By Mr. SKUBITZ:

H.R. 13471. A bill to amend the Emergency Petroleum Allocation Act of 1973; to the Committee on Interstate and Foreign Commerce.

By Mr. STAGGERS (for himself and Mr. DEVINE) (by request):

H.R. 13472. A bill to amend the Public Health Service Act to revise and extend programs of Federal assistance for comprehensive health resources planning, and to assist the States in regulating the costs of health care; to the Committee on Interstate and Foreign Commerce.

By Mr. TEAGUE:

H.R. 13473. A bill to amend title 10, United States Code, to establish a center for research regarding prisoner-of-war health problems; to the Committee on Armed Services.

H.R. 13474. A bill to amend title 38, United States Code, to extend the 20-year protection to ratings for children permanently incapable of self-support; to the Committee on Veterans' Affairs.

By Mr. THORNTON (for himself, Mr. SARBANES, Mr. TALCOTT, Mr. STUDDS, Mr. CLEVELAND, Mr. MOAKLEY, Mr. HECHLER of West Virginia, Mr. HOGAN, Mr. GUNTER, and Mr. PRICE of Illinois):

H.R. 13475. A bill to amend the Small Business Act to provide for loans to small business concerns seriously affected by shortages of energy producing materials, and for other purposes; to the Committee on Banking and Currency.

By Mr. TIERNAN:

H.R. 13476. A bill to provide public service employment opportunities for unemployed and underemployed persons, to assist States and local communities in providing needed public services, and for other purposes; to the Committee on Education and Labor.

H.R. 13477. A bill to amend title II of the Social Security Act to provide that increases in monthly insurance benefits thereunder (whether occuring by reason of increases in the cost of living or enacted by law) shall not be considered as annual income for purposes of certain other benefit programs; to the Committee on Ways and Means.

By Mr. VANIK (for himself, Mr. FORD, Mr. MATSUNAGA, Ms. ABZUG, Mr. STRATTON, Mr. ROSENTHAL, Mr. STOKES, Mr. OWENS, Mr. RIEGLE, and Mr. ROE):

H.R. 13478. A bill to amend the Internal Revenue Code of 1954 to eliminate, in the case of any oil or gas well located outside the United States, the percentage depletion allowance and the option to deduct intangible drilling and development cost, and to deny a foreign tax credit with respect to the income derived from any such well; to the Committee on Ways and Means.

By Mr. BRADEMAS:

H.R. 13479. A bill to provide assistance and full-time employment to persons who are unemployed or underemployed as a result of the energy crisis; to the Committee on Education and Labor.

By Mr. DANIELSON (for himself, Mr. CORMAN, Mr. HAWKINS, Mrs. GRASSO, Mr. JOHNSON of California, Mr. LEGGETT, Mr. MCFALL, Mr. MOSS, Mr. SISK, Mr. VAN DEERLIN, and Mr. WALDIE):

H.R. 13480. A bill to amend title 38, United States Code, to provide veterans and other elegible persons a 10-year delimiting period for completing educational programs; to the Committee on Veterans' Affairs.

By Mr. HÉBERT (for himself, and Mr. BRAY) (by request):

H.R. 13481. A bill to amend title 10, United States Code, to repeal sections which impose certain restrictions on enlisted members of the Armed Forces and on members of military bands; to the Committee on Armed Services.

H.R. 13482. A bill 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 movements of dependents and effects, or trailers, of those members in such a status for more than 1 year, to make it retroactive to February 28, 1961; to the Committee on Armed Services.

By Mr. LITTON (for himself, Mr. BADILLO, Mr. BINGHAM, Mr. BREAUX, Ms. BURKE of California, Mr. CHAPPELL, Mr. DENT, Mr. EILBERG, Mr. FLOOD, Mr. FORD, Mr. FRENZEL, Mr. HAWKINS, Mr. KEMP, Mr. KETCHUM, Mr. MANN, Mr. OBEY, Mr. OWENS, Mr. POWELL of Ohio, Mr. ROBINSON of Virginia, Mr. ROBISON of New York, Mr. ROYBAL, Mr. RUPPE, Mr. STEPHENS, Mr. YATRON, and Mr. YOUNG of Illinois):

H.R. 13483. A bill to amend the Legislative Reorganization Act of 1970 to provide seminars to freshmen Members of the Congress, and for other purposes; to the Committee on House Administration.

By Mr. PRICE of Illinois (for himself, Mr. HOLIFIELD, Mr. HOSMER, Mr. ANDERSON of Illinois, and Mr. MCCORMACK) (by request):

H.R. 13484. A bill 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; to the Joint Committee on Atomic Energy.

By Mr. TEAGUE:

H.R. 13485. A bill to provide that veterans' compensation shall not be considered as income in determining the financial eligibility of individuals for Federal benefits; to the Committee on Ways and Means.

By Mr. UDALL:

H.R. 13486. A bill to provide for the establishment of the Mojave-Sonora Desert National Conservation Area; to the Committee on Interior and Insular Affairs.

By Mr. HOWARD (for himself, Ms. ABZUG, Mr. BADILLO, Mr. BELL, Mr. CARTER, Mr. CLEVELAND, Mr. DU PONT, Mr. GILMAN, Mrs. GREEN of Oregon, Mr. HENDERSON, Mr. HUNGATE, Mr. JONES of North Carolina, Mr. MCDADE, Mr. MELCHER, Mr. MOAKLEY, Mr. MORGAN, Mr. PARRIS, Mr. PODELL, Mr. RANGEL, Mr. STEELE, Mr. THONE, Mr. TREEN, Mr. WILLIAMS, Mr. WOLFF, and Mr. ZWACH):

H.J. Res. 938. Joint resolution to authorize the President to issue a proclamation designating the month of May 1974, as 'National Arthritis Month"; to the Committee on the Judiciary.

By Mr. HUBER (for himself, Mr. BLACKBURN, Mr. HARRINGTON, Mr. HECHLER of West Virginia, Mrs. HECKLER of Massachusetts, Mr. KEMP, Mr. LONG of Maryland, Mr. MITCHELL of Maryland, Mr. QUIE, Mr. WHITEHURST, and Mr. WON PAT):

H. Con. Res. 446. Concurrent resolution offering honorary citizenship of the United States to Alexander Solzhenitsyn and Andrey Sakharov; to the Committee on the Judiciary.

By Mr. LUJAN:

H. Res. 981. Resolution to create a Select Committee on the Right of Privacy; to the Committee on Rules.

By Mr. OWENS (for himself, Mr. BINGHAM, Mr. BROWN of California, Mr. EDWARDS of California, Mr. HECHLER of West Virginia, Mr. DE LUGO, Mr. LEGGETT, Mr. MITCHELL of Maryland, Ms. MINK, Mr. STARK, Mr. STUDDS, Mr. VAN DEERLIN, Mr. WALDIE, Mr. CHARLES H. WILSON of California, Mr. WOLFF, Mr. WON PAT, and Mr. MOORHEAD of Pennsylvania):

H. Res. 982. Resolution to amend the Rules of the House of Representatives to provide for the broadcasting of meetings, in addition to hearings, of House committees which are open to the public; to the Committee on Rules.

SENATE—*Wednesday, March 13, 1974*

The Senate met at 10 a.m. and was called to order by Hon. ROBERT C. BYRD, a Senator from the State of West Virginia.

PRAYER

Brig. James Osborne, divisional commander, the National Capital and Virginias Division, the Salvation Army, offered the following prayer:

Almighty God, Father of all and cornerstone of this great Nation, touch and teach us today. Mark us for significant service for this exciting and exacting moment.

We particularly pray for these selected and elected servants, standing in the midst of great turmoil, encircled by the forces of good and evil, yet enriched and equipped by Thy presence and power.

Grant them strength to stand against all that is low and profane accompanied by wisdom to know and courage to choose high ideals and righteous causes.

Endow them with ability to see problems of this day and beyond them to lasting possibilities and eternal verities.

Guide our people to lives of love, fervent devotion, and spiritual efficiency.

Send us a sensitivity to those suffering and in need then direct us to appropriate action as the demonstration that righteousness exalts a nation.

Bestow on us new vision and verve through Jesus Christ our Lord. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., March 13, 1974.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. ROBERT C. BYRD, a Senator from the State of West Virginia, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

Mr. ROBERT C. BYRD thereupon took the chair as Acting President pro tempore.

THE JOURNAL

Mr. HUGH SCOTT. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Tuesday, March 12, 1974, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. HUGH SCOTT. 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.

QUORUM CALL

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

The ACTING PRESIDENT pro tempore. Does the distinguished minority leader desire to have any time under the standing order?

Mr. HUGH SCOTT. Mr. President, I yield back my time and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Does the distinguished minority leader wish the time to be taken out of the first order for recognition of Senators, which would be the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.)?

Mr. HUGH SCOTT. Mr. President, I ask unanimous consent that the time for the quorum call be taken out of the first order.

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

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may be permitted to yield the 15 minutes allotted to me under the order entered to the distinguished senior Senator from Virginia (Mr. HARRY F. BYRD, JR.).

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

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator yield me 30 seconds?

Mr. HARRY F. BYRD, JR. I yield.

RICE ALLOTMENT TRANSFERS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 705, S. 3075.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 3075) to amend the Agricultural Adjustment Act of 1938.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the bill (S. 3075) was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of subsection (g) of section 353 of the Agricultural Adjustment Act of 1938 be amended by striking "for 1973" and inserting in lieu thereof "for any year" and by striking "an adjoining" and inserting in lieu thereof "a near".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that appropriate extracts from the committee report (No. 93–729), in explanation of the bill, be printed in the RECORD.

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

PURPOSE OF THE BILL

This bill would permit rice growers who are unable to plant part or all of their farm acreage allotments because of floods or other natural disasters to transfer their allotments to other farms in the same or a near county on which they will have an interest in the particular commodity. Any allotment transferred will be considered to have been grown on the farm from which transferred for the purposes of acreage history credits and eligibility for future allotments as an old farm.

NEED FOR THE LEGISLATION

Flood conditions this year in some parts of the country again threaten to make it impossible for farmers to grow rice on their farm acreage allotments. This bill would provide permanent authority for the Secretary of Agriculture to permit the transfer of rice allotments from farms where because of a natural disaster the crop cannot be planted or replanted, to another farm in which the grower has an interest in the same or a near county.

Authority to permit, for 1973 only, the emergency transfer of rice allotments to another farm in the same or an adjoining county was provided by Public Law 93–27, approved April 27, 1973.

The production of rice from acreages affected by floods or other natural disasters is needed to meet the demand for rice, which is in short supply. An increase of 27 percent in the national acreage allotment for 1974 was announced by the Department on January 24, 1974, to provide a crop adequate for an increase in export demand and to allow for a desirable year-ending stock. While marketing quotas are not in effect with respect to the 1974 crop, producers must plant within their established allotments to be eligible for price support loans.

Thus, the provisions of this bill would assure a more adequate supply of rice as well as provide relief for farmers adversely affected by natural disasters.

The bill potentially affects approximately 660,000 acres of rice land in Mississippi, Arkansas, and Louisiana. Mississippi rice producers, currently the hardest hit by recent floods, have to make planting decisions by April 25.

DEFENSE AND DÉTENTE: AN ANALYSIS

Mr. HARRY F. BYRD, JR. Mr. President, today the free world is beset by troubles, with weakness and disorder apparent both between nations and within nations.

Inflation is widespread and increasing, with no end in sight.

Militant forces within nations demand and get prerogatives at the expense of the nation and other groups within the nation.

By contrast, in the Soviet Union there are no powerful militant organizations; there is little inflation, although productivity is low; there are no strikes or work stoppages, only inefficiencies; their shortages are not severe and a possible food shortage was averted, thanks to the willing cooperation of the United States.

Russia, as I see it, is playing a shrewd game.

The Soviets have come to realize that in order to reach their goals they must utilize all the fundamental elements of national power: political power, economic power, and military power.

Over the years, they have cautiously but continuously expanded their control and influence over more of the world. In the process they have not only increased their elements of national power, but have become more skillful in using them.

Their scientific achievements have been great. They lack capital and management and technological skills, but they recognize these deficiencies and are taking steps to rectify them. They hold out the hope of détente as a means of obtaining assistance in their technological difficulties and their need for low interest rates and long-term credits.

While they are in the process of building a more solid economic base, the Soviets are not averse to exacerbating economic troubles for the West.

Oil is the first economic weapon to be used against us. There seems little doubt that the Soviets influenced recent Arab action in establishing oil embargos and drastically and repeatedly raising the price of oil.

This has resulted in hurting the economy of Western nations and aggravating the relationships among these nations dependent on Middle East oil. The Soviets are adept at using third powers to further their aims.

The Soviets will avoid any action, I feel, that might lead to general nuclear war; but at the same time they will continue to maintain and improve nuclear capability and try to achieve nuclear superiority.

Current situations in the Middle East and the Mediterranean aid in causing disruption in the economy of many free world nations, and present an opportunity for the Soviets to increase their influence on Persian Gulf and Indian Ocean countries.

Iraq and India are moving closer to Moscow. If the Soviets can obtain essential control over the Indian Ocean area, and the Arabian Peninsula, they will have come a long way to countering Red China as well as having a powerful economic lever on all of the West.

The opening of the Suez Canal will be of substantial benefit to the Soviet Union, and detrimental militarily to the United States.

Summarizing, Soviet political power is tremendous; only the United States is comparable. The Russian leaders are skilled in causing other nations to do those things which help them and injure those who may oppose them.

The significance to the United States is this: Russia is the only present potential threat—China's threat is a decade or two away—to the free world and it is primarily because of Russia that the United States is spending approximately $80 bil-

lion a year for military purposes—the new budget exceeds that figure.

I believe that in 1974 we must carefully evaluate the entire defense policy of the United States.

This appraisal should be conducted on the basis of a realistic understanding of the relationship between the United States and the rest of the world. In particular, we must look carefully at the situation which exists between the United States and the Soviet Union.

Because of recent agreements with Russia, there is optimism over "détente"—a French word meaning a relaxing of tensions between nations. But before we relax to the point of complacency, a note of caution may be in order.

At the outset, let me say that I favored President Nixon's visits to Peking and Moscow. Let the leaders of the great powers continue to meet, continue to discuss, continue to seek solutions. This is important and desirable.

But let us not deceive ourselves. Let us not suppose that all has become sweetness and light between the Communist powers and the United States.

As to the Soviet Union—while the Russian leaders have signed agreements with the United States, we must remember that they have received far more than they have given. This is true both in trade and in arms.

As a matter of fact, in each of the three agreements between the United States and the Soviet Union during 1972, the United States came out second best.

The most dramatic is the grain deal. Not only did we let our products go too cheaply, but also the U.S. Government provided what was in effect a $300 million subsidy. And, on top of that, Russia borrowed the money from the U.S. Government to pay for the wheat. In other words, Russia bought our wheat with our money.

Melvin Laird, former counselor to President Nixon, stated flatly—

> The wheat deal was forged to save the Soviets from the results of a disastrous agricultural program.

Is there any wonder Chairman Brezhnev is so anxious to promote détente?

The fact is that we made it easier for them to spend for defense when we subsidized their domestic economy with bargain basement prices on wheat.

Another agreement with Russia in 1972 was the settlement of its debt to the United States.

At the end of World War II, the total value of lend-lease equipment sent from the United States to Russia during the conflict was estimated at about $11 billion. All but $2.6 billion of this amount was written off in 1946, since it consisted mostly of military equipment used in the war.

In 1972 the United States agreed to a settlement of the remaining $2.6 billion debt for $722 million—or about 28 cents on the dollar.

But there is no assurance that the $722 million will be paid. Of that total, $674 million is contingent upon granting to the Russians of most-favored-nation status in tariffs, a concession many of us in Congress strongly oppose.

That leaves only $48 million in assured repayment—which is less than 2 percent of the $2.6 billion debt.

Russia said, in effect, we will pay the United States a small part of what we owe you—provided you give us special trade concessions, including long-term credits and subsidized interest rates provided by the American taxpayers.

Yes, détente is fine—for Russia.

The third United States-Russian agreement of 1972 was the SALT accords. In the agreement on offensive ballistic missiles, the Russians were permitted to have numerical superiority.

The United States may have 1,054 land-based intercontinental ballistic missiles while Russia is permitted 1,618.

We also gave the Russians a numerical advantage in submarine-launched ballistic missiles and in the number of missile-carrying submarines. They are building and modernizing 62 strategic-missile submarines as allowed under the SALT Treaty, while the United States is limited to 44.

The United States held a lead in submarine missiles during the negotiations but conceded to the Soviets a sizable advantage in the treaty agreement, 950 to our 710.

And the Soviets are not standing still. They already have passed the United States in total missiles and are speeding production to reach the limits allowed under SALT–I.

In addition, the Soviets are accelerating development of four new types of long-range missiles, all capable of carrying large numbers of multiple independently targeted warheads. They also are developing a fast new manned bomber, the "Backfire."

In addition, they have great numbers of very fast attack submarines to be used against our Polaris-Poseidon submarine fleet.

SALT–I was a temporary agreement, yet I was uneasy about this agreement when it was submitted to the Senate. I joined with Senator JACKSON and a number of other Senators in sponsoring an amendment calling on U.S. negotiators to insist on equality with Russia in future agreements.

Without that provision, I could not have supported the strategic arms limitation agreement.

The point to be made by this review of the 1972 agreements is this: our representatives are so anxious to get agreements that they are too willing to make unmatched concessions.

It is essential that the United States never lose sight of the fact that while moods and methods, words and gestures may change in Moscow, the underlying goal of the Communist dictatorship remains constant. That goal is the worldwide domination of the Communist system. It is a fixed star in the Soviet firmament.

If we forget this central fact, we imperil ourselves. Soviet theorists constantly reiterate that no matter what course may be dictated by the opportunities of the moment—and Moscow has changed course often—the ultimate goal remains the same.

Chairman Brezhnev made this clear in June 1972, when he said:

> Détente in no way implies the possibility of relaxing the ideological struggle. On the contrary, we must be prepared for this struggle to be intensified and become an ever sharper form of the confrontation between the two systems.

The United States cannot afford to accept a "détente" which leaves open the way for global domination by the Soviet Union.

The danger of "détente" is that it tends to lull the United States into a false sense of security.

From within Russia, dissident voices like those of now-exiled novelist Alexander Solzhenitsyn and physicist Alexei Sakharov have warned against concessions by the West unmatched by concessions on the part of the Soviets.

Sakharov, father of the Russian hydrogen bomb, stated:

> Détente without democratization, a détente when the West in fact accepts Russia's rule of the game in the process, such a détente would be dangerous.

All the world, of course, yearns for peace. Most of us would prefer a world order based on justice rather than on might. But such an order, unfortunately, has not yet come.

Indeed, the only way we have to build a peace that is effective and lasting is to maintain a strong defense and to bargain realistically.

The implications of these facts for the current SALT negotiations are important to note.

If we are to attain nuclear stability, then we must attain strategic equality.

Clearly, we have to maintain adequate strategic defense, as a vital element of our own national security and for the security of the free world.

As I have pointed out, there has been a shift in the strategic balance between the United States and the Soviet Union. In fact, strategic inequality in favor of the Soviets was built into the SALT–I agreement.

How do we measure strategic balance?

We look at the numbers of strategic launchers, their throw weight, ability to deliver multiple warheads, and technology.

We were led to believe, in the debate on SALT–I, that the numerical superiority afforded the Soviets in numbers of launchers was balanced by our superior technology, especially MIRV capability.

But now the Soviets have improved their technology. They are developing a MIRV'ing capability, which coupled with their built-in advantage in the number of missiles, could lead to a Russian advantage in the number of warheads.

In fact, the Soviets are building up to every level allowed under SALT–I—and how could anyone expect otherwise?

If our SALT–II negotiators do not insist on equality, then they are opening the door to further Soviet advantages at our peril.

The Soviets will use every agreement to their advantage. They gave up nothing at SALT–I and retained the right to increase the ultimate payload of their missiles. Since then they have greatly increased their nuclear capability.

Having gained the upper hand from the interim agreement, they will be even harder to deal with in subsequent negotiations.

I agree with my colleague, Senator JACKSON, that it is time to put the Soviets to the test.

If they do not want to bargain realistically and accept a position of nuclear equality, then we should revise our view of détente and increase our vigilance.

Yet while we must maintain a strong defense to protect our vital interest, ours cannot be a lone vigil.

Secretary of Defense Schlesinger said at a recent hearing of the Senate Committee on Armed Services:

> The United States, as opposed to the period before 1939, or even before 1945, bears the principal burden of maintaining the worldwide military equilibrium that underscores the survival and security of the Free World.

The Secretary went on to say:

> There is nobody else to pick up the torch if the United States fails to carry it.

We have been carrying the torch since World War II. We carried the torch and at the same time carried on a long, costly conflict in Southeast Asia. We have carried the torch of free world defense for a long time and at great expense to ourselves.

It would be a grave error in judgment to assume that we can carry the torch alone, or that the torch gets lighter because there is talk of détente.

Our free world allies must share more fully in the burden which the United States has assumed. We must get that point across to our friends.

We must look closely at all our commitments.

We should carefully analyze our commitments to NATO in particular, with an eye for a more equitable sharing of the costs.

NATO is clearly one of our most important alliances. In the past few years, however, its strength has deteriorated. Since the energy crisis, the weaknesses have increased.

There are several questions on the NATO alliance that should be raised:

Are our NATO allies bearing their just share of its burden?

Can we continue to maintain 4⅓ divisions of ground troops in Europe? Should we, even if we could?

Can Spain make an important contribution to the defense of Europe and should we pursue the possibility of her admission to NATO?

Can the United States continue to carry a disproportionate share of the NATO burden?

A free and peaceful Europe is vital to the United States. The 6th Fleet in the Mediterranean is of substantial importance, as are the six Royal Air Force bases we occupy in England; our naval and air bases in Spain and Greece; and our air bases in Turkey and Germany. All are of tremendous importance.

But 29 years after World War II, should the United States maintain 200,000 ground troops in Europe? I think that is difficult to justify.

I urge the President and the Secretary of Defense to begin talks now with our NATO allies looking toward phasing out 100,000 U.S. ground troops in Europe over a 3-year period.

This should result in a reduction of the total United States defense force. Such a reduction should be focused in the support elements, without reducing the combat capability of our conventional forces.

While I believe that we must be cautious about the commitments which we undertake, and those which we maintain, I do not favor isolation.

The United States, as a great power, has a major role to play in the world. Europe and the Middle East are of especial importance to the United States.

Because of this—and because the flow of commerce and supplies in any emergency depends upon freedom of the seas—the United States must maintain its naval power.

Indeed, I feel Secretary of Defense Schlesinger was accurate when he told the Senate Armed Services Committee last month that the free world today "is an ocean world."

During the last 10 years, the Soviet Union has been engaged in a massive maritime building program, paralleled only once in all history—the great expansion of the American fleet during World War II.

Since 1964, the Russians have commissioned almost double the number of submarines put into service by the United States—140 against 75—and have more than kept pace with the United States in surface warships.

Moreover, because of obsolescence in the U.S. Fleet and because of retirements for economy reasons, the Russians this year for the first time have a surface combatant fleet larger than that of the United States.

The quality, as well as the quantity of the Soviet buildup should be noted. Historically, Russia built ships for defense of the home waters; today, the emphasis in the Russian program is upon attack vessels designed to project power to distant shores.

The Soviet fleet definitely has taken on great offensive capability.

I believe that the Russian naval forces are part of a major effort to use the sea for economic, political, and military purposes.

But all this is not to say that we are overpowered at sea or that we would be defeated at sea in a struggle against the Soviet Union.

Actually, we are ahead of the Soviets in aircraft carriers, amphibious forces, submarine detection, and many other important aspects of naval power.

But there is a very definite trend—the Soviets are rapidly reducing our lead in some of these areas.

Not only has the Russian bear learned to swim, but he is making a big splash—in the Mediterranean, in the Indian Ocean, and increasingly all around the globe. And he wants his paws planted on the reopened Suez Canal, another advantage—at our expense—to his seapower.

The Soviets have learned the real importance of seapower—power to assure the movement of vital goods, power to protect a nation's vital interests.

The sea offers concealment for undersea warships that have made the missile-carrying submarine a comparatively invulnerable deterrent against the possibility of nuclear war.

So, for economic, political and military reasons, the world's oceans are vital.

What does that mean in terms of national policy? To me, it means that the United States must have a Navy second to none.

It also means that we need a strong merchant marine. For several years after World War II, the United States was the unquestioned leader among the world's maritime powers.

However, our merchant marine declined for many years and we have paid a heavy price for that neglect.

Not only has the United States lost its merchant fleet supremacy, but it has been forced to pay large sums to other countries to haul goods to and from our own shores. And this at the expense of our balance of payments with other nations. Obviously, the amounts we paid for our commerce on ships of other countries made the balance-of-payments situation worse.

Today, after many years of drifting, our Government policy toward the U.S. merchant marine is back on course. Congress has enacted a program with the specific goal of revitalizing the American merchant fleet.

It is important that we continue the effort to provide the United States with a strong merchant marine. A fleet of modern merchant vessels is the proper companion to a strong Navy and in this era the United States must have both.

There is another aspect of our seapower which needs to be taken into consideration—namely, the security of vital links such as the Panama Canal.

In my opinion, the United States cannot afford to yield its sovereignty over the Panama Canal Zone.

I take strong exception to the statement signed last month in Panama by Secretary of State Kissinger. Secretary Kissinger committed the United States to prompt completion of negotiations leading to the transfer of sovereignty over the Canal Zone from the United States to Panama.

Neither the President nor the Secretary of State has the right under our Constitution to commit the United States to a new treaty eliminating U.S. sovereignty in the Canal Zone.

That sovereignty was acquired by treaty 70 years ago and it can be abrogated and a new treaty ratified only by a two-thirds vote of the Senate of the United States.

President Johnson tried to bargain away U.S. sovereignty in 1967, and I helped lead the fight in the Senate in opposition. President Johnson, facing defeat on this issue, decided not to press it.

I shall make every effort in the Senate to defeat Secretary Kissinger's "commitment" to give away the United States interest in the Panama Canal.

I am willing to support reasonable changes in the present treaty with Panama but so far as my vote is concerned, our sovereignty over the Canal Zone is not negotiable.

Turning back to the global scene, I have said that the United States must bargain more firmly with the Communist powers, particularly Russia; that we must insist on equality in strategic

forces; that we must reexamine the structure of our worldwide alliances; that we cannot afford to police the world; and that seapower is a vital element to national security.

Nor can one minimize the importance of airpower to national security. Manned bombers are an essential element of the triad concept—namely, bombers, ICBM's, and SLBM's.

The role that we assume among the nations of the world determines the size of our defense budget.

Let us now proceed to this budget.

In considering the proposals for national defense expenditures, let us bear in mind that the debate we will conduct here in the United States will have no parallel in the Soviet Union.

The leaders in Moscow are not subject to the kinds of constraints which are present in a democracy.

I feel that the Russian people are just as peace loving as the people of the United States. But the Russian people have no way to present their views, because the Soviet Union is a rigid dictatorship. A small group makes the decisions, and opposition is not tolerated.

Fortunately, such is not the case in our Nation.

At the outset of the debate on the defense budget, let us keep in mind that defense costs are not the reason for the enormous expansion of the Federal budget which has taken place in recent years.

On the contrary, defense outlays from 1968 through the current year have been relatively stable at $78 to $80 billion, while nondefense outlays have soared from $98 to $194 billion.

For the coming fiscal year, the President has proposed an increase in defense spending to $86 billion or about 8 percent.

My attitude toward that proposal is this: there can be no reductions which would impair national security, but wasteful or unnecessary spending must be eliminated.

To put it another way—we must cut the fat, but we dare not cut the muscle.

In more concrete terms, this means that we must have a strategic force sufficient to deter nuclear war and a conventional force adequate to discourage expansionism on the part of the Communist powers.

We need both—nuclear and conventional—because without the latter a future President will lack a conventional option to a nuclear response. We must have an alternative to nuclear war.

In my judgment, there can be no compromise with these objectives.

Within these guidelines, however, we must look carefully at each proposal for spending.

For example, nearly two-thirds of every defense dollar today goes for personnel or personnel-related costs. These costs have escalated dramatically as a result of the implementation of the all-volunteer Armed Forces concept. Today, the average cost of maintaining one man in uniform is $12,500 per year.

From the beginning I have questioned the wisdom of an all-volunteer force. I see nothing wrong with what now seems to be thought of as an old-fashioned ideal—namely, broad citizen participation in the defense of the Nation as opposed to an all-professional force.

I think we must take a hard look at the way this all-volunteer system is working.

I am not opposed to past pay increases for the military. All of our Armed Forces personnel should be appropriately paid, well housed, and well fed.

However, as we pay more for personnel the quality should increase. Yet the experience to date with the all-volunteer force has been just the opposite.

In 1964, a pre-Vietnam low draft year, 67 percent of those in the Army had high school diplomas. But in December 1973, only 41 percent of new recruits had completed high school. To date in fiscal year 1974, the overall high school graduate figure is 54 percent.

There is a similar pattern in regard to recruits when measured as to mental ability.

So far in fiscal year 1974, 19 percent of Army recruits have been "category IV." These are persons of lower than average intelligence, who are difficult to train and have more than normal problems adjusting to military life.

In regard to racial composition, blacks represent about 12 percent of the population in the country and yet thus far in fiscal year 1974, 27 percent of Army recruits have been black. In the Marines, blacks now constitute 18 percent of the Corps.

Let us now consider personnel cost versus expenditures for research and development and weapons systems acquisition.

In fiscal year 1954 defense outlays were $43.6 billion, and in fiscal year 1974 defense outlays are estimated at $79 billion.

This is an increase of $35.4 billion in 20 years. But the bulk of this increase has not been for the procurement of weapons systems. Of the $35.4 billion increase, 93 percent went for pay and operating costs, and only 7 percent for the combined total of procurement, research and development, and military construction.

If we compare fiscal year 1964 to fiscal year 1974, the picture is even more startling. Defense outlays have increased $28.2 billion since fiscal year 1964. Of this increase 96 percent has been for pay and operating costs while only 4 percent has been for procurement, research and development, and military construction.

Retired pay is a significant part of the manpower budget.

In fiscal year 1974 there will be over 1 million persons on the retired rolls, at a cost of $5 billion. For fiscal year 2000 there will be 2 million retirees with an annual cost of more than $30 billion.

Additionally, the unfunded liability of the military retirement system is currently $137 billion.

It causes me great concern that we spend such a small percentage of the defense budget for procurement and research and development.

With two-thirds of the defense dollar going for personnel costs, if sufficient money is to be obtained for weaponry and for research and development, the armed services are likely to be faced with the need to reduce the total numbers of personnel—which today total 2.1 million in uniform and 1 million civilians.

With such a high percentage of the defense budget going to personnel costs, the services must learn to make the most efficient use of their valuable manpower resources. Military manpower is a costly resource. It must be managed as such.

In addition, there is a definite relationship between a strong defense and a sound economy. Heavy Government deficits are forcing down the value of the dollar and forcing up the cost of living.

That is why I believe that if we are going to maintain a strong defense with adequate modern weapons, we must reduce to some extent the total personnel.

I began by discussing "détente."

Let there be détente.

But let it be based on reality—on a recognition of Russian ambitions and might, and the need for American strength—and not on wishes and unilateral concessions.

Weakness never has been a basis for peace.

We must never lose sight of the fact that dollars spent for American defense are an investment in world peace and stability, and that world peace and stability, in turn, are important to our own freedom and prosperity.

Mr. President, at this point I ask unanimous consent to insert in the RECORD certain statements made by various leaders of the Soviet Union.

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

[Marshal of the Soviet Union A.A. Grechko, May 1973]

IMPROVEMENT OF FORCES

The Communist Party and Soviet Government attach great importance to improving these forces [i.e., the Strategic Missile Forces], and day-to-day attention is also given to other branches of the Armed Forces and combat arms. They are being outfitted with all means of armed warfare needed to defeat any aggressor.

[Pravda Editorial, July 1972]

POWER

The more powerful our Motherland becomes, the more opportunities it acquires for influencing the course of world events in a direction favorable to the peoples. Recent events confirm once again that the Soviet Union and the other countries of the socialist community are a force increasingly determining the course of world development.

[Resolution of CPSU Central Committee, April 1973]

STRENGTH

The active, enterprising international policy of the CPSU, a policy which relies on the great strength and prestige of the Soviet state, and the support of the entire people, is conducive to positive changes in the world situation.

[24th CPSU Congress, March 1973]

EDUCATE PEOPLE FOR DEFENSE STRENTH

The comprehensive raising of the defense might of our Motherland and the education of Soviet people in a spirit of great vigilance and constant readiness to defend the great achievements of socialism must continue to remain one of the most important tasks of the party and the people.

Mr. HARRY F. BYRD, JR. Mr. Presi-

dent, how much time do I have remaining?

The PRESIDING OFFICER (Mr. INOUYE). The Senator has 1 minute remaining.

Mr. HARRY F. BYRD, JR. I yield that 1 minute to the Senator from New York.

The PRESIDING OFFICER. Under the previous order, the Senator from New York (Mr. BUCKLEY) is recognized for not more than 15 minutes. With the 1 minute yielded by the Senator from Virginia, it is a total of 16 minutes.

Mr. BUCKLEY. Mr. President, I thank the Senator from Virginia not only for that 1 minute but more particularly for his excellent and comprehensive statement of our defense needs. I am particularly grateful for his having pointed out the danger in the euphoria of détente which has unfortunately blinded so many to the Soviet Union's capabilities and intentions.

ANTIJAMMING AMENDMENTS TO THE TRADE REFORM ACT OF 1974

AMENDMENTS NOS. 1021 AND 1022

Mr. BUCKLEY. Mr. President, we have seen a gradual transformation in the administration's perception of détente from a policy for opening the way to hard-headed negotiations with the East into one in which maintaining the "spirit of détente" has become an end in itself. Thus, while détente began as an instrument of policy designed to cope with world realities and thus achieve a safer world, the Nixon-Kissinger policy now seems so concerned with preserving the appearances of détente that we run the danger of losing sight of reality. Thus we are pursuing goals that may make the world considerably less safe than we now find it.

By way of contrast, the Soviet Union views détente as a means of achieving specific ends, and not as an end in itself. As Secretary of Defense Schlesinger recently observed:

Soviet actions during the October 1973 Middle East war show that détente is not the only, and in certain circumstances, not the primary policy interest of the U.S.S.R.

In the economic sphere, détente is viewed as a means of curing serious shortcomings in the Soviet economy by encouraging massive transfers of Western capital and technology. This latter aspect is detailed in a recent article by Natalie Wales Hamilton entitled "Why Must We Bail out the Soviet Economy?" which appears in the current issue of Human Events, March 16, 1974. I ask unanimous consent that this article be printed at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. BUCKLEY. Mr. President, I belive it is fully appropriate for the Congress to demand a more realistic view of détente than that currently held by the administration. To this end, I am today introducing amendents to the Trade Reform Act (H.R. 6767) and to the bill to extend the life of the Export-Import Bank (S. 1890) which will deny most-favored-nation status and extension of commercial credits to any country that jams international broadcasts that are supported by U.S. tax dollars.

These amendments are in full harmony with the objectives of policy of détente. They are based on the understanding that freedom of information is the sine qua non of international stability and peace; that only by assuring better communication among the peoples of East and West can we hope to build the foundation for a truly peaceful world.

I say this not on my own authority, but on that of the leading statesmen of the West who met in Helsinki last June to prepare the way for the current Conference of Security and Cooperation in Europe—CSCE. These men gave unanimous witness to the necessity for a freer movement of ideas and individuals and information among the nations of Europe—and by extension, the world. It would be futile, they said, to talk about establishing a structure for long-term cooperation and security among the nations of Europe without first assuring the ability of the peoples of Europe to talk to one another, to learn from one another, under conditions conducive to a genuine exchange of views and information.

Allow me for a moment to offer quotations from the distinguished participants in the Helsinki talks:

United Nations Secretary General Kurt Waldheim said:

Detente is a word often used to describe better political relations between the great powers, but I wish to emphasize that although this is of crucial importance, real detente goes much deeper. . . . Above all, real detente means true understanding of the values and the interests of others. . .

Finland's President Kekkonen said:

Security is not gained by erecting fences; security is gained by opening gates.

Italian Foreign Minister Medici said:

It is because human beings, and not treaties, make war or peace that greater freedom of movement for mankind and improved cultural and information exchange are of such decisive importance.

France's Foreign Minister Jobert stated:

We believe that peace is achieved by the exchange of ideas and goods, by free circulation movement of individuals, as well as by their free self-determination.

British Foreign Secretary Douglas Home said:

If our Conference is to be about people, and about trust, then it is essential that we should do something to remove the barriers which inhibit the movement of people, the exchange of information and ideas.

West Germany's Foreign Minister Scheel said:

Who does not observe everywhere in Europe today the urge for more contacts, more information, more meetings? People wish to partake at long last in their daily lives of the fruits of detente, to feel these fruits with their hands . . . We must make it clear that detente implies an improvement in human contacts. The inviolability of frontiers only assumes its full meaning if frontiers do not disrupt natural ties, and if it is possible to maintain and establish contacts across frontiers.

Commenting on the final recommendations adopted at Helsinki, William Rogers, then Secretary of State of the United States said:

A fundamental aspect of our commitment is outlined in Section III. I refer, of course, to the lowering barriers to the freer flow of people, information and ideas among participating states. . .

It will . . . be important to give specific content to our agreement to improve the circulation of and access to information transmitted by the various media and to improve the conditions under which journalists may exercise their profession in our countries. The right of people to know fully what is happening in the world is a basic human right and a basic requirement for understanding. . .

Of paramount importance (are) . . . human contacts, the freer dissemination of information and the broadening of cultural and educational cooperation . . .

As the insistence of the Western representatives, the final recommendations adopted at Helsinki for the Conference on Security and Cooperation in Europe include the following provisions of title III—"Cooperation in Humanitarian and Other Fields":

Section 42 states:

With the aim of contributing to the strengthening of peace and understanding among the peoples of the participating States . . . irrespective of their political economic and social systems, the Committee, shall be charged with examining all possibilities of cooperation conducive to creating better conditions for increased cultural and educational exchanges, for broader dissemination of information, for contacts between people, and for the solution of humanitarian problems.

Section 47, entitled "Information," states:

The Committee/Sub-Committee shall prepare proposals to facilitate the freer and wider dissemination of information of all kinds in doing so it shall pay particular attention to:

(a) improving the circulation of, and access to, oral, printed, filmed and broadcast information and extending the exchange of information;

(b) encouraging co-operation in these fields of information on a basis of short or long term agreements;

(c) improving conditions under which journalists from one participating State exercise their profession in another participating State.

Mr. President, I want to underscore the fact that the 35 nations participating in this conference, including a reluctant Soviet Union, agreed that security and cooperation depend significantly on "improving * * * access to * * * broadcast information * * * *." Thus, the principle of freedom of information in international broadcasting is one officially subscribed to by the nations participating in the conference as a prerequisite for true international security and cooperation among nations. In fact, the participants agreed to meet in Geneva "on the basis of the final recommendations of the Helsinki consultations." There can be no doubt that the free movement of ideas and information is not a peripheral matter, but one of central concern to the nations involved in the security talks.

It is clear from the foregoing that the amendments I am offering are completely consistent with the policy that has been adopted by the participants in the CSCE. Yet there are those who, while sympathetic with the objectives of my

amendments, will nevertheless object that their adoption might hurt the cause of peace. They will suggest that it is inappropriate to introduce purely political considerations into legislation having to do with matters of trade; and that the attempt to do so will derail the "spirit of détente." I submit, Mr. President, that such objections reflect far too narrow a view of the nature and implications of the trade negotiations now in progress between the United States and the Soviet Union, as well as a lack of understanding of how the Kremlin regards the relationship we describe as "détente."

For those having an overweening concern for Soviet sensibilities, for those who feel the fabric of détente is too delicate to allow us to insist on a balancing of benefits, perhaps the following authoritative statements of the hardheaded attitudes of our Russian partners-in-détente will prove reassuring. In March of last year, for example, G. Arbatov, director of the Soviet Institute for American Studies, said:

> Relations with the capitalist nations will remain the relations of struggle, however successful normalization and detente may be . . . The essential question is what form that struggle will take.

Lest there be any misunderstanding, here is Pravda, the official voice of Soviet communism, in May of 1973:

> Only naive people can expect that recognition of the principles of coexistence by the capitalists can weaken the main contradiction of our times between capitalism and socialism, or that the ideological struggle will be weakened.

I suggest, in short, that the kind of tradeoff implicit in the amendments I am introducing today will not only advance the objectives of détente by bringing legitimate pressures to bear for a leavening of Soviety society, it will apply these pressures in a manner wholly consistent with the Soviet Union's own understanding of the political and economic arenas into which détente has taken us.

The tradeoffs provided for in my amendment recognize the fact that the costs and benefits of an expanded trade with the Soviet Union based on credits unilaterally extended by the United States cannot be measured in traditional commercial terms. Economists are in agreement that the United States has relatively little to gain economically from the dramatic expansion of commercial intercourse that is now being discussed between Washington and Moscow. On the other hand, they are equally in agreement that the Soviet economy would be immeasurably strengthened by it. The Soviets are in desperate need not just of our agricultural and consumer goods, but most especially, of our agricultural, industrial, and computer technology. The London Economist has described the contemplated expansion of Western and, in particular, American trade with the Soviet Union as a "rescue service" to deliver the Soviets and their allies from decades of economic mismanagement. The Soviet technology—with the exception of some specialized military areas and a few research-oriented specialties—is primitive by comparison with our own. This fact has not escaped the notice of leading Soviet scientists, three of whom have appraised the disparity between United States and Soviet technology in this manner:

> When we compare our economy with that of the United States, we see that ours is lagging behind, not only quantitatively . . . We are . . . behind in the production of oil, gas, and electric power, ten times behind in chemistry, and immeasurably behind in computer technology . . .

It is for this reason that the Soviets seem so much more interested in acquiring our technology than our goods. According to a recent article in the National Journal, the Soviets are negotiating to acquire our advanced technology in the fields of computers, agriculture, petroleum, conventional and atomic power generation, aviation, and a number of others.

As I have stated, it is generally agreed that while the purely economic benefits to be derived by the American economy from expanded trade with the Soviet Union are small, the advantages that are to accrue to the Soviet economy are of critical importance. Furthermore, it is also agreed that an economically strengthened Soviet Union will be better able to continue its massive investment in military forces while increasing the level of political and economic competition that the Kremlin equates with détenté.

Thus it is both reasonable and prudent for us to ask ourselves whether without special concessions from the Soviets, it is in the interest of world peace, to say nothing of our own self-interest, to subsidize the kind of expansion in commercial relationships between our two countries that is now being advocated. I believe the answer is self-evident. This Nation cannot prudently go about facilitating trade without insisting that a significant political price be paid as a condition for credits or any other special accommodations extended to the Soviet bloc. I can think of none that is easier to verify or more important to peace than an insistence that our broadcasts be allowed uninhibited access to listeners behind the Iron Curtain.

To those who state that the Kremlin has shown its goodwill by ceasing to jam Voice of America broadcasts, it must be pointed out that, first, this gesture has not been extended to the broadcasts of Radio Liberty, and second, there is no assurance that the jamming of the VOA will not be resumed at any time in the future, especially if VOA resumes a somewhat meatier diet than that now being served its Russian-language listeners. Moreover, at no time has the Soviet Union shown a willingness to sign any specific, detailed multilateral agreement concerning the jamming of international broadcasts; and there is no reason to expect them to do so now unless given a specific incentive to do so. It is precisely this incentive that can be provided by the adoption of my amendments.

It will be argued, I know, that my amendment is redundant as the Soviet Union and its Eastern satellites have already agreed to a final recommendation for the agenda for the CSCE that will require a freer exchange of peoples and ideas. We would be naive, however, in light of past experience and of the tightening of the forces of internal repression that has accompanied the so-called era of détente, to believe that the Soviets will in fact translate formal agreement to principle into its implementation in practice. The Soviet fear of truth runs too deep. The extraordinary measures and expense the Kremlin undertakes to protect its subjects from knowing about what is going on in the outside world—or in their own country, for that matter—are underscored in a study made by the Library of Congress.

This study of the origins, structure, policy, programing, and effectiveness of Radio Liberty—RL—was prepared at the request of Senator J. WILLIAM FULBRIGHT and published in March of 1972. I would like to quote from the study about the nature and extent of jamming by the Soviet Union:

> Within 10 minutes after RL went on the air in March 1953, the Soviet Government began jamming operations; it has continued ever since, jamming RL around the clock 24 hours a day . . .
>
> *Soviet jamming operations are extensive, and they are expensive. It has been estimated that it costs the Soviet Government over 6 times as much annually to operate the jamming network as the annual budget of RL itself.* (Emphasis added.)
>
> A further indication of Soviet willingness to pay a high price to prevent the citizens from hearing foreign broadcasts, despite pressing economic problems at home that could use this allocation of funds, was the estimate of USIA a few years ago on the cost of Soviet jamming. USIA compared jamming with the erection of the Berlin Wall as an admission of failure, and went on to say that, "the communists now employ something like 2,500 jammers against the Voice and other free world broadcasters. We estimate that it would cost us over $150,000,000 per year to operate a similar network. This is three or four times the amount spent by all free world radios broadcasting to the communist bloc . . . ." RL estimates that Soviets have 24 main jamming stations with between 10 and 15 transmitters per station.

I might add that the study submitted by the USIA estimates that the Soviet Union spends $150 million a year to keep their public from learning the truth from U.S. sources.

Although the Soviet Union is a signatory to the final recommendations of the Helsinki Resolutions asserting the principle of "improving—the access to—broadcast information" as a means of "contributing to the strengthening of peace," it would be naive to assume that the Soviets will willingly comply with its terms. There has been no more dramatic or obvious example of the Soviet Union's fear and repression of the basic human rights of freedom of speech and of information than its treatment of the Nobel Prize-winning author Alexander Solzhenitsyn.

The arrest and exile of Alexander Solzhenitsyn represents far more than just another example of the Soviet Union's contempt for the basic human freedoms for which the great Russian author and patriot has so long fought. It represents an act of calculated contempt for American and world opinion and for the values of free men everywhere. As such, it dramatizes the full context of the relationships within which trade plays a necessarily political as well as economic role.

Alexander Solzhenitsyn's life has been spared, and for this we should all be grateful; but it was spared not out of respect or compassion, but because of Mr. Brezhnev's desire not to make a martyr of a man who has become the embodiment of mankinds unquenchable thirst for freedom and justice. Instead, this great patriot has been condemned to a life in exile which he has long made clear would be for him a kind of living death.

The arrest and exile of Solzhenitsyn is a gesture of major symbolic importance. It is a naked assertion that the Kremlin does not intend to lift in the slightest degree the repression through which it continues to rule. The American people are therefore entitled to something more than the rhetoric of détente if they are to be asked, in effect, to subsidize trade through the extension of special credits and other privileges so that the Soviet Union may, on its own terms, acquire the benefits of American technology and consumer goods.

I do not quarrel with the desirability of establishing lines of communication with Moscow, or with the necessity to pursue every reasonable avenue of discussion that is designed to result in symmetrical and prudent reductions in our respective military forces and armaments. The necessity or desirability of such negotiations, however, cannot excuse or justify a policy in which all moral concepts and objectives are set aside in considering the totality of the relationships between the two superpowers.

Mr. President, this is something that this Congress has already recognized with respect to the trade reform bill. I speak of the Jackson amendment that would withhold most-favored-nation status and the extension of commercial credits to any nonmarket economy nation that denies its citizens the right of emigration. This restriction has been adopted by the House of Representatives, and the amendment in the Senate is sponsored by 70 Senators. But while the Jackson amendment serves the great humanitarian objective of using our leverage to induce the Soviet Union to let people seek their destinies elsewhere, of requiring the Soviets to honor their solemn undertaking as signatories to the United Nations Declaration of Human Rights as it respects the right of emigration; my amendment would have the complimentary effect of requiring, as a condition to the extension by the United States of certain privileges and benefits, that information and ideas be allowed entry into the Soviet Union in the form of uninterrupted radio broadcasts. More than that, the objective of my amendment; namely, the requirement that the Soviet bloc desist from jamming broadcasts sponsored or supported by the United States, is one that is not only supportive of the policy of détente, but essential to its ultimate success.

The rulers of the Soviet Union have shown an insatiable appetite for the goods and technology of the West. Let us demonstrate that if they want to import our goods, if they want to master our technology, if they want to utilize our economic credits, they must also "import," as it were, our most precious commodity—the one that those imprisoned behind the Iron Curtain value above all others—freedom of information. We cannot force the Soviet Union to stop jamming; but we can make it clear to them that this is the price they will have to pay if they want our trade.

Mr. President, I send my amendments to the desk and ask that they be appropriately referred, and that they be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. The amendments will be received and printed, and will be appropriately referred; and, without objection, the amendments will be printed in the RECORD in accordance with the Senator's request.

Mr. BUCKLEY's amendments are as follows:

AMENDMENT No. 1021

On page 81, after line 12, insert the following new section:

SEC. 507. INTERFERENCE WITH BROADCASTS BY UNITED STATES.—(a) Notwithstanding any other provision of this Act or any other law, after the date of the enactment of this Act, no nonmarket economy country shall be eligible to receive most-favored-nation treatment or to participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, during the period beginning with the date on which the President of the United States determines that such country is interfering with the reception by citizens or residents of such country of radio or television broadcasts from stations operated, or funded in whole or in part, by the Government of the United States or any agency thereof, and ending on the date on which the President determines that such country is no longer interfering with the reception of such broadcasts by citizens or residents of such country.

(b) After the date of the enactment of this Act, a nonmarket economy country may participate in a program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and shall be eligible to receive most-favored-nation treatment, only after the President of the United States has submitted to the Congress a report indicating that such country is not interfering with the reception by citizens or residents of such country of radio or television broadcasts described in subsection (a). The report required by this subsection shall be submitted initially as provided herein and semi-annually thereafter so long as any agreement entered into pursuant to the exercise of such authority is in effect.

AMENDMENT No. 1022

At the end of the bill, insert the following new section:

SEC. 3. INTERFERENCE WITH BROADCASTS BY UNITED STATES.—(a) Notwithstanding any other provision of this Act or any other law, after the date of the enactment of this Act, no nonmarket economy country shall be eligible to receive most-favored-nation treatment or to participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, during the period beginning with the date on which the President of the United States determines that such country is interfering with the reception by citizens or residents of such country of radio or television broadcasts from stations operated, or funded in whole or in part, by the Government of the United States or any agency thereof, and ending on the date on which the President determines that such country is no longer interfering with the reception of such broadcasts by citizens or residents of such country.

(b) After the date of the enactment of this Act, a nonmarket economy country may participate in a program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and shall be eligible to receive most-favored-nation treatment, only after the President of the United States has submitted to the Congress a report indicating that such country is not interfering with the reception by citizens or residents of such country of radio or television broadcasts described in subsection (a). The report required by this subsection shall be submitted initially as provided herein and semiannually thereafter so long as any agreement entered into pursuant to the exercise of such authority is in effect.

EXHIBIT 1

[From Human Events, Mar. 16, 1974]

WHY MUST WE BAIL OUT THE SOVIET ECONOMY?

(By Natalie Wales Hamilton)

An article in the New York Times of October 30 by Harry Schwartz, of the editorial staff, raised doubts about the wisdom of "today's lemming-like anxiety of some American businessmen to make massive transfers of United States technology and capital to the Soviet Union." By way of example he cited the recent Control Data Corporation deal with the Soviets for joint development of computer technology.

"If its implementation is to mean anything at all," he said, "this agreement will transfer to the Soviet Union a knowledge of computer techniques that it does not now possess." Then he posed the crucial question, applicable to expanded trade with Communists generally: "Will this be in the country's interest?"

At about the same time, the Committee to Unite America, a non-partisan voluntary organization, had decided to protest against the computer deal—not because it is worse than other gigantic American-Soviet partnerships, but to exemplify the whole suicidal drive.

In a letter to the corporation, we asserted that its agreement "defies the common sense of American security and political self-interest," and warned against all "profit-oriented deals that bolster the economic and military vitality of our self-declared enemies in the Soviet Union." Incidentally, we quoted the Schwartz article.

RED TECHNOLOGY LAG

One of the presumptive "lemmings" responded. William C. Norris, chairman of Control Data, in a letter to our committee, brushed off Dr. Schwartz as "grossly misinformed." His letter to the New York Times, published on November 30, was more restrained, holding Dr. Schwartz guilty of "superficial assumptions." Since Dr. Schwartz has been an earnest student of the Soviet economy for some 25 years, disdainful dismissal of his views on a matter as serious as giving the Soviets access to sophisticated American technical achievements and expertise was on the face of it unjustified and insolent.

Mr. Norris defended Soviet-American technology exchanges not only in the computer field but in all fields. The United States, he contended, "has more to gain than lose in a broad program of technical cooperation with the USSR." In particular, he assailed the belief that the transfer of our advanced technology would help the Soviet military machine.

These were extraordinary statements: to grasp how extraordinary, they must be seen in the context of two commonly known facts, not disputed even by Soviet spokesmen, namely (1) the Soviet technology lags very far behind the West and especially the United States, and (2) that in order to narrow and ultimately close this gap, the Kremlin is

frankly eager to import our technology and production know-how.

An analysis by U.S. News & World Report (April 21) estimated that Soviet production "remains 20 years behind the levels in the West." Soviet Russia, it said, having been "unable to develop the technology and know-how to exploit its vast natural resources," is "turning to the West for capital, technology, computers and production machinery."

New York Times correspondent Theodore Shabad in a Moscow dispatch (June 17) similarly noted "the basic decision about 1970 to turn increasingly westward, especially to the United States, to make up the lag and convert the Soviet economy into a more modern and efficient mechanism."

For the Soviets, this is obviously the most important element in the detente equation. A Wall Street Journal article (April 10) was headlined: "Soviets Look to Detente With the West As Possible Cure for Their Economic Ills." To cure these ills, the article said, "Moscow has decided it needs infusion of Western capital and technology." A later dispatch in the same newspaper from Brussels in November reported considerable belief there "that the detente is merely a temporary tactic to build strength by tapping Western technology."

Soviet spokesmen say little about exchanges of technology—the disparity is so great that such proposals seem unreasonable. What they emphasize, as Brezhnev did while visiting here, is a marriage of Western technology and Russian natural resources: in effect the purchase of capitalist expertise with Communist promises of profits.

As Patrick M. Boardman of the Center for International Business in Los Angeles summed it up: "Since the Russians need our money to buy our technology, all we'd be getting from them is non-negotiable Soviet IOU's." Mr. Norris assured us that "The United States is offering only standard commercial technology in the exchange with the USSR." But that is precisely what the Soviet economy, civilian and military, desperately needs at this stage.

The East-West trade debate is almost as old as the Soviet regime itself. The central issue has been and remains whether we have more to gain or to lose by adding economic muscle to a dictatorship unswervingly committed to imposing its ideology and system on the non-Communist world. This issue, rightly raised by Dr. Schwartz, was evaded by Mr. Norris.

He could make the claim that "technical cooperation" has no military relevance only by drawing an unrealistic line between civilian and military needs. He ignored the obvious: that the enhancement of any nation's economy also enhances its military potential—and that this is especially true for Soviet Russia, which concentrates its economy primarily on expansion of military power.

Any advanced technology and manufacturing experience we supply certainly will be exploited by the Kremlin's military-industrial complex. Another agreement for technical exchanges wtih the USSR in the electronics area, by General Dynamics, covers such fields as ship-building, telecommunications equipment, and computer-operated microfilm equipment, all clearly defense-related. Technical collaboration in the steel industry, now being negotiated by the Armco Steel Corporation, would obviously invigorate Soviet armaments.

RESTRICT COMPUTERS

Even David Rockefeller of the Chase Manhattan Bank, an ardent promoter of trade with the Communists, stated in an interview last summer that "strategic goods" should continue to be restricted. Certainly computers are in this category. The computer has become the heart of modern military instrumentation. We doubt that Mr. Norris could point to any advanced computer that could not also be used for military purposes.

The Times news story announcing the Control Data accord with Moscow, under Mr. Shabad's byline on October 24, said plainly: "The Soviet Union has lagged far behind the United States and other industrial countries in the use of computer technology." Surely that refers to military no less than civilian uses; the two are inseparable.

Mr. Shabad also noted that the agreement came "at a time when the Soviet Union has ambitious plans for a national computer and data-processing network that would inject new vigor and efficiency into a sluggish economy." The network is intended to improve both civilian and military planning, but it would also improve police and espionage operations for tracking down political and religious dissenters and to tighten surveillance and control of the people in general.

Alexander Solzhenitsyn's Gulag Archipelago, documenting the Soviet terror system, has deservedly aroused worldwide attention. At one point it declares that in recent years the police control apparatus has been fortified with "the refinement of electronic monitoring devices."

Should not Americans who make deals for technical cooperation with the Soviets pause to consider the desirability of injecting "new vigor and efficiency" into the Kremlin's "sluggish economy"? When the deals involve electronics, should they not face up to the moral dilemma of providing the Soviet terror machine with better "electronic monitoring devices" for the persecution of the citizenry?

The magnitude of what Control Data, General Dynamics and other such companies are making available to the USSR must be judged in relation to the backwardness of Soviet computer science.

A top Soviet cybernetics specialist, writing in Moscow's *Izvestia* on July 11, 1966, complained about "the low reliability of computers and ancillary devices, and the substandard quality of magnetic tape." More than seven years have passed since then, but "lead time" in computer development is exceptionally long, and the West has made at least as much progress in these years as the Russians. Besides, there is plenty of current testimony.

In early July 1973, Prof. Allen Reiter, head of the computer department at the Israel Institute of Technology, stated: "The Russians know nothing about modern computer technology. The whole basis of third-generation computers, in use in the West for 10 years, is unfamiliar to them." Reiter was quoted in an article in HUMAN EVENTS by Prof. Anthony C. Sutton of the Hoover Institution, an outstanding authority on the Soviet economy whose latest book is *"National Suicide: Military Aid to the Soviet Union"*, published by Arlington House.

Mr. Norris insists, nevertheless, that we "have more to gain than to lose" by pooling American and Soviet technologies. That astounding faith he rests on the fact, probably correct, that "the USSR has many more scientists and engineers than the U.S." and on "the exceptionally high quality of Russian research capabilities." The excellence of Russian mathematicians, he argues, is "of particular value to logical design and software in the computer field."

His response to the Committee to Unite America goes further: "It should follow that the Russians would be doing significant work in design of computers" and are "likely" to come through with a concept "more advanced than any which we know in the U.S." He thus justifies exchanging what we already possess for that which they may—not *will* but *may*—some day produce. Only the euphoria of detente illusions can account for such reasoning.

Communist Russia has had this great body of engineering and research talent, in quantity and quality, for decades. It should "logically follow" that it would have matched if not surpassed the West in technoogy, that its mathematicians would already have originated superior computer and related concepts. But in fact Soviet technology remains dismally backward. Why suppose that it will produce tomorrow the marvels it could not produce yesterday?

Mr. Norris fails to explain this mystery of Soviet technical retardation despite larger numbers of engineers and exceptionally brilliancy in research. The explanation no doubt lies in the stifling and self-defeating character of the Communist economic system and political despotism. Businessmen and bankers eager to exchange American for Soviet technical knowledge evidently discount the importance of intellectual and personal freedom in achieving technological progress.

Referring to the Soviet concentration on military industry, Mr. Schwartz wrote: "What Moscow seems to be asking now is that the United States play a major role in repairing the backwardness caused by this concentration, particularly, but not exclusively in the computer field." We submit that it is politically, militarily and humanly irrational for America to take on that role.

From Lenin's time to Brezhnev's, the Soviet economy has been essentially parasitic, drawing on the accomplishments of advanced capitalist nations. Some 10,000 foreign engineers and other specialists, mostly Americans, representing dozens of Western firms, enabled Stalin to carry out his first five-year plan. Had the West and especially the United States resisted the bait of profit and refused to launch Soviet industralization, the plan could not have gotten off the ground.

FRANKENSTEIN ROLE

A series of articles in the New York *Times* in December, by Henry R. Lieberman, detailed Moscow's present campaign "to make centralized planning work"—"to stimulate lagging technological growth and keep up with the West." With regard to "widespread computerization," one of the principal Soviet needs, the executive vice president of the Data Control Corporation, Richard D. Schmidt, told Mr. Lieberman that "they want us to show them how to put it together." And that is what the corporation has contracted to do.

Why must we again assume the role of Frankenstein creating a destructive monster?

Mr. Norris, David Rockefeller and the horde of other U.S. businessmen and financiers so eager to enter into long-term partnerships with the Kremlin involving tens of billions of dollars in credits—underwritten by American taxpayers through the Export-Import Bank and other government guarantees—should ask themselves that key question.

The unholy rush to hand over the fruits of our free economy to the sworn foes of freedom is shocking. No less shocking is the fact that so few of our business leaders have spoken out against this disastrous course.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator yield?

Mr. BUCKLEY. I yield.

Mr. HARRY F. BYRD, JR. Mr. President, the Senator from New York has made a magnificent analysis of the question of détente with the Soviet Union. I thought his entire presentation was splendid, but I was particularly impressed with one of his sentences, which was that the United States is entitled to more than rhetoric, more than the rhetoric of détente, if the Soviet Union is going to be granted credits and subsidized interest by the American taxpayers.

I think our negotiators and the executive department of our Government have a keen obligation to see that from these agreements, whatever agreements might be made with the Soviet Union, the benefits we receive not be confined to rhetoric, but that we get something of substance. That was the point made so ably by the Senator from New York.

The PRESIDING OFFICER. The Senator's time has expired.

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business of not to exceed 10 minutes, with statements therein limited to 5 minutes each.

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

SALT II

Mr. HARRY F. BYRD, JR. Mr. President, along the same line as the remarks of the Senator from New York, I have in my hand an article entitled "SALT II: Agreement Unlikely," written by the columnist Joseph Alsop, and published in the Washington Post of Friday, March 8, 1974.

This article is an excellent analysis of how the United States came out second best in the SALT I agreements. To quote one sentence:

> When you have given an inch, and have had a mile taken, it is always vastly harder to get back on a sound basis.

That is what happened to the United States in SALT I. The United States distinctly came out second best. Now, in SALT II, as Alsop points out, it is going to be a lot more difficult to get a fair and appropriate agreement. He says that an agreement at SALT II is unlikely.

Mr. President, I agree with his entire column with the exception of its conclusion. I think there will be an agreement at SALT II. I think that the administration is so anxious to get an agreement that the necessary concessions will be made. That is what I am very fearful of, and very much concerned about.

I ask unanimous consent that the article by Joseph Alsop to which I have referred be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HARRY F. BYRD, JR. I again commend the able Senator from New York for his excellent address to the Senate this morning.

EXHIBIT 1

SALT II: AGREEMENT UNLIKELY

(By Joseph Alsop)

"Essential equivalence" is now the official description of the American objective in the new round of talks on strategic arms limitations. Secretary of State Henry A. Kissinger and Secretary of Defense James Schlesinger have sworn solemn oaths to one another to aim for "essential equivalence" and to take nothing less.

The SALT negotiators have been so instructed. Thus the considerable period has ended when the U.S. government had no agreed position concerning the next round of SALT. But it has to be admitted that, short of a miracle, anything like a real agreement based on "essential equivalence" will be all but impossible to obtain from the Soviets.

There are two cardinal points that weigh against a future SALT agreement that would represent a genuine Soviet-American balance in strategic weapons. To begin with, the U.S. SALT negotiators are now heavily handicapped by the fact that the first SALT agreement, so loudly applauded in the United States, did not remotely begin to represent "essential equivalence."

This was partly the result of gross American official underestimation of Soviet progress in weaponry. It was concluded, for example, that the Soviets could not possibly produce a submarine-launched ballistic missile with anything like the range of the American Trident. Yet the first SALT agreement was hardly signed when just such a missile was tested by the Soviets.

More generally, and in all sorts of additional ways, intangible U.S. technological advantages were falsely counted upon to compensate for the enormous tangible advantages allowed to the Soviets in the vital area of missile power and missile numbers. To the foregoing arguments from false assumptions, however, another quite realistic argument was added by Dr. Kissinger.

Given the character of the former U.S. defense program and the former Defense Department leadership, there was little likelihood of a sudden surge of U.S. effort when the first SALT agreement was signed. We had no plans then and we had no means then to do what we promised not to do in SALT I. So it was persuasively and realistically argued that the agreement gave nothing away that had not been given away already.

Unhappily, that does not alter the present handicap resulting from SALT I. Whenever one unequal agreement has been signed with the Soviets, they have always automatically assumed that gross inequality, favoring them, has thus become a matter of right. This rule was sadly underlined by the extreme inequality of the first Soviet proposals for the second round of SALT.

When you have given an inch, and have had a mile taken, it is always vastly harder to get back on a sound basis. In the present instance, the problem is made much, much worse by the second cardinal point mentioned above. In brief, as anyone can see from the new Soviet missile programs, the Soviet military lost nothing whatever by the first SALT agreement.

It can be strongly argued in fact that the Soviet defense minister, Marshall Andrei Grechko, and his colleagues actually made great gains from SALT I. They went on getting every ruble they could possibly have demanded to forge ahead with every kind of lavish defense improvement. Meanwhile the Western nations got a large dose of tranqualizers—which Marshall Grechko can hardly have minded.

At this juncture, however, one thing is already abundantly clear. The Soviet military are surely going to suffer where they mind suffering most—in the future scale of their defense investments—if the U.S. SALT negotiators seriously insist upon "essential equivalence." You now have a position, in fact, where nothing like "essential equivalence" can possibly be attained except at the expense of the Soviet military and their projects.

This will require a further development that is extremely improbable. General Secretary Leonid Brezhnev will have to get exceptionally tough with Marshall Grechko, who is more like his "closest comrade in arms" than his chief sparring partner in the Kremlin. You can see, then, why miracles are now required for another SALT agreement.

Mr. BUCKLEY. Mr. President, I appreciate the kind remarks of the Senator from Virginia. I believe he has made an enormous contribution to our critical understanding of the negotiations now going on in connection with SALT II.

With reference to the Senator's remarks in connection with the euphoria of détente, as to what may be the outcome, and that if we do not show the willingness to make up for lost time the Soviets will have no incentive to talk, I share his fear that SALT II will become the captive of our foreign policy and of our determination and desire to come up with some kind of agreement; and I hope he also shares my concern over the implication of much of what is involved in the current negotiations over expanded trade.

To this Senator, it seems clear that if we in fact cooperate with the Soviets in the transferral of massive technological know-how, especially in such sophisticated fields as computer technology, we will be handing over to them at our expense the ability to perfect their weapons, so that they can translate their quantitative advantage in nuclear armament into a qualitative advantage as well, as they catch up with our technology. I hope the Members of this body will view with skepticism and care any proposal, either in terms of SALT II or in terms of commerce, that is not truly symmetrical, wherein we cannot at least measure what we give up against what we receive back, and make sure that the totals even out.

I would also ask Members of this body to keep in mind that as economically we have not much to gain from the Soviet Union, the best we can hope for—and this can be critically important—is to get those political advantages in terms of loosening up the Soviet system that alone offer some hope for long-range peace.

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

ILLEGAL HELP TO CAMBODIANS

Mr. CRANSTON. Mr. President, I and a rapidly growing number of Senators are today sending a letter to JOHN STENNIS, the chairman of the Armed Services Committee of the U.S. Senate.

Mr. President, this morning's Washington Post reports that an American is serving as a military adviser in Cambodia—in the field—in direct violation of a law prohibiting U.S. military personnel from direct involvement in the Cambodian fighting.

I have written a letter to Senator JOHN STENNIS, chairman of the Senate Armed Services Committee, asking him to conduct an immediate investigation into what is apparently a gross violation of the law. Today I will ask other Senators to join me. We must serve clear notice that covert and illegal war cannot be tolerated by the Congress.

Mr. President, on June 29 of last year, the Congress voted to halt the bombing of Cambodia. That ban went into effect on August 15.

At that time, I believe that most Members of Congress thought that they were

voting in favor of ending the U.S. role in Cambodian hostilities once and for all. But apparently we underrated either the administration's determination to have its way regardless of the law, or its ignorance of what is going on.

While the White House pays lip service to the law, Maj. Lawrence W. Ondecker has been telling Cambodian Government soldiers in the field how to fight. Naturally that kind of activity is heatedly denied at the U.S. Embassy at Phnom Penh.

How many others are there whom we do not know about?

I am asking Senators to think back for a moment, to the days before the Vietnam war reached the attention of the American public. In those days there were occasional reports of Green Beret activities, of Americans killed, of counterinsurgency planning. All were played down or denied by the White House.

What have we learned from Vietnam, anyway?

Mr. President, apparently it is not enough for Congress to pass a law. We must constantly monitor its implementation. We must police—and publicize—each violation.

The war in Southeast Asia has been a breeding place for lies, deceptions, and illegal activities by our Government for nearly 10 years.

We have already paid an exorbitantly high price—in lives and in money—for these practices.

We had hoped that they had been brought to an end. They must be brought to an end lest they drag us once again into the horror, the waste, and the futility of active combat in Southeast Asia.

This latest news report on possible illegalities in Cambodia puts the administration's pending request for funds in a new and even worse light. The light was bad enough to begin with.

The administration has already asked for an excessive amount of money for economic and military aid to Southeast Asia.

Counting the supplemental defense budget request now pending in the Congress, the administration is talking about spending $2.4 billion in military aid to the three countries of Indochina for the remainder of this fiscal year and in fiscal year 1975. This compares with $1.3 billion in actual outlays so far this year.

If economic aid is included, the estimated totals are $3.2 billion requested in fiscal year 1975 compared with $2.2 billion in this year's outlays.

I emphasize that these figures are only tentative, because there is a great deal of obscurity surrounding our aid to Indochina.

The money is fragmented and diffused among a number of different agencies.

Some of the details are classified.

And aid which is technically "economic" often winds up being used for military purposes. The operation of the Food for Peace program in South Vietname is a recent and notorious example.

Mr. President, as I have said before, we are pouring money down a rathole.

Not only do we have, in today's newspaper article, an example of an apparent violation of the law in Cambodia, we also have in Saigon a dictator whose contempt for the law is as great as his dependence on American money.

President Thieu has repeatedly violated both the spirit and the letter of the peace agreements which were negotiated so laboriously by Henry Kissinger and Le Duc Tho.

I believe that so long as Thieu feels confident of unrestricted American support, he will continue to defy those agreements.

The Congress should make it clear that we will no longer feed Thieu's hunger for power with our tax dollars. As signatories to the Paris peace agreements, we should insist that Thieu's Government live up to those agreements—or do without our support.

Mr. President, I ask unanimous consent that my letter to Senator STENNIS, requesting an immediate investigation into the apparent violation of the law that is taking place in Cambodia, be published in the CONGRESSIONAL RECORD. At the end of this session I will announce the names of those Senators who have added their signatures to this effort.

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

Hon. JOHN STENNIS,
Chairman, Senate Armed Services Committee, U.S. Senate.

DEAR JOHN: We respectfully request that the Armed Services Committee conduct an immediate investigation into the activities of United States military personnel, including Major Lawrence W. Ondecker of the Third Infantry Brigade, who allegedly are serving as military advisers in Cambodia, which would be in violation of the law.

Sincerely,

ALAN CRANSTON.

Mr. CRANSTON. I also ask unanimous consent to have printed in the RECORD an article published in today's Washington Post entitled "Illegal Help to Cambodia—American Advises In Combat," written by Elizabeth Becker.

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

ILLEGAL HELP TO CAMBODIANS—AMERICAN ADVISERS IN COMBAT

(By Elizabeth Becker)

KAMPOT, CAMBODIA.—During the dark hours of dawn the Cambodian insurgents were lobbing mortars around the government's command post at Kampot. Inside, U.S. Maj. Lawrence W. Ondecker was showing the Cambodian officers how to mount a counterattack.

"I want you to respond very quickly," he said. "If even one mortar falls in your zone, you must answer back with fire immediately."

While the American major was poring over maps with the Cambodian staff officers, the Cambodian general officially in command of the post was writing in his diary, alone in the adjoining bunker.

The U.S. embassy in Phnom Penh has repeatedly denied reports that Americans are serving as military advisers in the field. Congress has passed a law that prohibits the U.S. mission here from direct involvement in the conduct of the war.

But the situation in this coastal town about 80 miles south of Phnom Penh is critical, and Maj. Ondecker was flown down Sunday. "He was loaned to us from the 3d Infantry Brigade," Lt. Col. Choey Yeun said. "He is attached to the 3d and normally works in the field with them, but he is needed here. I am surprised that you did not know him."

In the past month rebel troops have moved within one to four miles of Kampot, capturing the city's main water supply and the country's only cement factory. They regularly shell the town with 75-mm, recoilless rifles and 81-mm. mortars.

Although government intelligence officers warned of an impending offensive as early as January, the Kampot garrison made no defense preparations. Over the past week the Cambodian high command sent reinforcements—and they sent Maj. Ondecker.

"Protect this area immediately," Maj. Ondecker said while the 31 rounds were falling in and around the city Monday morning. "Good, perfect," he said as a Cambodian officer pointed on the map after accepting the American's proposal.

The day before rebel gunners shot down one of the two helicopter gunships stationed here, and the second one was recalled to Phnom Penh. Maj. Ondecker arranged with the U.S. embassy on the morning of the attack that additional gunships would be sent to Kampot to support the infantry.

A member of the U.S. military attache's staff in Phnom Penh, Ondecker, is in Kampot officially to gather information. Chuck Bernard, known as Monsieur Jacques, is the other U.S. representative in town. He has approximately the same official duties as Ondecker except that his area is civilian matters.

"Monsieur Jacques works with me," said Ker Sophay, director of political warfare. "He writes propaganda tracts with me. We have published and distributed 6,000 pamphlets in the three weeks he has been here."

While junior Cambodian officers say Americans advise in the field around Phnom Penh, it has never been confirmed. In Kampot, however, it is difficult to hide. Ondecker was in and out of the command post, openly recommending military maneuvers. Sometimes he prefaced his proposals with "I suggest and the general also suggests that you immediately fire in this direction."

The Cambodians were obviously pleased with the American's help. "Maj. Ondecker was very good with the 3d Brigade; he *will be* good with us," said Col. Choey Yeun.

Changes were made quickly after Ondecker's arrival. Another infantry brigade was called in to bolster the 2,000-man government garrison, and the top command was replaced within 24 hours. The city's defense perimeter was stabilized for the first time throughout the siege.

Villagers are still leaving the town—the population has dropped from 50,000 to less than 20,000 in a month. Though all private shops are closed, and mortars still land within the city, the city's small open-air market reopened Sunday with some fruit and fish offered for sale.

CAMBODIAN ROUTE PARTIALLY CLEARED

Cambodian government forces yesterday cleared insurgent troops from a five-mile stretch of Highway 4, opening the road from Phnom Penh to the provincial capital of Kompong Speu 30 miles to the west, the Cambodian command said.

The highway, Phnom Penh's only land route to the sea, remains cut by rebel troops between Kompong Speu and the port of Kompong Som.

Meanwhile political sources in Phnom Penh reported that four prominent Cambodians, all of them former or present government officials, had defected to the government-in-exile of Prince Norodom Sihanouk, the deposed head of state.

The most prominent figure among them was Ing Kiet, the minister of public works in Sihanouk's government before the latter was ousted in March 1970.

The others were Khek Sisoda, onetime senior official in the Ministry of Commerce; Sieu Sophon, a magistrate in Takeo Province,

and Siv Hak, an official in Tela Khmer, the government-owned petroleum complex.

All four had been in Paris on either private or official business when they defected and began working for Sihanouk's government there, the sources said.

In Vientiane, the Laotian Foreign Ministry announced that North Vietnam's Ambassador Le Van Hien would return to his post today after an absence of nine years. Hien's return is seen by observers as an indication that a final agreement is imminent on a coalition government for Laos. Hien was last in Laos in 1965, departing in apparent protest over the collapse of an earlier attempt to form a coalition.

Mr. CRANSTON. Mr. President, I thank you for this opportunity to speak.

ENROLLED BILL SIGNED

The ACTING PRESIDENT pro tempore (Mr. ROBERT C. BYRD) today signed the enrolled bill (H.R. 6119) for the relief of Arturo Robles, which had previously been signed by the Speaker of the House of Representatives.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REQUEST FOR SUPPLEMENTAL APPROPRIATION FOR NATIONAL RAILROAD PASSENGER CORPORATION

A letter from the president, National Railroad Passenger Corporation (Amtrak), requesting a supplemental appropriation for fiscal year 1974 (with an accompanying paper). Referred to the Committee on Appropriations.

REPORT ON FACILITIES PROJECTS PROPOSED TO BE UNDERTAKEN FOR THE ARMY RESERVE

A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, on facilities projects proposed to be undertaken for the Army Reserve (with an accompanying paper). Referred to the Committee on Armed Services.

REPORT OF DEFENSE DEPARTMENT

A letter from the Principal Deputy Assistant Secretary of Defense, transmitting, pursuant to law, a report of that Department, fiscal year 1975 (with an accompanying report). Referred to the Committee on Armed Services.

PROPOSED LEGISLATION FROM DEPARTMENT OF THE NAVY

A letter from the Secretary of the Navy, transmitting a draft of proposed legislation to amend title 10, United States Code, to repeal sections which impose certain restrictions on enlisted members of the Armed Forces and on members of military bands (with an accompanying paper). Referred to the Committee on Armed Services.

REPORT OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Progress and Problems in Providing Health Services to Indians," Health Services Administration, Department of Health, Education, and Welfare, dated March 11, 1973 (with an accompanying report). Referred to the Committee on Government Operations.

PROPOSED LEGISLATION FROM CABINET COMMITTEE ON OPPORTUNITIES FOR SPANISH-SPEAKING PEOPLE

A letter from the chairman, Cabinet Committee on Opportunities for Spanish-Speaking People, transmitting a draft of proposed legislation to extend the expiration date and the authorization of appropriations for the Cabinet Committee on Opportunities for Spanish-Speaking People (with an accompanying paper). Referred to the Committee on Government Operations.

PROJECT PROPOSALS UNDER SMALL RECLAMATION PROJECTS ACT OF 1956

A letter from the Acting Deputy Assistant Secretary of the Interior, reporting, pursuant to law, on the receipt an application for a loan, in the amount of $9,946,400, and a grant of $53,600 from the Central Nebraska Public Power and Irrigation District of Holdrege, Nebr. Referred to the Committee on Interior and Insular Affairs.

REPORT ON A DEFECTOR ALIEN

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, reporting, pursuant to law, on the case of Tibor Joseph Herczeg, a defector alien (with an accompanying paper). Referred to the Committee on the Judiciary.

REPORT ON ADMINISTRATION OF PUBLIC LAWS 874 AND 815

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report on the administration of Public Laws 874 and 815, for fiscal year ended June 30, 1972 (with an accompanying report). Referred to the Committee on Labor and Public Welfare.

PROPOSED LEGISLATION FROM DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

A letter from the Acting Secretary, Department of Health, Education, and Welfare, transmitting a draft of proposed legislation to amend the Public Health Service Act to revise and extend programs of Federal assistance for comprehensive health resources planning, and to assist the States in regulating the costs of health care (with an accompanying paper). Referred to the Committee on Labor and Public Welfare.

REPORT OF VETERANS' ADMINISTRATION

A letter from the Administrator, Veterans' Administration, transmitting, pursuant to law, a report of that Administration, for fiscal year ended June 30, 1973 (with an accompanying report). Referred to the Committee on Veterans' Affairs.

PROPOSED LEGISLATION FROM VETERANS' ADMINISTRATION

A letter from the Administrator, Veterans' Administration, transmitting a draft of proposed legislation to amend title 38, United States Code, to increase rates of disability compensation and dependency and indemnity compensation, and to provide for automatic adjustment thereof commensurate with future increases in the cost of living, and for other purposes (with an accompanying paper). Referred to the Committee on Veterans' Affairs.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore (Mr. ROBERT C. BYRD):

A memorial of the Senate of the State of Arizona. Referred to the Committee on Interior and Insular Affairs:

"SENATE MEMORIAL 1007

"A memorial relating to construction of the Hualapai Hydroelectric Dam, and urging the Congress of the United States to approve construction of the Hualapai Hydroelectric Dam located in the inner gorge of the Colorado River within the boundaries of the Hualapai Indian Reservation

"To the Congress of the United States of America:

"Your memorialist respectfully represents:

"Whereas, the Nation is faced with an energy supply inadequate to meet its rapidly increasing needs; and

"Whereas, preservation of our natural environment must be balanced with the development of energy needed to maintain a sound economy; and

"Whereas, electric energy produced in hydroelectric projects is highly desirable from the standpoints of reliability, cleanliness, efficiency, and safety; and

"Whereas, highly desirable hydroelectric dam sites are still available in Arizona along the Colorado River; and

"Whereas, the Hualapai Hydroelectric Project (Bridge Canyon) is potentially a major clean energy source for supplying a significant amount of energy for the Southwest Region; and

"Whereas, it would take millions of barrels of oil, our single most-demanded fuel, per year to generate the electricity which can be developed from this project; and

"Whereas, the water which would be the power to run the hydroelectric generators is a vast renewable resource now being wasted down the river; and

"Whereas, income from the Hualapai Dam would provide the State with major financial support to help pay for the Central Arizona Project; and

"Whereas, the Hualapai Indians support construction of the dam on their reservation recognizing it as their only opportunity for economic development and full tribal employment; and

"Whereas, this project would not interfere with the free-flowing Colorado River through the Grand Canyon; and

"Whereas, construction of the dam will create a ribbon of blue in the narrow inner gorge, making the Hualapai section of the Colorado available to all for recreational uses.

"Wherefore your memorialist, the Senate of the State of Arizona, prays:

"1. That the Congress promptly review the many benefits of hydroelectric development along the Colorado River, particularly the proposed Hualapai Project and take action to approve its construction at a time when the Nation could greatly use the electrical energy derived from it, and support the efforts of the Arizona Power Authority and the Hualapai Indian Tribe to preserve the viability of the Hualapai Dam site in legislation now pending before Congress.

"2. That the Secretary of State of the State of Arizona transmit a copy of this Memorial to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives and to each member of the Arizona congressional delegation."

A memorial of the Senate of the State of Arizona. Referred to the Committee on the Judiciary.

"SENATE MEMORIAL 1002

"A memorial relating to Veterans' Day; urging Congress to enact legislation returning observance of Veterans' Day to November 11

"To the Congress of the United States:

"Your memorialist respectfully represents:

"Whereas, the Congress of the United States enacted legislation which changed observance of Veterans' Day from November 11, the date of the armistice ending World War I and the traditional day of observance of that historical event, and

"Whereas, the change of Veterans' Day to the fourth Monday in October for the sole purpose of adding a three-day weekend to the holidays of the year is not a sufficient reason for breaking with tradition, memories, sentiments and history, and the reduction which follows in participation in patriotic ceremonies.

"Wherefore your memorialist, the Senate of the State of Arizona, prays:

"1. That the President and Congress give their most earnest consideration to the prompt enactment of legislation which would result in the return of Veterans' Day to the traditional day of observance, November 11, of each year.

"2. That the Honorable Wesley Bolin, Secretary of State of the State of Arizona, transmit copies of this Memorial to the President of the United States, the President of the United States Senate, the Speaker of the House of Representatives of the United States and to each Member of the Arizona Congressional Delegation."

A memorial of the Senate of the State of Arizona. Referred to the Committee on Veterans' Affairs:

"SENATE MEMORIAL 1003

"A Memorial Urging the Veterans Administration of the United States to Enact Legislation Establishing a National Cemetery in Arizona

"To the President and the Congress of the United States of America:

"Your memorialist respectfully represents:

"The State of Arizona's one hundred seventy available National Cemetery burial spaces are totally inadequate to handle the potential demand of the more than two hundred fifty thousand veterans residing in the state.

"A deceased veteran who had expressed a desire to be buried in a National Cemetery must be transported to another state for burial thereby causing great hardships for his survivors.

"Veterans organizations within the State of Arizona have some six hundred forty acres of land in central Arizona available, without cost, for utilization as a National Cemetery and Memorial Park.

Wherefore your memorialist, the Senate of the State of Arizona, prays:

"1. That the Veterans Administration give its most earnest consideration to the establishment of a National Cemetery in the State of Arizona.

"2. That the Secretary of State of the State of Arizona transmit a copy of this Memorial to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the Administrator of the Veterans Administration and to each member of the Arizona Congressional Delegation.

Resolutions of the legislature of the Commonwealth of Massachusetts. Referred to the Committee on Finance:

"THE COMMONWEALTH OF MASSACHUSETTS

"Resolutions memorializing the Congress of the United States to enact legislation amending the Social Security Act and the Internal Revenue Code of 1954 to provide for federal participation in the costs of the Social Security program, with a substantial increase in the contribution and benefit base and with appropriate reductions in Social Security taxes to reflect the Federal Government's participation in such costs

"Whereas, There is pending before the Congress of the United States a bill H.R. 12489 which if enacted into law would amend the Social Security Act and the Internal Revenue Code of 1954 to provide for federal participation in the costs of the Social Security Program, with a substantial increase in the contribution and benefit base and with appropriate reductions in Social Security taxes to reflect the Federal Government's participation in such costs; and

"Whereas, Said bill would grant tax relief to every wage earner with an income of $20,000 or less; and

"Whereas, It is the sense of the Massachusetts House of Representatives that, in these times of severe inflation, every means should be employed to increase the spendable income of working people; and

"Whereas, Said bill, in addition to aiding the workers, would lower the cost of doing business for employers: therefore be it

"Resolved, That the Massachusetts House of Representatives urges the Congress of the United States to enact into law H.R. 12489; and be it further

"Resolved, That copies of these resolutions be forwarded by the Clerk of the House of Representatives to the President of the United States, to the Secretary of State, to the presiding officer of each branch of Congress and to each member thereof from the Commonwealth."

Adopted, February 25, 1974.

Resolutions of the Legislature of the Commonwealth of Massachusetts. Referred to the Committee on Veterans' Affairs:

"THE COMMONWEALTH OF MASSACHUSETTS

"Resolutions memorializing the Congress of the United States to establish a National Cemetery in the Commonwealth

"Whereas, It is the right of every veteran to be accorded the honor of a burial in a national place of honor; and

"Whereas, Out of the ninety-eight national cemeteries in the United States, there is none in the New England area; and

"Whereas, The saturation point of these cemeteries is rapidly being reached and the need for new land is urgent; now, therefore, be it

"Resolved, That the General Court of Massachusetts hereby memorializes the Congress of the United States to establish a National Cemetery in the Commonwealth of Massachusetts; and be it further

"Resolved, That copies of these resolutions be sent forthwith by the Clerk of the House of Representatives to the President of the United States, to the presiding officer of each branch of Congress and to members thereof from the Commonwealth."

A joint resolution of the Legislature of the State of Wisconsin. Referred to the Committee on Commerce:

"1973 SENATE JOINT RESOLUTION 121

"Enrolled joint resolution purging all concerned agencies of the government of the United States to insure that the Lake Michigan ferry service between Manitowoc and Kewaunee, Wisconsin and Frankfort, Michigan be continued

"Whereas the United States Department of Transportation has proposed abandonment Lake Michigan ferry service between Manitowoc and Kewaunee, Wisconsin, and Frankfort, Michigan; and

"Whereas, abandonment of the ferry service would cause severe economic hardship for east-central Wisconsin; and

"Whereas, in light of the national energy crisis, any curtailment of the Lake Michigan ferry service would necessarily increase the burden on our national energy resources; and

'Whereas tourism in Wisconsin would be severely damaged by curtailment of the Lake Michigan ferry service; and

"Whereas the Green Bay and Western Railroad, which is of great economic significance to the people of Wisconsin, would lose a very substantial portion of its revenue if the Lake Michigan ferry service were curtailed; and

"Whereas rail service to many Wisconsin communities would be jeopardized by curtailment of the ferry service; and

"Whereas, curtailment of the ferry service will jeopardize economic development in northern Wisconsin; and

"Whereas curtailment of the Lake Michigan ferry service would eliminate a vital link in the interstate transportation system of east-central Wisconsin: Now, therefore, be it

"Resolved by the Senate, the assembly concurring, That the Legislature of the State of Wisconsin opposes any curtailment of the Lake Michigan ferry service, pending a full and complete study of Wisconsin's transportation needs by the Wisconsin Department of Transportation, the United States Department of Transportation, the Interstate Commerce Commission and the United States Railway Association; and, be it further

"Resolved, That the Legislature of the State of Wisconsin respectfully urges all concerned agencies of the United States Government to insure that the Lake Michigan ferry service between Manitowoc and Kewaunee, Wisconsin, and Frankfort, Michigan, be continued; and, be it further

"Resolved, That certified copies of this resolution be immediately transmitted to the President of the Senate and the Speaker of the House of Representatives of the United States and to each member of the congressional delegation from Wisconsin."

PRESENTATION OF PETITIONS

By Mr. PASTORE (for himself and Mr. PELL):

A resolution of the Senate of the State of Rhode Island and Providence Plantations. Referred to the Committee on Finance:

"SENATE RESOLUTION

"Memorializing Congress to Enact Legislation Relating to the Individual Taxpayer's Income Tax and the Increased Amounts in Fuel Prices

"Whereas, The federal government has permitted price increases for fuel products, thereby providing windfall profits to numerous companies within the oil industry at the expense of the consuming public, many of whom are overburdened by the inflationary spiral which has affected the United States and are thus unable to afford the increased costs of petroleum products; and

"Whereas, It is incumbent upon the federal government to provide relief to those consumers so adversely affected by its policy with respect to the pricing of fuel products; now therefore, be it

"Resolved, That the Congress is urged to enact legislation permitting individual taxpayers, in computing federal tax, to deduct directly from their adjusted gross income regardless of whether deductions have been otherwise itemized, an amount equal to the increased amounts such taxpayers have been requested to pay for fuel; and be it further

"Resolved, That the secretary of state be and he hereby is authorized and directed to transmit a duly certified copy of this resolution to the Rhode Island delegation in Congress."

A resolution of the Senate of the State of Rhode Island and Providence Plantations. Referred to the Committee on Finance:

"SENATE RESOLUTION

"Memorializing Congress to review and repeal existing laws granting favored income tax treatment to the Oil Industry

"Resolved, That the members of the congress of the United States be and they are hereby respectfully requested to review and repeal existing laws granting favored income tax treatment to the oil industry whereby major oil producers have been able to reap excessive profits at the expense of the consuming public; and be it further

"Resolved, That the secretary of state be and he hereby is authorized and directed to transmit a duly certified copy of this resolution to the senators and representatives from Rhode Island in the Congress of the United States."

A resolution of the Senate of the State of Rhode Island and Providence Plantations. Referred to the Committee on Interior and Insular Affairs:

"SENATE RESOLUTION

"Memorializing Congress to give the Federal Energy Office authority to inspect oil inventories of major oil companies

"Resolved, That the members of the Congress of the United States be and they are hereby respectfully requested to give the Federal Energy Office authority to audit and examine data, books, and make inspections of oil inventories of major oil companies on a monthly basis; and be it further

"Resolved, That the Secretary of State be and he hereby is authorized and directed to transmit duly certified copies of the resolution to the senators and representatives from Rhode Island in the Congress of the United States."

A resolution of the Senate of the State of Rhode Island and Providence Plantations. Referred to the Committee on Interior and Insular Affairs:

"SENATE RESOLUTION

"Memorializing Congress to roll back the prices of domestic fuel and gas to January 1, 1973 and to freeze at that level on suppliers and retailers

"Resolved, That the senate of the state of Rhode Island and Providence Plantations hereby memorializes Congress to roll back the prices of domestic fuel and gas to January 1, 1973 to freeze at that level on suppliers and retailers; and be it further

"Resolved, That the secretary of state be and he hereby is authorized and directed to transmit a duly certified copy of this resolution to the Rhode Island delegation in Congress."

Resolutions of the Legislature of the Commonwealth of Massachusetts. Referred to the Committee on Public Works:

"RESOLUTIONS

"Relative to the energy crisis

"Whereas, The nation and particularly the New England region is confronted with a major energy and environmental dilemma; and

"Whereas, Extensive engineering and economic studies conducted some ten years ago by the Department of the Interior demonstrated to the satisfaction of President Kennedy the feasibility and relative environmental desirability of developing the extraordinary tidal characteristics of the Passamaquoddy Bay area for hydroelectric production; and

"Whereas, Such development, including the Dickey-Lincoln School hydroelectric installations would have provided some 1,250 megawatts of electricity (mostly peaking power) to northeastern America, with annual power benefits in excess of $40 million in the form of a power supply available at about 25% less than the then prevailing cost; and

"Whereas, The combined project would have represented a Federal resource-developing investment of more than $1 billion in the New England area and entailed some 15,000 man-years of on-site employment; and

"Whereas, Private international investors have recently been organizing to develop similar tidal sites in Nova Scotia; and

"Whereas, Electric power is expected to be increasingly required, especially for mass transit and industry; and

"Whereas, The mounting costs and the precariousness of supply of imported petroleum is drastically transforming the economy of energy; and

"Whereas, The Congress has recently responded to the crisis by providing in the Emergency Energy Act for the preparation of plans for the development of hydroelectric resources; and

"Whereas, The Massachusetts Senate is gravely concerned about the development of the economic base of New England and about the protection of the environment as well as insistent that the few natural energy resources that the northeast possesses be wisely and equitably developed; now, therefore, be it

"*Resolved,* That the Massachusetts Senate respectfully requests the Congressional delegation from this Commonwealth and the other states of the northeastern area to assure reconsideration of the entire project as presented in the July, 1963 Report by Secretary Udall to President Kennedy as a major element in the forthcoming appraisal of our national hydroelectric potential; and be it further

"*Resolved,* That a copy of the foregoing resolutions be transmitted forthwith by the Clerk of the Senate to the Congressional delegation from this Commonwealth and the other northeastern states.

"Senate, adopted, January 21, 1974."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. FONG, from the Committee on the Judiciary, without amendment:

S. 1276. A bill for the relief of Joe H. Morgan (Rept. No. 93-731).

By Mr. HRUSKA, from the Committee on the Judiciary, without amendment:

S.J. Res. 179. Joint resolution to authorize and request the President to issue a proclamation designating the calendar week beginning April 21, 1974, as "National Volunteer Week" (Rept. No. 93-732.

By Mr. HRUSKA, from the Committee on the Judiciary, with amendments:

S.J. Res. 163. Joint resolution authorizing the President to proclaim the last full week in March of each year "National Agriculture Week" (Rept. No. 93-733).

By Mr. LONG, from the Committee on Finance, with amendments:

H.R. 13025. An act to increase the period during which benefits may be paid under title XVI of the social Security Act on the basis of presumptive disability to certain individuals who received aid, on the basis of disability, for December 1973, under a State plan approved under title XIV or XVI of that act.

By Mr. MOSS, from the Committee on Aeronautical and Space Sciences, with amendments:

H.R. 11864. An act to provide for the early commercial demonstration of the technology of solar heating by the National Aeronautics and Space Administration and the Department of Housing and Urban Development, in cooperation with the National Bureau of Standards, the National Science Foundation, the General Services Administration, and other Federal agencies, and for the early development and commercial demonstration of technology for combined solar heating and cooling (Rept. No. 93-734).

EXECUTIVE REPORTS OF COMMITTEES

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

By Mr. HRUSKA, from the Committee on the Judiciary:

John W. Warner, of Virginia, to be Administrator of the American Revolution Bicentennial Administration.

(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.)

Mr. WILLIAM L. SCOTT. Mr. President, as in executive session, from the Committee on Armed Services, I report favorably the nominations of 9 in the Army to the grade of major general and brigadier general, and in the Navy, 31 captains for temporary promotion to the grade of rear admiral. I ask that these names be placed on the Executive Calendar.

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

Mr. WILLIAM L. SCOTT. Mr. President, in addition, there are 165 appointments in the Army in the grade of colonel and below; 944 in the Air Force for appointment in the grade of captain and below; and, in the Marine Corps and Marine Corps Reserve, 3,552 appointments to the grade of colonel and below. Since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing on the Executive Calendar, I ask that these names be placed on the Secretary's desk for the information of any Senator.

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

By Mr. SPARKMAN, from the Committee on Foreign Relations:

Leonard Unger, of Maryland, a Foreign Service officer of the class of career minister, to be Ambassador Extraordinary and Plenipotentiary to the Republic of China;

John Gunther Dean, of New York, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary to the Khmer Republic;

Robert W. Dean, of Illinois, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary to Peru;

Hermann F. Eilts, of Pennsylvania, a Foreign Service officer of the class of career minister, to be Ambassador Extraordinary and Plenipotentiary to the Arab Republic of Egypt;

Leo Cherne, of New York, Rita E. Hauser, of New York, and Leonard H. Marks, of the District of Columbia, to be members of the U.S. Advisory Commission on International Educational and Cultural Affairs; and

Lawrence Y. Goldberg, of Massachusetts, to be a member of the U.S. Advisory Commission on International Educational and Cultural Affairs.

(The above nominations were reported with the recommendation that the nominations be confirmed, subject to the nominees' 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. MCGOVERN (for himself and Mr. CASE):

S. 3163. A bill to amend the General Education Provisions Act to require that the budget of the President include proposed appropriations for carrying out section 412 relating to advance funding of education programs. Referred to the Committee on Labor and Public Welfare.

By Mr. BROCK:

S. 3164. A bill to provide for greater disclosure of the nature and costs of real estate settlement services, to eliminate the payment of kickbacks and unearned fees in connection with settlement services provided in federally related mortgage transactions, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. CRANSTON:

S. 3165. A bill to authorize the Secretary of the Interior to sell mineral interests of the United States in certain lands in the State of California to the record owners of the surface thereof. Referred to the Committee on Interior and Insular Affairs.

By Mr. JAVITS (by request):

S. 3166. A bill to amend the Public Health Service Act to revise and extend programs of Federal assistance for comprehensive health resources planning, and to assist the States in regulating the costs of health care. Referred to the Committee on Labor and Public Welfare.

By Mr. TOWER:

S. 3167. A bill to amend title II of the Social Security Act to eliminate the special dependency requirements for entitlement to husband's and widower's insurance bene-

fits, so that benefits for husbands and widowers will be payable on the same basis as benefits for wives and widows.

S. 3168. A bill to amend title II of the Social Security Act to permit the payment of benefits to a married couple on their combined earnings record;

S. 3169. A bill to amend title II of the Social Security Act to provide that an insured individual otherwise qualified may retire and receive full old-age insurance benefits, at any time after attaining age 60, if he has been forced to retire at that age by a Federal law, regulation or order; and

S. 3170. A bill to amend title II of the Social Security Act to provide that any individual who has 40 quarters of coverage, whenever acquired, will be insured for disability benefits thereunder. Referred to the Committee on Finance.

By Mr. COOK (for himself and Mr. HUDDLESTON):

S. 3171. A bill to amend section 133 of title 28, United States Code, to increase by two the number of district judges for the Eastern District of Kentucky. Referred to the Committee on the Judiciary.

By Mr. GRAVEL:

S. 3172. A bill to amend title 39, United States Code, to eliminate certain restrictions on the rights of officers and employees of the U.S. Postal Service, and for other purposes. Referred to the Committee on Post Office and Civil Service.

By Mr. INOUYE:

S. 3173. A bill to amend the Intercoastal Shipping Act, 1933. Referred to the Committee on Commerce.

By Mr. FANNIN:

S. 3174. A bill to authorize the Secretary of the Interior to convey certain lands situated in Yuma County, Ariz. Referred to the Committee on Interior and Insular Affairs.

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

S. 3175. A bill to amend section 203(b) of the National Aeronautics and Space Act of 1958. Referred to the Committee on Aeronautical and Space Sciences.

By Mr. BIBLE:

S. 3176. A bill for the relief of Douglas B. Yballe. Referred to the Committee on the Judiciary.

By Mr. McGOVERN:

S. 3177. A bill to regulate commerce and promote the general welfare by providing incentives and assistance, based on detailed data and information, that will increase the amount of transportation by railroad rather than by less energy-efficient modes in order to conserve limited resources of energy, and for other purposes. Referred to the Committee on Commerce.

By Mr. PASTORE (for himself and Mr. AIKEN) (by request):

S. 3178. A bill to authorize appropriations to the Atomic Energy Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and for other purposes. Referred to the Joint Committee on Atomic Energy.

By Mr. PASTORE (by request):

S. 3179. A bill 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.

By Mr. STEVENSON:

S. 3180. A bill to amend the Emergency Petroleum Allocation Act of 1973, Public Law 93-159, to clarify services directly related to agricultural operations, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

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

S. 3181. A bill to amend the Public Health Service Act to revise the National Health Service Corps programs and the Public Health and National Health Service Corps scholarship training program. Referred to the Committee on Labor and Public Welfare.

By Mr. McCLURE:

S. 3182. A bill to prohibit the banning of lead shot for hunting. Referred to the Committee on Commerce.

STATEMENTS ON INTRODUCED BILLS AND RESOLUTIONS

By Mr. BROCK:

S. 3164. A bill to provide for greater disclosure of the nature and costs of real estate settlement services, to eliminate the payment of kickbacks and unearned fees in connection with settlement services provided in federally related mortgage transactions, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

Mr. BROCK. Mr. President, today I am introducing the "Real Estate Settlement Procedures Act of 1974" to relieve the consumer from the high cost of settlement charges.

While many of the provisions of this bill are presently contained in S. 2228, which I introduced on July 23, 1973, a number of new consumer-oriented provisions have been added as a result of the recommendations that were made by public, consumer, and industry witnesses in Congressional hearings held during the past 9 months.

Mr. President, both Houses of Congress have discussed and examined the real estate settlement process extensively during the past 2 years. In the early months of 1972, the Department of Housing and Urban Development and the Administrator of Veterans' Affairs submitted a detailed report to the Congress on "Mortgage Settlement Costs." Contrary to the belief held by many that the HUD–VA report concluded that unreasonably high settlement costs were a widespread problem, the actual finding of the report was that "costs appear to be high in some areas, but unreasonable costs probably occur in fewer areas than may be popularly assumed." The report did find, however, that certain problems and abuses existed in some areas of the country that were resulting in unnecessarily high settlement costs. Specific recommendations for Federal action that could be taken to correct these problems and abuses were proposed. I am pleased to point out that the "Real Estate Settlement Procedures Act" is directly responsive to all of the recommendations of that report for Federal legislative action.

Over the last 2 years the Senate has also received testimony from approximately 25 witnesses on this subject in three different sets of hearings. The House of Representatives has held extensive hearings on various proposals for reform in this area as well. The provisions of my bill are responsive to the various points and suggestions made by the witnesses in these hearings. It is clear that we have studied reform proposals for the real estate settlement process long enough. The time has come for Congress to act.

My bill would attack the problems and abuses that have been demonstrated to exist in the real estate settlement process in four basic ways.

First, there are a number of provisions that would provide greater and more timely information to home buyers on the nature and costs of settlement services. A special information booklet to be developed by HUD would have to be given by the lender to the home buyer at the time he files a mortgage loan application. The lender would also have to give the home buyer a detailed estimate of his settlement costs at least 10 days in advance of settlement. This disclosure would be made on a uniform settlement statement to be developed by HUD that would also be the form used as the final statement that would be given to the buyer at the time of settlement. These provisions should help insure that home buyers will no longer be surprised to first learn of certain costs at the time of settlement and that they will be in a much more knowledgeable position to negotiate for the most reasonable charges for the services that they need.

Second, sections 7, 8 and 11 of my bill will deal effectively with certain abuses that exist in the real estate settlement process in some areas of the country. Section 7 would prohibit any kickback or referral fee that is paid or received for the mere referral of settlement business and would prohibit any fee-splitting among persons who render settlement services unless the fee is paid in return for services actually rendered. These kickbacks or referral fees increase the cost of settlement services to the home buyer without providing any benefits to him. Section 7 will deal with these problems in the most comprehensive manner ever considered by the Senate.

Section 8 and 11 are new provisions not contained in S. 2228. Section 8 would limit the amount that lenders can require home buyers to pay into escrow accounts established to ensure the payment of real estate taxes and insurance. In areas where unreasonable escrow requirements are imposed on the buyer, this provision should result in a reduction of hundreds of dollars in the amount that must be paid by the buyer at the time of settlement. Section 11 would prohibit a lender from charging the home buyer any fee for the preparation of truth-in-lending statements or the disclosure statements called for by sections 4 and 6 of the bill.

Third, in order to deal with what many witnesses have described as the underlying cause of unnecessarily high title transfer costs, I have added a provision directing HUD to develop and place in operation a model system or systems for the recordation of land title information. In many areas of the country, local governments continue to maintain land title records in accordance with systems designed for use in the 19th or 18th centuries. The costs of title searching in these jurisdictions are invariably higher than in areas where local records are maintained in accordance with more modern methods. The model systems developed by HUD in accordance with section 9 of the bill will provide much needed information and experience to help local governments modernize their record keeping and help us achieve real savings that will result in lower title transfer costs.

Finally, section 10(c) of the bill would repeal section 701 of the Emergency Home Finance Act of 1970. In spite of

what many of us in the Congress intended in this section, a number of people have interpreted section 701 as empowering the Secretary of HUD and the Administrator of Veterans' Affairs to engage in the wholesale regulation of the rates charged by those who provide settlement services in FHA and VA assisted transactions. We have received extensive testimony from consumer and industry groups as to the many difficulties and drawbacks of Federal rate regulation in this area. The Department of Housing and Urban Development itself, on the basis of its experience in trying to develop such a rate regulatory scheme, has concluded that such regulation would be both unwise and unworkable and has testified in support of repeal of section 701. Its recommendations in this matter have received the strong support of the Federal Home Loan Bank Board, the agency established by the Congress to help insure that there are adequate financial resources to meet the Nation's housing goals.

While I believe the Federal rate regulation is not a realistic solution and that the antiabuse, disclosure and reform provisions of this bill offer the brightest prospects for keeping settlement costs to reasonable levels, I have, after consultation with a number of my colleagues, expanded section 10 to include a provision calling upon the Secretary of HUD to monitor the implementation of the various provisions of the bill and to report back to the Congress on what further legislation may be needed in this area. Section 10(b) would specifically call for the Secretary's recommendations in three areas that were of particular concern to some of the witnesses who testified at the congressional hearings: First, whether it is desirable to have lenders bear the costs of particular settlement services presently paid for by the borrower; second, whether Federal regulation of settlement charges is necessary and desirable, and if so, what sort of regulatory scheme should be adopted by the Congress; and third, what sort of incentives can be provided to local governments to improve and modernize their system for the recordation of land title information.

I would like to point out, Mr. President, that I believe the report to be prepared by the Secretary will provide the necessary basis for further legislative action in this area. The earlier HUD-VA study has proven to be of great value to the Congress and, indeed, the findings and recommendations contained in that study have formed the basis for the legislation I am proposing today. Contrary to many other reports that are called for by Congress which only delay effective action on the problem, the report called for by section 10 is designed to insure that the actions we would be taking in the bill are effective and, if they are not, to provide the Congress with the necessary information to allow us to act proptly on whatever further legislation is needed.

Mr. President, the "Real Estate Settlement Procedures Act" offers the Senate the best opportunity to enact legislation this year that will provide real and significant benefits to home buyers. It represents a realistic compromise of the positions of numerous groups and individuals. I believe we would be neglectful of our duties to our constituents if we allowed another year to go by without adopting legislation that would eliminate the abuses we know to exist, that would provide meaningful advance disclosure which the prospective home buyer needs, and that would take the initial steps necessary to solving the basic shortcomings in local recordkeeping that is at the root of unnecessarily high title transfer costs.

Mr. President, I ask unanimous consent that the text of this bill together with a section-by-section explanation be printed at this point in the RECORD.

There being no objection, the section-by-section analysis and the bill were ordered to be printed in the RECORD as follows:

SECTION-BY-SECTION ANALYSIS OF THE REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

SHORT TITLE

Section 1 is a new provision that specifies that the Act may be cited as the "Real Estate Settlement Procedures Act of 1974."

FINDINGS AND PURPOSE

Section 2 is a new "findings and purpose" section that was not contained in S. 2228. The section sets forth two Congressional findings: (1) that significant reforms in the real estate settlement process are needed to provide consumers with greater and more timely information on the nature and costs of the settlement process and to protect them from unnecessarily high settlement charges that are the result of certain abusive practices that have developed in some areas of the country, and (2) that the time has come for the Congress to implement the recommendations contained in the 1972 HUD-VA Report to the Congress on "Mortgage Settlement Costs" that was prepared in accordance with Section 701(b) of the Emergency Home Finance Act of 1970.

Section 2 also sets forth the four basic purposes that the Congress intends to achieve in enacting the bill. These include: (1) that more effective advance disclosure of settlement costs is provided to home buyers and sellers, (2) that kickbacks or referral fees that unnecessarily increase settlement costs are eliminated, (3) that reductions are affected in the amounts home buyers are frequently required to place in escrow accounts established to ensure the payment of real estate taxes and insurance, and (4) that significant first steps are taken by the Federal government to help effect reform and modernization of local record-keeping in regard to land title information.

DEFINITIONS

Section 3 contains various definitions of terms used in the Act and is substantially identical to section 101 of S. 2228. The only change is that the definition of "settlement services" in section 3(4) has been expanded somewhat so as to make the definition more comprehensive.

UNIFORM SETTLEMENT STATEMENT

Section 4 of the new bill is identical to section 102 of S. 2228. This section requires that a uniform settlement statement is to be prepared by the Secretary of HUD in consultation with various federal agencies and is to be used as the standard settlement form for all transactions in the United States which involve federally related mortgage loans. Because of the differences that exist in legal and administrative requirements and practices in various areas of the country, the uniform settlement statement may contain minimum variations that are necessary to reflect these differences across the country. The form is also intended to include all of the information and data required to be provided under the Truth-in-Lending Act and the regulations thereunder, so that by combining the settlement statement with the Truth-in-Lending form, more effective disclosure can be made to the home buyer.

SPECIAL INFORMATION BOOKLETS

Section 5 is identical to section 103 of S. 2228 and would direct that the Secretary of HUD prepare and distribute special information booklets to help persons borrowing money to finance the purchase of a home to better understand the nature and costs of real estate settlement services. These booklets, which may be prepared by lenders if their form and content are approved by the Secretary, are to be distributed to the home buyer at the time he files a mortgage loan application.

ADVANCE DISCLOSURE OF SETTLEMENT COSTS

Section 6 is substantially identical to section 104 of S. 2228 in requiring that any lender agreeing to make a federally related mortgage loan must provide to the home buyer, at least ten days prior to settlement, an itemized disclosure of each charge arising in connection with the settlement. This section has been amended so that this information will be required to be given to the seller as well. This disclosure would be made upon the uniform settlement statement to be developed under section 4 of the bill.

PROHIBITION AGAINST KICKBACKS AND UNEARNED FEES

Section 7 is identical to section 105 of S. 2228 and would prohibit the payment or receipt of any kickback or referral fee made for the referral of real estate settlement business. In addition, this section would prohibit any person from giving or accepting any portion of any charge made for the rendering of a settlement service unless the payment were made for services actually performed. Both civil and criminal penalties would be imposed for violation of the prohibitions.

LIMITATION ON REQUIREMENT OF ADVANCE DEPOSITS IN ESCROW ACCOUNTS

Section 8 is a new provision designed to limit the amounts that lenders can require home buyers to pay into escrow accounts established to ensure the payment of real estate taxes and insurance. At the present time, many lenders require that a home buyer establish such an account at the time of settlement and pay as much as 6 months, one year or even two years advance taxes and insurance premiums into this account. Section 8 would limit the amount of these payments at the time of settlement in the following manner: (1) in jurisdictions where taxes and insurance premiums are post-paid, the borrower could not be required to deposit more than the amount of taxes and insurance premiums that will be due and payable on the date of settlement plus the pro rata portion of such taxes and premiums that has already accrued, and (2) in jurisdictions where taxes and insurance premiums are prepaid, the borrower could not be asked to deposit more than the pro rata portion of the estimated taxes and insurance premiums based on the number of months from the last payment date to the date of settlement. In both cases, lenders may also require one-twelfth of the taxes and insurance premiums estimated to become due and payable during the twelve months following the date of settlement. After the date of settlement, a lender may only require the borrower to deposit in any one month one-twelfth of the total taxes and insurance premiums that will be due and payable during the year. In those areas where excessive escrow requirements have been imposed on home buyers, this provision will result in substantial savings to the home buyer at the time of settlement without substantially interfering with the legitimate requirements of lenders for some assurance that real estate taxes and insur-

ance premiums will continue to be paid on the property.

ESTABLISHMENT ON DEMONSTRATION BASIS OF LAND PARCEL RECORDATION SYSTEM

Section 9 is a new provision that would direct the Secretary of HUD to establish, on a demonstration basis, model land recordation systems in various parts of the country in the hope of effecting fundamental improvements in the present systems utilized by local governments for the recordation and indexing of land title information. Virtually all of the witnesses in the recent Senate hearings on closing and settlement costs testified as to the urgent need for the Federal government to take meaningful steps in this area to assist local governments in improving and modernizing their land record systems. The January, 1972, Report by American University to HUD on "The Real Estate Settlement Process and Its Costs" concluded that "the root problem involved in reducing costs in reform and reorganization of public land records." Section 9 is designed to meet this problem by having HUD establish on a demonstration basis various types of recordation systems that can be used as a model by local governments who wish to modernize their own antiquated systems. The experience gained from these models should prove invaluable in the determination of how basic reforms in land parcel indexing and recording can be achieved.

REPORT OF THE SECRETARY ON NECESSITY FOR FURTHER CONGRESSIONAL ACTION

Section 10 of the bill is a new section that is designed to achieve two purposes. First, subsection (c) would repeal Section 701 of the Emergency Home Finance Act of 1970. This is the section of law that has been interpreted as authorizing the Secretary of HUD and the Administrator of Veterans' Affairs to directly regulate the rates and charges of hundreds of thousands of attorneys, title companies, surveyors, pest and fungus inspectors, and others who provide settlement services in FHA and VA assisted mortgage transactions. Testimony presented by various consumer, industry and government witnesses in Congressional hearings held during the past year have demonstrated that Federal rate regulation of settlement charges would be both unwise and unworkable. Both the Department of Housing and Urban Development and the Federal Home Loan Bank Board have testified in opposition to Federal rate regulation of settlement charges and have urged the repeal of Section 701 of the Emergency Home Finance Act of 1970.

Second, section 10 would direct the Secretary of HUD to monitor the implementation of the various anti-abuse and disclosure provisions of the bill and report back to the Congress no sooner than three and no later than five years from the effective date of the Act on whether there is any necessity for further legislation in this area. If he concludes that there is need for further Congressional action, he is to report on the specific practices or problems that should be the subject of such legislation and the corrective measures that need to be taken. Specifically, section 10 would direct the Secretary to include in his report to the Congress his recommendations on the desirability of requiring lenders of federally related mortgage loans to bear the costs of particular real estate settlement services presently paid for by borrowers and recommendations on whether Federal regulation of settlement charges is necessary and desirable. If he concludes that such regulation would be necessary and desirable, he is to provide the Congress with a description and analysis of the regulatory scheme he believes the Congress should adopt. The Secretary is also directed to report on the ways in which the Federal government can encourage and assist local governments to improve and modernize their land title record-keeping systems.

This report will ensure continuing Congressional and administrative attention to the problems of unnecessarily high settlement charges even after the passage of the bill. This continuing concern itself will help to ensure that changes are affected in the real estate settlement process over the next three years. Moreover, the report called for by section 10 will provide the Congress with the information it needs to make a reasoned judgment as to the various alternatives that might be considered if the provisions of the bill are not totally effective in ensuring that home buyers pay only reasonable charges for necessary settlement services.

FEE FOR PREPARATION OF TRUTH-IN-LENDING AND UNIFORM SETTLEMENT STATEMENTS

Section 11 is a new provision not contained in S. 2228 that would prohibit lenders from imposing on borrowers any fee or charge for the preparation of the Truth-in-Lending statement or any other disclosure statement called for by the provisions of the bill. This type of provision received substantial support during the hearings held by the Senate Banking Committee.

MISCELLANEOUS PROVISIONS

The final three sections of the bill are identical to sections 106, 107 and 108 of S. 2228. Section 12 provides that actions to recover damages pursuant to sections 6 and 7 of the bill may be brought in an appropriate United States district court within one year from the date of the occurrence of the violation. Section 13 provides that nothing in the Act shall affect the validity of enforceability of any sale, loan, mortgage or lien made in connection with a federally related mortgage loan. Section 14 provides that the effective date of the Act shall be 180 days after the date of enactment.

S. 3164

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Real Estate Settlement Procedures Act of 1974."

FINDINGS AND PURPOSE

SEC. 2. The Congress finds that significant reforms in the real estate settlement process are needed to insure that consumers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices that have developed in some areas of the country. The Congress also finds that it has been over two years since the Secretary of Housing and Urban Development and the Administrator of Veterans' Affairs submitted their joint report to the Congress on "Mortgage Settlement Costs" and that the time has come for the recommendations for Federal legislative action made in that report to be implemented. It is the purpose of this Act to effect certain changes in the settlement process for residential real estate that will result (1) in more effective advance disclosure to home buyers and sellers of settlement costs, (2) in the elimination of kickbacks or referral fees that tend to unnecessarily increase the costs of certain settlement services, (3) in a reduction in the amounts home buyers are required to place in escrow accounts established to insure the payment of real estate taxes and insurance, and (4) in significant reform and modernization of local recordkeeping of land title information.

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) the term "federally related mortgage loan" includes any loan which—

(A) is secured by residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families; and

(B) (i) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is itself regulated by any agency of the Federal Government; or

(ii) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other such officer or agency; or

(iii) is eligible for purchase by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or from any financial institution from which it could be purchased by the Federal Home Loan Mortgage Corporation; or

(iv) is made in whole or in part by any "creditor", as defined in section 103(f) of the Consumer Credit Protection Act of 1968 (15 U.S.C. 1602(f)), who makes or invests in residential real estate loans aggregating more than $1,000,000 per year;

(2) the term "thing of value" includes any payment, advance, funds, loan, service, or other consideration;

(3) the term "person" includes individuals, corporations, associations, partnerships, and trusts;

(4) the term "settlement services" includes any service provided in connection with a real estate settlement including, but not limited to, the following: title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a realtor, and the handling of the processing, and closing or settlement; and

(5) the term "Secretary" means the Secretary of Housing and Urban Development.

UNIFORM SETTLEMENT STATEMENT

SEC. 4. The Secretary, in consultation with the Administrator of Veterans' Affairs, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board, shall develop and prescribe a standard form for the statement of settlement costs which shall be used (with such minimum variations as may be necessary to reflect unavoidable differences in legal and administrative requirements or practices in different areas of the country) as the standard real estate settlement form in all transactions in the United States which involve federally related mortgage loans. Such form shall conspicuously and clearly itemize the charges imposed upon both the borrower and the seller in connection with the settlement, and shall indicate whether the title insurance premium included in such charges covers or insures the lender's interest in the property, the borrower's interest, or both. Such form shall include all information and data required to be provided for such transactions under the Truth-in-Lending Act and the regulations issued thereunder by the Federal Reserve Board, and may be used in satisfaction of the disclosure requirements of that Act, and shall also include provision for execution of the waiver allowed by section 6(c).

SPECIAL INFORMATION BOOKLETS

SEC. 5. (a) The Secretary shall prepare and distribute special booklets to help persons borrowing money to finance the purchase of residential real estate to better understand the nature and costs of real estate settlement services. The Secretary shall distribute

such booklets to all lenders which make federally related mortgage loans.

(b) Each booklet shall be in such form and detail as the Secretary shall prescribe and, in addition to such other information as the Secretary may provide, shall include in clear and concise language—

(1) a description and explanation of the nature and purpose of each cost incident to a real estate settlement;

(2) an explanation and sample of the standard real estate settlement form developed and prescribed under section 4;

(3) a description and explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate;

(4) an explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incident to a real estate settlement; and

(5) an explanation of the unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

Such booklets shall take into consideration differences in real estate settlement procedures which may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.

(c) Each lender referred to in subsection (a) shall provide the booklet described in such subsection to each person from whom it receives an application to borrow money to finance the puchase of residential real estate. Such booklet shall be provided at the time of receipt of such application.

(b) Booklets may be printed and distributed by lenders if their form and content are approved by the Secretary as meeting the requirements of subsection (b) of this section.

ADVANCE DISCLOSURE OF SETTLEMENT COSTS

SEC. 6. (a) Any lender agreeing to make a federally related mortgage loan shall provide or cause to be provided to the prospective borrower, to the prospective seller, and to any officer or agency of the Federal Government proposing to insure, guarantee, supplement, or assist such loan, at least ten days prior to settlement, upon the standard real estate settlement form developed and prescribed under section 4 and in accordance with regulations prescribed by the Secretary, an itemized disclosure in writing of each charge arising in connection with such settlement. For the purposes of complying with this section, it shall be the duty of the lender agreeing to make the loan to obtain or cause to be obtained from persons who provide or will provide services in connection with such settlement the amount of each charge they intend to make. With respect to any charges arising in connection with the settlement, in the event the exact amount of any such charge is not available, a good faith estimate of such charge may be provided.

(b) If any lender fails to provide a prospective borrower with the disclosure as required by subsection (a), it shall be liable to such borrower in an amount equal to—

(1) the actual damages involved or $500, whichever is higher, and

(2) in the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney's fee as determined by the court;

except that a lender may not be held liable for a violation in any action brought under this subsection if it shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures adopted to avoid any such error.

(c) The provisions of subsection (a) shall be deemed to be satisfied with respect to any settlement involving a federally related mortgage loan if the disclosure required by subsection (a) is provided at any time prior to settlement and the prospective borrower executes, under terms and conditions prescribed by regulations to be issued by the Secretary after consultation with the Federal Reserve Board, a waiver of the requirement that the disclosure be provided at least ten days prior to such settlement.

(d) With respect to any particular transaction involving a federally related mortgage loan, no borrower shall maintain an action or separate actions against any lender under both the provisions of this section and the provisions of section 130 of the Consumer Credit Protection Act of 1968 (15 U.S.C. 1640).

PROHIBITION AGAINST KICKBACKS AND UNEARNED FEES

SEC. 7. (a) No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement involving a federally related mortgage loan shall be referred to any person.

(b) No person shall give and no person shall accept any portion, split or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

(c) Nothing in this section shall be construed as prohibiting (1) the payment of a fee (i) to attorneys at law for services actually rendered or (ii) by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance or (iii) by a lender to its duly appointed agent for services actually performed in the making of a loan, or (2) the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.

(d) (1) Any person or persons who violate the provisions of this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(2) In addition to the penalties provided by paragraph (1) of this subsection, any person or persons who violate the provisions of subsection (a) shall be jointly and severally liable to the person or persons whose business has been referred in an amount equal to three times the value or amount of the fee or thing of value, and any person or persons who violate the provisions of subsection (b) shall be jointly and severally liable to the person or persons charged for the settlement services involved in an amount equal to three times the amount of the portion, split or percentage.

LIMITATION ON REQUIREMENT OF ADVANCE DEPOSITS IN ESCROW ACCOUNTS

SEC. 8. No lender, in connection with a federally related mortgage loan, shall require the borrower or prospective borrower—

(1) to deposit in any escrow account which may be established in connection with such loan for the purpose of assuring payment of taxes and insurance premiums with respect to the property, prior to or upon the date of settlement, an aggregate sum (for such purpose) in excess of—

(A) in any jurisdiction where such taxes and insurance premiums are postpaid, the total amount of such taxes and insurance premiums which will actually be due and payable on the date of settlement and the pro rata portion thereof which has accrued, or

(B) in any jurisdiction where such taxes and insurance premiums are prepaid, a pro rata portion of the estimated taxes and insurance premiums corresponding to the number of months from the last date of payment to the date of settlement,

plus one-twelfth of the estimated total amount of such taxes and insurance premiums which will become due and payable during the twelve-month period beginning on the date of settlement; or

(2) to deposit in any such escrow account in any month beginning after the date of settlement a sum (for the purpose of assuring payment of taxes and insurance premiums with respect to the property) in excess of one-twelfth of the total amount of the estimated taxes and insurance premiums which will become due and payable during the twelve-month period beginning on the first day of such month, except that in the event the lender determines there will be a deficiency on the due date he shall not be prohibited from requiring additional monthly deposits in such escrow account of pro rata portions of the deficiency corresponding to the number of months from the date of the lender's determination of such deficiency to the date upon which such taxes and insurance premiums become due and payable.

ESTABLISHMENT ON DEMONSTRATION BASIS OF LAND PARCEL RECORDATION SYSTEM

SEC. 9. The Secretary shall establish and place in operation of a demonstration basis, in representative political subdivisions (selected by him) in various areas of the United States, a model system or systems for the recordation of land title information in a manner and form calculated to facilitate and simplify land transfers and mortgage transactions and reduce the cost thereof, with a view to the possible development (utilizing the information and experience gained under this section) of a nationally uniform system of land parcel recordation.

REPORT OF THE SECRETARY ON NECESSITY FOR FURTHER CONGRESSIONAL ACTION

SEC. 10. (a) The Secretary, after consultation with the Administrator of Veterans' Affairs, the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board, and after such study, investigation and hearings (at which representatives of consumers groups shall be allowed to testify) as he deems appropriate, shall, not less than three years nor more than five years from the effective date of this Act, report to the Congress on whether, in view of the implementation of the provisions of this Act imposing certain requirements and prohibiting certain practices in connection with real estate settlements, there is any necessity for further legislation in this area.

(b) If the Secretary concludes that there is necessity for further legislation, he shall report to the Congress on the specific practices or problems that should be the subject of such legislation and the corrective measures that need to be taken. In addition, the Secretary shall include in his report—

(1) recommendations on the desirability of requiring lenders of federally related mortgage loans to bear the costs of particular real estate settlement services that would otherwise be paid for by borrowers;

(2) recommendations on whether Federal regulation of the charges for real estate settlement services in federally related mortgage transactions is necessary and desirable, and, if he concludes that such regulation is necessary and desirable, a description and analysis of the regulatory scheme he believes Congress should adopt; and

(3) recommendations on the ways in which the Federal Government can assist and encourage local governments to modernize their methods for the recordation of land title information, including the feasibility of providing financial assistance or incentives to local governments that seek to adopt one of the model systems developed by the Secretary in accordance with the provisions of section 9 of this Act.

(c) Section 701 of the Emergency Home Finance Act of 1970 (12 U.S.C. 1710, note) is repealed.

FEE FOR PREPARATION OF TRUTH-IN-LENDING AND UNIFORM SETTLEMENT STATEMENTS

SEC. 11. No fee shall be imposed or charge made upon any other person (as a part of settlement costs or otherwise) by a lender in connection with a federally related mortgage loan made by it (or a loan for the purchase of a mobile home), for or on account of the preparation and submission by such lender of the statement or statements required (in connection with such loan) by sections 4 and 6 of this Act or by the Truth-in-Lending Act.

JURISDICTION OF COURTS

SEC. 12. Any action to recover damages pursuant to the provisions of section 6 or 7 may be brought in the United States district court for the district in which the property involved is located, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

VALIDITY OF CONTRACTS AND LIENS

SEC. 13. Nothing in this Act shall affect the validity or enforceability of any sale or contract for the sale of real property or any loan, loan agreement, mortgage, or lien made or arising in connection with a federally related mortgage loan.

EFFECTIVE DATE

SEC. 14. The provisions of this Act, and the amendments made thereby, shall become effective one hundred and eighty days after the date of the enactment of this Act.

By Mr. CRANSTON:

S. 3165. A bill to authorize the Secretary of the Interior to sell mineral interests of the United States in certain lands in the State of California to the record owners of the surface thereof. Referred to the Committee on Interior and Insular Affairs.

Mr. CRANSTON. Mr. President, I introduce for appropriate reference a bill to authorize the Secretary of the Interior to sell the mineral interests of the United States in certain lands near Saugus, Calif., to the owners of the surface rights of those lands. The property involved is in Los Angeles County and encompasses approximately 500 acres.

Under existing law, the Secretary of the Interior does not have the authority to convey reserved mineral interests of the United States. The Interior Department has advised me that private legislation is necessary. I am pleased to sponsor this bill at the request of the surface owners, provided that there is no loss of revenue or essential minerals to the United States. The bill requires that the beneficiaries pay all the administrative costs as well as the fair market value of the mineral interests conveyed.

I request that the text of the bill be printed at this point in the RECORD.

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

S. 3165

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is authorized and directed, in accordance with this Act, to convey, sell, and quitclaim all mineral interests of the United States in and to the following described properties to the record owners of the surface thereof as of the date of the enactment of this Act:

Parcel 1: The East half of the southwest quarter and the southwest quarter of the southwest quarter of Section 10, Township 4 North, Range 15 West, in the County of Los Angeles, State of California, according to the Official Plat thereof.

Parcel 1A: The Northwest quarter of the southwest quarter of Section 10, Township 4 North, Range 15 West, in the County of Los Angeles, State of California, according to the Official Plat thereof.

Parcel 1B: The East half of the southwest quarter and the southwest quarter of the southwest quarter of Section 10, Township 4 North, Range 15 West, in the County of Los Angeles, State of California, according to the Official Plat thereof.

Parcel 2: The northwest quarter of the northwest quarter of Section 15, Township 4 North, Range 15 West, in the County of Los Angeles, State of California, according to the Official Plat thereof.

Parcel 2A: The Northwest quarter of the northwest quarter of Section 15, Township 4 North, Range 15 West, in the County of Los Angeles, State of California, according to the Official Plat thereof.

Parcel 3: The north half of the northeast quarter of Section 16, Township 4 North, Range 15 West, in the County of Los Angeles, State of California, according to the Official Plat thereof.

Parcel 3A: The southeast quarter of the northeast quarter and the East half of the southwest quarter of the northeast quarter of Section 16, Township 4 North, Range 15 West, in the County of Los Angeles, State of California, according to the Official Plat thereof.

Parcel 3B: The southeast quarter of the northeast quarter of the East half of the southwest quarter of the northeast quarter of Section 16, Township 4 North, Range 15 West, in the County of Los Angeles, State of California, according to the Official Plat thereof.

Parcel 4: The southeast quarter of the southeast quarter of Section 9, Township 4 North, Range 15 West, in the County of Los Angeles, State of California, according to the Official Plat thereof.

Parcel 4A: The northeast quarter of the southeast quarter of Section 9, Township 4 North, Range 15 West, in the County of Los Angeles, State of California, according to the Official Plat thereof.

Parcel 4B: The northeast quarter of the southeast quarter of Section 9, Township 4 North, Range 15 West, in the County of Los Angeles, State of California, according to the Official Plat thereof.

Parcel 5: The East half of the northeast quarter of the southeast quarter and the West half of the West half of the northeast quarter of the southeast quarter, Section 16, Township 4 North, Range 15 West, in the County of Los Angeles, State of California, according to the Official Plat thereof.

Parcel 5A: The east half of the northwest quarter of the southeast quarter and the west half of the west half of the northeast quarter of the southeast quarter, section 16, township 4 north, range 15 west, in the county of Los Angeles, State of California, according to the official plat thereof.

SEC. 2. The Secretary of the Interior shall require the deposit of a sum of money which he deems sufficient to cover estimated administrative costs of this Act. If any conveyance is not made pursuant to this Act, and the administrative costs with respect thereto exceed the deposit, the Secretary shall bill the applicant for the outstanding amount, but if the amount of the deposit exceeds the actual administrative costs, the Secretary shall refund to the applicant the excess.

SEC. 3. No conveyance shall be made pursuant to this Act unless application for conveyance is filed with the Secretary within six months of the date of the enactment of this Act and unless within the time specified by him payment is made to the Secretary of (1) administrative costs of the conveyance and (2) the fair market value of the interest to be conveyed. The amount of the payment required shall be the difference between the amount deposited and the full amount required to be paid under this section. If the amount deposited exceeds the full amount required to be paid, the applicant shall be given a credit or refund for the excess.

SEC. 4. The term "administrative costs" as used in this Act, includes, but is not limited to, all costs of (1) conducting such exploratory programs as the Secretary of the Interior deems necessary to determine the character of the mineral deposits in the land, (2) evaluating the data obtained under the exploratory programs to determine the fair market value of the mineral rights to be conveyed, and (3) preparing and issuing the instrument of conveyance.

SEC. 5. Moneys paid to the Secretary for administrative costs shall be paid to the agency which rendered the service, and deposited to the appropriation then current. Moneys paid for the minerals or mineral interests conveyed shall be deposited into the general fund of the Treasury as miscellaneous receipts.

By Mr. JAVITS (by request):

S. 3166. A bill to amend the Public Health Service Act to revise and extend programs of Federal assistance for comprehensive health resources planning, and to assist the States in regulating the costs of health care. Referred to the Committee on Labor and Public Welfare.

HEALTH RESOURCES PLANNING ACT

Mr. JAVITS. Mr. President, by request, I am today introducing the administration's "Health Resources Planning Act" which would amend the Public Health Service Act to revise and extend programs of Federal assistance for comprehensive health resources planning, and to assist the States in regulating the costs of health care.

The major purposes of this bill—to assist the Nation's health care system to plan more effectively to provide the resources necessary to meet the Nation's health care needs and provide grant assistance to States to pay part of their costs in regulation proposed capital expenditures and rate increases for health care—are substantially similar to the "Health Planning Act" (S. 3139) measure I recently introduced.

In respect to planning activities the bill is designed to replace the State areawide planning components of five programs, conducted under the Public Health Service Act, whose authorizations expire with the close of the current fiscal year. These are the comprehensive health planning programs under sections 314(a) and 314(b) of the act, the Hill-Burton program under title VI of the act, the regional medical programs under title IX of the act, the program supporting area health education centers—funded through both the regional medical programs and section 774 of the act—and the program assisting experimental health services delivery systems under section 304 of the act.

In respect to State regulatory activities on health care planning the bill provides a formula grant program to encourage these activities, and to supply some of the costs to the State attendant upon its participation in the program of capital expenditure review established by section 1122 of the Social Security Act. In this regard, in contrast to views

about planning the bill recognizes that regulation of the health care industry is a governmental function, and cannot appropriately be transferred to private hands.

I am concerned that the bill—and the letter of transmittal from the Department of Health, Education, and Welfare makes it clear—does not propose to extend project grants for health facilities construction. I am not convinced that our urban and public hospital system can survive without such Federal assistance.

That is why I modified my planning bill to authorize grants, as well as loans, for facilities' construction and also introduced with Senator EAGLETON the "Urban Hospitals Emergency Assistance Act of 1974" (S. 2983).

I ask unanimous consent that the full text of the letter of transmittal, a section by section summary of the bill, and the bill be printed in the RECORD.

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

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
March 11, 1974.

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

DEAR MR. PRESIDENT: Enclosed for the consideration of the Congress is a draft bill "To amend the Public Health Service Act to revise and extend programs of Federal assistance for comprehensive health resources planning, and to assist the States in regulating the costs of health care." Upon enactment, the bill will bear the short title of the "Health Resources Planning Act".

The draft bill has two major purposes: First, to assist the nation's health care system to plan more effectively to provide the resources necessary to meet the nation's health care needs; second, to grant assistance to States to pay part of their costs in regulating proposed capital expenditures and rate increases for health care.

In aid of the first purpose, the draft bill would establish a procedure under which State governors and the chief executive officers of the territories of the United States would take the initiative in establishing geographical regions (to be known as "health service areas") within which there will be available a comprehensive range of health services, and which will represent rational areas for the effective planning and development of health services.

To serve as the locus for health planning and related activities within the areas thereby established, the Secretary would certify private nonprofit organizations, after consultation with the appropriate State and local officials, as "Health Systems Agencies" whose efforts would be directed at aiding the major sectors of the health care market within the area—consumers, health care providers, health care insurers, health educational institutions, and government—to develop, for the area, adequate, equitably distributed health services of high quality and reasonable cost.

An Agency would supply this aid, with respect to its area, by preparing and keeping current a comprehensive health plan for services, facilities, and manpower; by reviewing and advising the Secretary with respect to applications to the Secretary for financial assistance for the construction of health facilities, the development of health services, or the training of health manpower, by advising State and local governments in regard to actions those governments may propose relating to health services, facilities, or manpower; and by providing technical assistance, including grants and contracts not in excess of $25,000 each, for projects and activities that would contribute to implementing the comprehensive health plan.

In States containing more than one health service area, the Agencies serving the State would establish a Statewide Health Coordinating Council, which would prepare a Statewide comprehensive health plan and would offer its participating Agencies a forum for resolving problems of inter-Agency coordination.

To support these activities, the draft bill would offer the Agencies three forms of assistance: it would authorize the Secretary to contribute toward their expenses of operation, to accord them technical assistance, and to fund the Agencies' own technical assistance grants and contracts.

In aid of the draft bill's second purpose, it would establish a program of State formula grants, based upon a State's population and the cost of the services for which the grant is supplied, to aid each State (and the territories) in paying their costs of regulating capital expenditures for health care and the payment or reimbursement for health care services. A State choosing to regulate in both areas, and vesting that regulation in a single Agency of the State, would be entitled to receive a grant that was twenty-five percent larger than the grant that it would otherwise have received under the formula.

The draft bill is more fully described in the enclosed sectional summary.

The draft bill is designed to replace the State or areawide planning components of five programs, conducted under the Public Health Service Act, whose authorizations expire with the close of the current fiscal year. These are the comprehensive health planning programs under sections 314(a) and 314(b) of the Act, the Hill-Burton program under title VI of the Act, the regional medical programs under title IX of the Act, the program supporting area health education activities funded through the regional medical programs, and the program assisting experimental health services delivery systems under section 304 of the Act.

Because these programs, and therefore their planning components, were developed at different times and for different reasons, each program was designed to concentrate its planning activities on only a part of the health care system. In consequence, the Federal approach to private health care planning has been fragmented, demonstrating little capacity to bring about improvement in the health care system as a whole.

In seeking to remedy this problem, our proposal reflects our awareness that the larger portion of last year's national expenditures in the field of health care were by the private sector, with only five percent of the total representing amounts expended by State and local government: a share, moreover, that continues to diminish. By emphasizing support of private rather than governmental health care planning, our proposal recognizes that health care planning in the United States is now, and should remain, primarily a private activity.

A particular concern of our proposal is to assure that each Health Systems Agency assisted under it be governed by a body representative of the health care market in which the Agency is to intervene. It meets this concern by requiring one-half of the governing body to consist of consumers and State and local (primarily elected) governmental officials, and one-half to consist of providers of health care, health care insurers, and health education institutions.

A further concern is to open the planning process to the public and to encourage public participation. This would be accomplished by a range of provisions that include the mandating of open meeting of Agency governing bodies, and public hearings on the adoption of the comprehensive health plan.

The Agency function of reviewing Federal, State, and local health activities in its area, albeit advisory, will accord to its planning efforts serious attention at all levels of government.

Because of the influence of State regulatory activities on health care planning, and the importance of those activities in assuring the availability of quality health care at a reasonable cost, our proposal also includes the previously described formula grant program to encourage these activities, and to defray some of the costs to the State attendant upon its participation in the program of capital expenditure review established by section 1122 of the Social Security Act. In this regard, in contrast to our views about planning, the draft bill recognizes that regulation of the health care industry is a governmental function, and cannot appropriately be transferred to private hands.

We are not seeking an extension of those aspects of the regional medical program or the Hill-Burton program not embraced by the draft bill, or section 314(c) of the Public Health Service Act, which provides project grants for training, studies, and demonstrations in the health planning field.

The Hill-Burton hospital construction program was initiated in 1946 to meet the nation's most critical post-war need: acute care (inpatient) beds. During the early years of Hill-Burton, nearly two-thirds of available funds were expended for new construction, principally in rural communities where no facilities existed or where existing facilities were completely inadequate. As the program progressed, the need for additional facilities decreased and support shifted to projects for replacement, alterations, and additions to existing facilities. With the expenditure of more than $3.7 billion over the past two decades to assist over 10,000 facilities to establish 470,000 new beds, the need for additional general hospitals, mental hospitals, and acute beds has substantially been met. The national average bed occupancy rate is now about 73 percent. Moreover, any further construction that might be needed can be financed from charges for patient care through private, State, and local borrowing.

In regard to the regional medical programs, the expenditure of more than $500 million from 1966 through 1972 has not significantly altered the health care delivery system nationally. Moreover, the original objective of the programs—to improve quality of care—is now the major responsibility of the nationwide system of Professional Standards Review Organizations.

Finally, our experience with grants under section 314(c) has been that they have not contributed materially to the overall competence of the health planning process. Persons who wish to pursue graduate training in health planning can be assisted through alternative sources, *e.g.*, the student assistance programs of the Office of Education, which are generally available to students in higher education.

We urge that the draft bill receive prompt and favorable consideration.

We are advised by the Office of Management and Budget that enactment of this proposal would be in accord with the program of the President.

Sincerely,

/s/ FRANK C. CARLUCCI,
Acting Secretary.

SECTIONAL SUMMARY OF HEALTH RESOURCES PLANNING BILL

AN OVERVIEW

The draft bill consists of six sections:

Section one would give the bill the short title of the "Health Resources Planning Act";

Section 2 expresses the *bill's* purpose of assisting private and public health care systems

to plan more effectively the provision of resources necessary to meet the health care needs of the nation, and to facilitate governmental regulation of health care costs;

Section 3 would enact the bill's two new programs, as described below;

Section 4 consists of technical and conforming changes to the Public Health Service Act necessitated by the amendments made by section 3 of the bill;

Section 5 would authorize technical assistance, during fiscal year 1975, to planning agencies previously established under the Hill-Burton program or under the regional medical programs, and to "A" or "B" agencies under the current comprehensive health planning program, to enable them to convert to the type of planning agency assisted by the first of the bill's new programs; and

Section 6 would make the bill effective with respect to appropriations for fiscal years beginning after June 30, 1974.

ASSISTANCE FOR HEALTH RESOURCES PLANNING: A NEW SECTION 316 OF THE PUBLIC HEALTH SERVICE ACT

The draft bill would repeal the current section 316 of the Public Health Service Act, which provides for a National Advisory Council on Comprehensive Health Planning Programs, and would enact a new section 316, subdivided as shown below.

(a) *Purpose of section.* The purpose of the new section 316 is to assist in the formulation of a nationwide system of Health Systems Agencies to encourage the development of adequate, equitably distributed health services of high quality and reasonable cost. The Agencies, in pursuit of this purpose, would be responsible for fostering alternative health care arrangements, the elimination or reduction of health resource duplication, the establishment of an adequate supply and distribution of those resources, the improvement of the efficiency and productivity of health care providers, the continuing education of health personnel (including education for new roles), and the coordination of all segments of the health care market.

(b)(1) *Designation of health service area.* The chief executive officer of each State (defined to include the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands) may designate geographical regions as "health service areas". The areas (whose boundaries could be modified by the Secretary as appropriate) would be served by the Health Systems Agencies described below.

(2) *Characteristics of area.* The health services area would be a geographical region within which there are available a comprehensive range of health services, and which is of a character suitable for the effective planning and development of health services. Generally speaking, the areas (which could extend beyond the boundaries of a State) would be defined with appropriate regard for existing planning districts (such as those established for purposes of the Professional Standards Review Organizations, for State planning purposes, or as standard metropolitan statistical areas), and would contain a population of between one-half to three million.

(c) Health Systems Agencies: certification, functions, and eligibility for Federal assistance.—

(1) When and by whom certified. The Secretary would certify as a Health Systems Agency for each health service area an organization that enters into an agreement with the Secretary for this purpose and it's structured as described below.

(2) Functions. The agreement with the Secretary would obligate the Agency to prepare and maintain a comprehensive health plan for the health service area, to review the Secretary's grants of Federal financial assistance for health care activities, to review State and local health care activities, to offer technical assistance in furtherance of the health plan, to participate in the Statewide Health Coordinating Council described below, and to comply with various subsidiary requirements, including those necessary to protect the financial interest of the United States.

(3) Provisional agencies. Agencies would initially be certified on a provisional (24-month) basis, after appropriate consultation with State and local officials, during which period the Agency would follow a plan for the orderly assumption of the previously described Agency functions.

(4) Assistance by Secretary.—

(A) Expenses of operation. The Secretary would make grants for an agency's operational expenses.

(B) Technical assistance by Secretary. The Secretary would extend to the Agency a broad range of technical assistance, and keep it apprised of national health policies and issues that bear on health care.

(C) Support of Agency's technical assistance grants and contracts. The Secretary would fund the technical assistance grants and contracts awarded by the Agency in furtherance of the comprehensive health plan for its health service area. The amount of this assistance would, in part, depend upon the Secretary's evaluation of the Agency's effectiveness.

(d) Termination or withdrawal of certification. An Agency could terminate a provisional certification upon 90 days notice to the Secretary, or a final certification upon such notice as the Secretary's regulations provide. The Secretary would withdraw an Agency's provisional or final certification, on not less than 120 days notice, upon his determination, after a formal hearing, of the Agency's noncompliance with its agreement.

(e) Organizational requirements to be met by Agencies.——

(1) In general. An Agency is required to be a nonprofit private corporation that exercises no Federal, State, or local regulatory authority, and is not a provider or insurer of health services or an educational institution.

(2) Governing body.—

(A) In general. The governing body is made responsible for the Agency's compliance with its agreement with the Secretary, and for management of the Agency.

(B) Composition. The governing body must consist of not more than 30 members, one-half of whom are to represent consumer organizations or State or local officials (with not less than two members in each of these categories), and one-half of whom are to represent organizations representative of physicians, health maintenance organization hospitals, long-term care facilities, health care insurers, or health educational institutions (with not less than one member in each of these categories that has members that provide services to the health service area). In addition, there may be included, as part of this latter provider group, other private or public providers of health services (such as representatives of Federal agencies that provide, or assist the provision of health services within the area).

(C) Actions reserved to governing body. There are reserved to the governing body the responsibilities, for its health service area, of adopting the comprehensive health plan, making recommendations to the Secretary on the use of Federal funds related to health care, reviewing State or local health care actions, and awarding grants or contracts for technical assistance.

(D) Proceedings.—

(i) Quorum. The governing body may act only by vote of a majority of its members at a meeting at which at least one-half of its members are present.

(ii) Public participation and information. Subject to limitations for the protection of confidential information of a type now protected under the Administrative Procedure Act, the governing body must conduct its meetings in public, provide for participation of the public in Agency actions, and publish annually a statement of its financial situation and activities.

(3) Staff. In empowering the Agency to employ staff, the bill would provide for training to upgrade the staff's qualifications. The bill, in this regard, contemplates only in-service training and does not intend to authorize education of a character leading to an academic degree.

(4) Invidious discrimination prohibited. In the selection of its members or staff, the Agency would be barred from discriminating on the basis of race, color, national origin, religion, sex, or age.

(5) Limitation of liability.—

(A) Services of members and employees. Members and employees of the Agency would be relieved of civil or criminal liability under any law for the performance, with the exercise of due care, of functions authorized by the bill.

(B) Provision of information. A similar relief would be accorded to persons providing information to the Agency with respect to the provision of that information, if the information is provided in good faith and related to the Agency's functions.

(6) Sources of financial support. An Agency may receive unconditional contributions from any private source of up to 5 percent of the amount of assistance received from the Secretary, and of up to 25 percent of that amount from any public sources.

(f) Comprehensive health plan.—

(1) Preparation and contents. Each Agency must annually adopt a comprehensive health plan for its health service area identifying shortages, maldistributions, and surpluses of health personnel, facilities, and services, and the most serious organizational and operational deficiencies of health care providers.

(2) Recommendations. The plan must set forth long-range goals and annual priorities for the establishment or improvement of health care systems, and recommend actions to alleviate the problems identified by the plan. The actions recommended should foster the objectives described in subsection (a), above.

(3) Adoption and promulgation. Prior to the adoption of its plan, the Agency must conduct a public hearing and receive written comment from interested persons.

(g)(1) Review of Federal project grants. Each Agency is required to review project grants by the Secretary to its health service area, under the principal health statutes administered by him, for the development, expansion, or support of health facilities, manpower, or services.

(2) Review of Federal formula grants. The Agency, if its area is Statewide or, if not, the pertinent Statewide Health Coordinating Council, must review the plans or applications submitted as a condition of an entitlement to formula grant funds under the health statutes administered by the Secretary.

(3) Effect of approval or disapproval. The Secretary would be required to provide to the pertinent Agency or Council, upon request, a detailed written statement of his reasons for disregarding their recommendations in the approval or disapproval of any project grant or, in the case of a formula grant, any plan or similar application upon which the entitlement is conditioned.

(h) Technical assistance by Agencies.—

(1) Purposes. An Agency may provide technical assistance, directly or by grant or contract, to implement the recommendations of its comprehensive health plan. The assistance would be available, among other purposes, for the preparation of applications to the Secretary for assistance related to health care, and for implementing any project or activity for which such assistance is awarded.

(2) Limitation of purpose, amount, and duration. Grants or contracts under this subsection could be used only for operational expenses (although not for the purposes or provision of health care services or training in the provision of health care services), could not exceed $25,000 for any single project for a fiscal year, and could not be awarded for any single project for more than two successive fiscal years.

(i) Statewide Health Coordinating Council.—

(1) Requirement for Council. Two or more Agencies that serve health service areas that fall, in whole or in part, within the same State would be required to form a Statewide Health Coordinating Council.

(2) Organization. The Council would consist of two representatives from each member Agency, one representative selected from the consumer or public members of the Agency's governing body, the other selected from the members related to the health professions.

(3) State participation. The State would also be permitted to appoint one or more of its officials to serve on the Council, and would be permitted to contribute up to 25 percent of the amount required to meet the Council's expenses (the remainder, under paragraph (2) above, to be paid by the participating Agencies).

(4) Functions. The Council would draw on the comprehensive health plans of its member Agencies to prepare a Statewide plan, and would perform other advisory analytical, and coordinative functions.

(5) Proceedings, public participation, staff, and limitations of liability. The captioned matters would be essentially the same as those required of Agencies.

(j) Evaluation of Agencies by Secretary. The bill would require the Secretary to evaluate the performance of Agencies and Councils on a regular basis, and would empower him to prescribe standards of performance to facilitate this evaluation.

(k) Appropriations authorized. The bill would authorize the appropriation of such sums as may be necessary for fiscal years 1975, 1976, and 1977 for section 316.

GRANTS TO STATES FOR REGULATION OF HEALTH CARE COSTS: A NEW SECTION 316A OF THE PUBLIC HEALTH SERVICE ACT

The draft bill would add a new section 316A to the Public Health Service Act, subdivided as shown below.

(a) Purpose. There would be established a formula grant program to assist the States to pay their costs of regulating capital expenditures related to health care, and otherwise to establish or regulate rates used for the payment or reimbursement for health care services.

(b) (1) (A) Allotment. The allotment would be in accordance with the populations of the respective States eligible for it, and the costs of regulating the activities selected by the States for regulation.

(B) Entitlement to increased allotment. A State that regulates both capital expenditures and the rates of payment or reimbursement for health care services, and that centralizes this regulation in a single State agency, would be entitled to an additional amount equal to 25 percent of its original allotment.

(2) Reallotment. Amounts not used by a State would be reallotted among the remaining States in proportion to their original allotments.

(3) Payment. Payment may be made on the basis of estimates of anticipated expenditures, with provision for adjustments for underpayments or overpayments.

(c) State agreement. In addition to its acceptance of provisions to protect the financial interest of the United States, a State, as a condition of its entitlement under this section, must also agree to provide for the establishment of a procedure under which the instrumentality of the State responsible for approving capital expenditure related to health care within the State will first obtain the recommendation of the Health Systems Agency with respect to any expenditure within the Agency's health service area. If the instrumentality takes action contrary to that recommendation, there must be a procedure under which its decision is reviewed by the chief executive officer of the State as he may designate.

(d) Termination of assistance. The Secretary, after reasonable notice and opportunity for hearing to a State, may terminate assistance for noncompliance. The Secretary may also request the Attorney General to take such action to compel compliance, or to recover amounts improperly expended by a State under the section, as may be authorized by law.

(e) Appropriations authorized. The bill would authorize the appropriation of such sums as may be necessary for fiscal years 1975, 1976, and 1977 for section 316A.

S. 3166

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 "Health Resources Planning Act".

PURPOSE OF ACT

SEC. 2. The purpose of this Act is to assist private and public health care systems to plan more effectively the provision of resources necessary to meet the health care needs of the Nation, and to facilitate governmental regulation of health care costs.

FEDERAL ASSISTANCE TO ESTABLISH A COMPREHENSIVE HEALTH CARE PLANNING SYSTEM AND TO AID STATES IN REGULATING HEALTH CARE COSTS

SEC. 3. Section 316 of the Public Health Service Act is repealed, and there are enacted new sections 316, 316A, and 316B to read as follows:

"ASSISTANCE FOR HEALTH RESOURCES PLANNING

"SEC. 316. (a) PURPOSE OF SECTION.—The purpose of this section is to assist in the formulation of a nationwide system of Health Systems Agencies whose mission is to inform, coordinate, assist, and influence each of the five major sectors of the health care market—consumers, health care providers, health care insurers, health educational institutions, and Government—to plan and develop an adequate supply of health care of high quality, equitably distributed, and of reasonable cost. In aid of this mission, each Agency shall seek to achieve the following objectives—

"(1) to foster the establishment of alternative arrangements for the organization, financing, and provision of health services;

"(2) to minimize or eliminate the unnecessary duplication of health resources;

"(3) to assure the adequate supply and distribution of health resources and services throughout the geographical area it serves;

"(4) to encourage improvements in the efficiency and productivity of individuals and organizations that provide health care, including, in aid thereof, change in the organization and operation of entities providing health services, and their use of personnel;

"(5) in aid of the preceding objectives, to foster the appropriate training, retraining, and continuing education of health personnel, and the initiation of new types and patterns, and the improvement of existing types and patterns of that training, retraining, and continuing education; and

"(6) to encourage coordination of the activities of all segments of the health care market, with particular reference to the relationship to that market of the health plans and activities of government, the kinds of services that are or should be reimbursed by insurers of health care, the kinds of personnel that are or should be providing those services, the admissions policies and curricula of health educational institutions, the location of medical or other health internships, residences, employment, or other manpower training programs, and the placement of health facilities.

"(b) (1) DESIGNATION OF HEALTH SERVICE AREA.—As soon as practicable after the enactment of this section, the Secretary shall publish a general notice in the Federal Register, and shall give actual written notice to the chief executive officer of each State, announcing the initiation of proceedings to designate geographical regions, to be known as 'health service areas', to be served by Health Systems Agencies certified under subsection (c). Each notice shall request the chief executive officer of each State to establish, in accordance with the criteria specified by paragraph (2) and after consultation with each agency within the State established under section 314(a) or 314(b), or title IX, of this Act, the boundaries of all health service areas within which his State or any portion thereof will be located, and to inform the Secretary of those boundaries within six months of the date of that enactment. By promulgation of a rule under 5 U.S.C. 553, the Secretary shall thereafter designate such areas as health service areas for purposes of this section, subject to such modifications (notwithstanding paragraphs (2)(B) and (2)(C) as the Secretary may deem appropriate. The Secretary, by such rule, shall also designate health service areas for every geographical region of the United States that would not otherwise be located in any health service area. A health service area may not be altered, after its designation, except by promulgation of a rule under 5 U.S.C. 553, proposed after actual written notice to the chief executive officer of each State any portion of which is included in that area.

"(2) CHARACTERISTICS OF AREA.—A health service area shall be a geographical region within which there are available a comprehensive range of health services, and which is of a character suitable for the effective planning and development of health services. Subject to the preceding sentence, a health service area—

"(A) shall not include any portion of the geographical region of any other health service area but may otherwise be within, coexistensive with, or extend beyond the boundaries of a State (except that there shall be designated with respect to each State not less than one health service area within which health services are provided primarily to residents of that State);

"(B) shall have boundaries, subject to subparagraph (A), that (i) shall conform to, or otherwise take into account, areas designated by a State for planning for human services and areas established under section 1152(a) of the Social Security Act; and (ii) shall not, unless such health service area boundaries would otherwise be infeasible, cross the boundaries of a standard metropolitan statistical area (as determined by the Office of Management and Budget); and

"(C) shall contain upon its establishment, subject to the preceding subparagraphs, a population of not less than five hundred thousand (unless the population of a State contained within the health service area is less than five hundred thousand), and not more than three million (unless the health service area contains a standard metropolitan statistical area having a population in excess of three million).

"(c) HEALTH SYSTEMS AGENCIES: CERTIFICATION, FUNCTIONS, AND ELIGIBILITY FOR FEDERAL ASSISTANCE—

"(1) WHEN AND BY WHOM CERTIFIED.—The Secretary shall, as soon as practicable after the designation of a health service area, enter into an agreement with an entity whereby he shall certify the entity as the sole Health Systems Agency (hereinafter in this section

referred to as the 'Agency') for that area. The initial certification of an entity as an Agency shall be provisional, in accordance with paragraph (3).

"(2) FUNCTIONS.—The Secretary may certify an entity as an Agency only if it meets the organizational requirements of subsection (e), and, in the agreement entered into under paragraph (1), undertakes—

"(A) to use amounts received from the Secretary under this section only for the purposes for which provided, and in accordance with such procedures, consistent with this section, as the Secretary's regulations may prescribe;

"(B) to prepare and keep current a comprehensive health plan for services, facilities, and manpower meeting the requirements of subsection (f);

"(C) at the Secretary's request, in accordance with subsection (g), to review and make recommendations upon each application to the Secretary for Federal financial assistance for the construction of a health facility, the development of a health service, or the training of health manpower within the health service area for which it is established;

"(D) in its discretion, to review and make recommendations upon the actions or proposed actions of a State (including its political subdivisions, any agency thereof, and any agency designated under section 1122 of the Social Security Act) relating to health services, facilities, or manpower within the Agency's health service area;

"(E) insofar as it finds necessary to facilitate the accomplishment of its mission, to collect data and other information, and to conduct analyses, evaluations, and other studies, with respect to (i) health manpower, facilities, services, and related health resources, (ii) the costs and financing of those health resources, and (iii) the health status and needs of the population of the health service area;

"(F) to make available to the public the data and other information collected, and the analyses, evaluations, and other studies conducted under subparagraph (E); and such other information on health conditions, needs, resources, and activities undertaken with respect to them, as may be in the Agency's possession;

"(G) to provide technical assistance in accordance with subsection (h);

("H) to participate, if required by subsection (i), in a Statewide Health Coordinating Council;

"(I) to comply with such performance standards as the Secretary may prescribe under subsection (j);

"(J) to make such reports, in such form and containing such information, as the Secretary may from time to time require, and to keep such records and afford such access thereto as the Secretary may find necessary to verify such reports;

"(K) to provide for such fiscal control and fund accounting procedures as the Secretary may require to assure proper disbursement of, and accounting for, amounts received from the Secretary under this section; and

"(L) to permit the Secretary and the Comptroller General of the United States, or their representatives, to have access for the purpose of audit and examination to any books, documents, papers, and records pertinent to the disposition of amounts received from the Secretary under this section.

"(3) PROVISIONAL AGENCIES.—The Secretary shall initially certify an entity as an Agency on a provisional basis, for a period not to exceed 24 months, in order to develop and determine the capacity of the entity to perform the functions imposed on Agencies under this section. The Secretary shall not provisionally certify an entity as an Agency until he has consulted with the chief executive officer of the State to be served, and such other State and local officials as he may deem appropriate, with respect to that certification, and has received from the entity, and approved, a formal plan for the entity's orderly assumption and implementation of those functions during the provisional period.

"(4) ASSISTANCE BY SECRETARY.—

"(A) EXPENSES OF OPERATION.—From the sums appropriated under subsection (k) for any fiscal year, the Secretary may make grants for that fiscal year to each entity certified or provisionally certified by him under this subsection as an Agency, for use by the Agency for its expenses of operation (as defined by section 316B(4)).

"(B) TECHNICAL ASSISTANCE BY SECRETARY.—To assist each Agency in performing its functions, the Secretary shall provide the Agency with materials pertinent to health care planning methodologies, health care system studies, research, and related information available to him, including information pertaining to health care resources and utilization. Materials provided shall include model curricula, and other information on the health care system, that would further educate members of the Agency. The Secretary shall also, as appropriate, inform each Agency of health policies or issues of national concern, of national priorities in the establishment of health policy or in addressing those issues, and of such other national policies or issues as may bear upon the provision of health care.

"(C) SUPPORT OF AGENCY'S TECHNICAL ASSISTANCE GRANTS AND CONTRACTS.—To enable an Agency that has prepared a plan, for a fiscal year, that meets the requirements of subsection (f), to provide technical assistance for that fiscal year authorized by subsection (h), the Secretary may award to the Agency for that fiscal year a grant from sums appropriated under subsection (k). The amount of that grant shall be based upon—

"(i) the population of the health service area for which the Agency is certified;

"(ii) the health care needs within that health service area as set forth by the plan; and

"(iii) the efficiency and effectiveness of the Agency as determined by the Secretary under subsection (j).

"(d) TERMINATION OR WITHDRAWAL OF CERTIFICATION.—An Agency may terminate a provisional certification upon 90 days notice to the Secretary, and a certification (other than a provisional certification) at such time and upon such notice to the Secretary as the Secretary's regulations shall prescribe. The Secretary shall withdraw an Agency's certification or provisional certification not less than 120 days after notifying the Agency of his intent to do so, but only upon his determination, after providing the Agency with an opportunity for hearing in accordance with 5 U.S.C. 554, that the Agency has not complied with the agreement entered into under subsection (c)(1) or, in the case of a provisionally certified Agency, is not capable of such compliance.

"(e) ORGANIZATIONAL REQUIREMENTS TO BE MET BY AGENCIES.—

"(1) IN GENERAL.—An agency shall be eligible to be certified for a health service area so long as it is and continues to be an entity that (A) is incorporated as a nonprofit private corporation of a State that includes the largest part of the area's population; (B) is governed and maintains a staff in compliance with paragraphs (2) and (3), respectively; (C) is not a subsidiary of, or otherwise controlled by, any other public or private corporation or other entity; (D) exercises no regulatory authority nor otherwise participates, other than in an advisory capacity, in any regulatory process, established by law; (E) does not provide, or insure the provision of, and does not own or operate any facility that provides, or insures the provision of, health services to any individual (other than its members or employees); (F) is not and does not operate an educational institution; (G) does not engage in activities not authorized by this section; and (H) is capable, as determined by the Secretary, of performing each of the functions described in subsection (c)(2).

"(2) GOVERNING BODY.—

"(A) IN GENERAL.—An agency shall have a governing body that shall be composed as provided in subparagraph (B), shall conduct its proceedings in accordance with subparagraphs (C) and (D), shall *be responsible for* the Agency's compliance with the agreement executed under subsection (c)(2), and shall otherwise manage the Agency.

"(B) COMPOSITION.—The governing body of an agency shall be composed of not more than thirty members (as the Secretary's regulations may prescribe) who are residents of the health service area for which the agency is certified. Of these members—

"(i) one-half shall be (I) individuals who represent organizations that in the aggregate reflect the composition of the population of the area and none of whom is, or within the 12 months preceding his appointment has been, a provider of health services; or (II) individuals who are officials of State or local government who hold public elective offices that are broadly representative of the elected governmental authorities in the area (except that the Secretary's regulations may authorize the selection, in lieu of an elected official, of an official holding a comparable appointive office); and

"(ii) one-half shall be individuals who represent organizations that are representative of (I) physicians, (II) health maintenance organizations, (III) hospitals, (IV) long-term care facilities, (V) other private or public providers of health services, (VI) health care insurers, or (VII) health educational institutions.

Members shall be selected in such manner and serve such terms as the Secretary's regulations may prescribe, except that—

"(iii) there shall be at least two members designated under each of the clauses enumerated (i)(I) and (i)(II); and

"(iv) there shall be at least one member designated under each of the clauses enumerated (ii)(I) through (ii)(IV), (ii)(VI), and (ii)((VII) (except with with respect to any clause that describes a category no members of which serve the Agency's health service area).

For purposes of clause (i), the term 'provider of health services' means an individual (or any dependent child of such individual) who receives (either directly or through his spouse) any gross annual income from fees or compensation for the provision of, research into the provision of, or instruction in the provision of health services, or from entities engaged in such provision, research, or instruction, or from producing or supplying, or from entities engaged in producing or supplying drugs or other articles for individuals or entities engaged in the provision of, research into the provision of, or instruction in the provision of such services, or holds a fiduciary position with, or has a fiduciary interest in, any of the previously described entities. For purposes of clause (ii), the terms contained in the enumerated clauses thereof shall bear such meaning as the Secretary's regulations may prescribe.

"(C) ACTIONS RESERVED TO GOVERNING BODY.—Except upon the approval of the governing body, an agency may not (i) adopt, or adopt a revision of, a comprehensive health plan under subsection (f); (ii) approve or disapprove any proposed use of Federal funds, or any State plan or similar institutional application, under subsection (g); (iii) make any recommendation relating to actions or proposed actions of a State under subsection

(c)(2)(D); or (iv) provide technical assistance by grant or contract under subsection (h).

"(D) PROCEEDINGS.—

"(i) QUORUM.—The governing body of an Agency shall act only by vote of a majority of its members present and voting at a meeting called in accordance with the Agency's articles of incorporation and applicable by-laws, and at which meeting a quorum is in attendance. A quorum for the governing body shall be not less than one-half of its members. An Agency shall reimburse the members of its governing body for their reasonable costs incurred in attending meetings of the governing body.

"(ii) PUBLIC PARTICIPATION AND INFORMATION.—Subject to such terms and conditions as the Secretary's regulations may prescribe, including such exceptions as the Secretary finds necessary to protect the confidentiality of matter comparable to matter described in 5 U.S.C. 552(b), the by-laws of an Agency shall—

"(I) provide that the governing body shall conduct its business meetings in public, shall maintain minutes of those meetings, and shall make those minutes, and its other records available, upon request, to the public;

"(II) provide for participation of the public in the actions of the Agency, by requiring public notice of meetings of the governing body, reasonable opportunity for interested persons to file statements with the governing body with respect to matters upon which the body proposes to act, and such other procedures as may be deemed necessary or appropriate to effect this purpose; and

"(III) provide that the governing body on behalf of the Agency shall annually publish and disseminate to the public a statement listing the Agency's income, expenditures, assets, and liabilities for the year; and a statement describing the Agency's activities in that year.

"(3) STAFF.—An Agency shall employ staff that includes individuals knowledgeable in the disciplines relevant to health care financing, organization, and resource utilization. An Agency may employ consultants, and may contract with individuals or groups for the provision of services, where necessary to perform its functions. The staff, consultants, and other individuals or groups employed by or providing services to the Agency shall be compensated in accordance with standards established by the Secretary's regulations. Subject to the Secretary's regulations, an Agency may, notwithstanding the limitations of paragraph (1)(F) (barring an Agency from functioning as an educational institution), undertake to provide, by contract or otherwise, for the additional training of its staff to improve the capability of the Agency to carry out its functions under this section.

"(4) INVIDIOUS DISCRIMINATION PROHIBITED.—For the purposes of the application to this section of title VI of the Civil Rights Act of 1964, section 601 of that Act shall be deemed also to prohibit, with respect to any person in the United States, the exclusion of that person from participation in, denial to that person of the benefits of, or the subjection of that person to discrimination under the activities of the Agency authorized or required by this subsection, on the ground of religion, sex, or age.

"(5) LIMITATION OF LIABILITY.—

"(A) SERVICES OF MEMBERS AND EMPLOYEES.—No individual who, as a member or employee of an Agency or who furnishes professional counsel or services to an Agency, shall, by reason of his performance of any duty, function, or activity required of, or authorized to be undertaken by, an Agency under this section, be held to have violated any criminal law, or to be civilly liable under any law, of the United States or any State (or political subdivision thereof), provided he has exercised due care and has acted, with respect to that performance, without malice toward any person affected by it.

"(B) PROVISION OF INFORMATION.—No person who provides information to an Agency shall, by reason of having provided that information, be held to have violated any criminal law, or to be civilly liable under any law, of the United States or any State (or political subdivision thereof), unless—

"(i) the information is unrelated to the performance of the functions of the Agency, or

"(ii) the information is false and the person providing the information knew, or had reason to believe, that the information was false.

"(6) SOURCES OF FINANCIAL SUPPORT.—An Agency is authorized to solicit and accept unconditional contributions of money, to be used for the purposes of this section. An Agency may not accept from any private individual or other private entity in or for any fiscal year, a contribution that exceeds five per centum of amounts awarded to the Agency by the Secretary under this section for that fiscal year, nor from any public entity a contribution that exceeds twenty-five per centum of such amounts for such year.

"(f) COMPREHENSIVE HEALTH PLAN.—

"(1) PREPARATION AND CONTENTS.—Each Agency shall annually adopt and promulgate, in accordance with the procedures prescribed by paragraph (2), a plan for the health service area for which it is certified which shall take into account the health services, facilities, and manpower of the area, including health care provided or the provision of which is assisted by the United States. The plan shall identify problems related to each of the objectives specified by subsection (a), and, to the extent not otherwise identified—

"(A) shall identify the most acute shortages, maldistributions, and surpluses of health personnel, facilities, and services, within the health service area; and

"(B) shall identify the most serious deficiencies in the organization and operation of health entities within the health service area engaged in providing health services.

"(2) RECOMMENDATIONS.—The plan shall set forth a detailed statement of long-range goals and annual priorities for the establishment or improvement of health care systems, including services, facilities, and manpower, which shall meet the health care needs of the people of the area, and shall recommend specific actions to alleviate the problems identified under paragraph (1). The actions recommended shall foster the objectives set forth for Agencies in subsection (a).

"(3) ADOPTION AND PROMULGATION.—Prior to its adoption of any plan under this subsection, the Agency shall conduct a public hearing on the plan as proposed, and shall give interested persons an opportunity to submit their views orally and in writing. Not less than thirty days prior to that hearing, the Agency shall publish in at least two newspapers of general circulation throughout the health service area a notice of its consideration of the proposed plan, the time and place of the hearing, the place at which interested persons may consult the plan in advance of the hearing, and the place and period in which to direct written comment to the Agency on the plan. As soon as practicable after conclusion of the hearing, the Agency shall either adopt the proposed plan, with such modifications as it deems appropriate, or reject it. Upon the adoption of a plan (subject to such modifications as may be made by the pertinent Statewide Health Coordinating Council, if any, under subsection (i)(4)(A)), the Agency shall promulgate it throughout the health service area.

"(g)(1) REVIEW OF FEDERAL PROJECT GRANTS.—Each Agency shall review and approve or disapprove each proposed use within its health service area of Federal funds appropriated for a program (other than a program described by paragraph (2)) under this Act, the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 for the development, expansion, or support of health facilities, manpower, or services.

"(2) REVIEW OF FEDERAL FORMULA GRANTS.—Each Agency whose health service area includes an entire State or each Statewide Health Coordinating Council of the State shall review and approve or disapprove the State plan or similar institutional application, or any revision thereof, submitted to the Secretary as a condition of entitlement to amounts allotted by this Act or the Acts cited by paragraph (1).

"(3) EFFECT OF APPROVAL OR DISAPPROVAL.—If an Agency disapproves a proposed use of Federal funds for a program described by paragraph (1), or an Agency or Council disapproves a plan or application described by paragraph (2), the Secretary may not make Federal funds available for such program, or approve such plan or application, until he has made, upon request of the entity proposing such use or submitting such plan or application, or upon his own initiative, a review of the Agency's or Council's decision. If the Secretary thereafter approves such use, plan, or application, he shall make a detailed written statement of his reasons to such Agency or Council. If the Secretary disapproves any proposed use of such Federal funds, or such plan or application, contrary to the approval of such Agency or Council, he shall make a detailed written statement of his reasons to such Agency or Council upon its request. Nothing in this subsection, however, shall be construed to authorize the Secretary to withhold his approval of any use, plan, or application that complies with provisions of law creating an entitlement to any amount, if the Secretary is not otherwise authorized to exercise discretion to withhold his approval.

"(h) TECHNICAL ASSISTANCE BY AGENCIES.—

"(1) PURPOSES.—An Agency may provide technical assistance, directly or by grant or contract, to assist public or private entities to plan or develop programs or projects to implement any action recommended under subsection (f)(2). Subject to the preceding sentence, technical assistance may include, but shall not be limited to, assistance—

"(A) to plan, develop, or prepare an application to the Secretary for assistance under any Act that the Secretary administers, or any Act administered by an official under his supervision, for any project or activity for or to develop or expand health services or facilities or the education or training of health manpower; or

"(B) to implement any such project or activity for which the assistance described in subparagraph (A) is awarded,

except that the amount of any technical assistance awarded under this subsection shall not be included in the computation of any non-Federal contribution to such project or activity required under any such Act. The Secretary shall publish and disseminate to each Agency standards and guidelines to assist in its provision of technical assistance described in subparagraphs (A) and (B).

"(2) LIMITATION OF PURPOSE, AMOUNT, AND DURATION.—Amounts awarded under a grant or contract under paragraph (1) shall be used only to pay expenses of operation (as defined by section 316B(4)), except that an Agency may not authorize the use of any such award for the purchase or provision of health care services (except by the recipient, in its capacity as an employer, with respect to its employees), or education or training in the provision of such services. No such award, or aggregate of awards, shall be

to an individual or other entity, for any single project or activity, in an amount that exceeds $25,000 for any fiscal year, nor shall an Agency extend technical assistance by grant or contract, or combination thereof, to any individual or other entity, for any single project or activity, for more than two successive fiscal years.

"(i) STATEWIDE HEALTH COORDINATING COUNCIL.—

"(1) REQUIREMENT FOR COUNCIL.—In the case of two or more Agencies certified for health service areas that fall, in whole or in part, within the boundaries of a single State, the Agencies shall prepare and submit to the Secretary, within such time, in such form and manner, and meeting such terms and conditions, consistent with this section as his regulations prescribe, a common proposal for the establishment, for that State, of a Statewide Health Coordinating Council (hereinafter in this section referred to as the 'Council'). An Agency certified for a health service area contained only within the boundaries of two or more States shall comply with the preceding sentence with respect to each of those States.

"(2) ORGANIZATION.—A proposal for a Council shall contain the agreement of each Agency that joins in submitting it—

"(A) to designate to serve as members of the Council, one member of each Agency described by subsection (e) (2) (B) (i) (pertaining to qualifications of consumer and public members), and one member of each Agency described by subsection (e) (2) (B) (ii) (pertaining to qualifications of members related to the health professions), and to maintain this number and character of membership of the Council;

"(B) to assume, for each fiscal year, its share of the costs of the Council in excess of those defrayed under paragraph (3); for which purpose the share of each agency shall bear the same proportion to those costs as th amounts the Secretary has awarded to the agency under this section (with respect to the portion of its health service area lying within the State of the Council) for that year bear to such aggregate amounts awarded under this section to all agencies joining in the proposal; and

"(C) to comply with the rules and regulations of the Council promulgated under paragraph (4).

An agency shall be required to comply with each proposal it submits under paragraph (1) upon notification of the Secretary's acceptance of it.

"(3) STATE PARTICIPATION.—The Secretary shall accord to the chief executive officer of each State for which a Council is established the opportunity to appoint one or more officials of the State to serve, on behalf of the State, as members of the Council. For use in the payment of the expenses of the Council, a State may contribute to the Council, for a fiscal year, an amount that may not exceed 25 per centum of those expenses for that year.

"(4) FUNCTIONS.—The Council, with respect to the State for which it is established, shall—

"(A) integrate, annually, the portions of plans that would be operative within the State, adopted under subsection (f) by each member agency, into a statewide plan that complies with that subsection, making only such modifications to the plan of each member Agency, for this purpose, as the Council finds necessary to eliminate inconsistencies that would unreasonably interfere with the coordination of activities among health service areas in pursuit of the statewide plan;

"(B) be authorized to undertake and publish such analyses, studies, research, evaluations, and other reports relating to health care as may be pertinent to the health services, facilities, or manpower in two or more health service areas served by member agencies;

"(C) be authorized to make recommendations to the State (including its agencies and political subdivisions) with respect to any plan or activity relating to the health care in two or more health service areas served by member agencies; and

"(D) take such other action with respect to coordinating the plans or activities of each agency within the State, with respect to one another and with respect to the plans or activities of the State, as the Council's rules and regulations may provide.

"(5) PROCEEDINGS, PUBLIC PARTICIPATION, STAFF, AND LIMITATION OF LIABILITY.—A Council's proceedings, the participation of the public in its activities, the appointment and composition of its staff, and the limitations of liability of its members, employees, individuals who furnish it with professional counsel, and persons who provide it with information, shall conform to subsections (e) (2) (D), (e) (3), and (e) (4), with such exceptions and subject to such modifications as the Secretary's regulations may prescribe.

"(j) EVALUATION OF AGENCIES BY SECRETARY.—The Secretary shall evaluate on a continuing basis the efficiency and effectiveness of each Agency and each Statewide Health Coordinating Council established under subsection (i), and shall periodically publish each evaluation and disseminate it to each Agency and Council. To facilitate this evaluation the Secretary shall develop and prescribe for the use of each Agency and Council uniform methods of measuring its performance, for which purpose the Secretary shall develop and publish uniform standards relating to the requirements of this section and shall employ these standards in his evaluations under this subsection. To aid in the conduct of evaluations under this subsection, the Secretary shall provide for the conduct of visitations to each Agency and Council at least once in each period of three consecutive fiscal years.

"(k) APPROPRIATIONS AUTHORIZED.—There are authorized to be appropriated for the purposes of this section such sums as may be necessary for the fiscal year ending June 30, 1975, and each of the next two fiscal years.

"GRANTS TO STATES FOR REGULATION OF HEALTH CARE COSTS

"SEC. 316A. (a) PURPOSE.—To assist the States to enter into and implement agreements with the Secretary to regulate capital expenditures related to health care, and otherwise to establish or regulate rates used for the payment or reimbursement for health care services rendered by health practitioners, hospitals, nursing homes, extended care facilities, community health care programs, home health agencies, visiting nurse associations, and indirect suppliers of health services (such as medical laboratories, ambulance services, blood banks, and dental laboratories), the Secretary shall, under subsection (b), allot the sums appropriated under subsection (e).

"(b) (1) (A) ALLOTMENT.—The sums appropriated under subsection (e) shall be allotted, for each fiscal year, among the States that, under subsection (c), have entered into an agreement with the Secretary that is in effect for the fiscal year. The allotment shall be, under the Secretary's regulations, in accordance with the populations of the respective States eligible therefor, and the costs of performing the functions to be undertaken by the States under their agreements, except that the allotment of a State, as so determined, shall be increased by twenty-five per centum (and the allotments of each State not so increased shall be proportionately reduced), in the case of a State meeting the requirements of subparagraph (B).

"(B) ENTITLEMENT TO INCREASED ALLOTMENT.—A State shall meet the requirements of this subparagraph if the Secretary determines that (i) the State is entitled to assistance under this section both in consideration of an agreement with the Secretary to regulate capital expenditures related to health care and an agreement with the Secretary to regulate the payment or reimbursement of such health care services described by subsection (a) as the Secretary may provide; and (ii) the State has designated a single agency of the State to perform all of those regulatory functions.

"(2) REALLOTMENT.—The amount of any allotment to a State under paragraph (1), for any fiscal year, that the Secretary determines will not be required by the State, during the period for which it is available, for the purposes for which allotted shall be available for reallotment by the Secretary from time to time, on such date or dates as he may fix, to other States with respect to which such a determination has not been made, in proportion to the original allotments to such States under paragraph (1) for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during that period; and the total of those reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amount so reallotted to a State from sums appropriated under subsection (e) for a fiscal year shall be deemed part of its allotment under paragraph (1) for the fiscal year.

"(3) PAYMENT.—From each State's allotment for a fiscal year under this subsection, the Secretary shall from time to time pay to the State the amount of its expenditures incurred during that year or the succeeding year under the agreement entered into under this subsection. The Secretary shall make these payments on the basis of estimates of those expenditures, or in anticipation of those expenditures based upon his estimate of the sums the State will need in order to perform the functions undertaken under the agreement, but with such adjustments as may be necessary to take account of previously made underpayments or overpayments.

"(c) STATE AGREEMENT.—In order to be approved for the purposes of this section, a State agreement (or agreements, in the case of a State submitting separate agreements for rate regulation and capital expenditure) must—

"(A) designate, or provide for the establishment of, the entities that will perform the functions described by subsection (a);

"(B) set forth policies and procedures that, in the judgment of the Secretary, will assure the effective discharge of those of the functions described by subsection (a) for which the State proposes to use its allotment under this section;

"(C) provide for the establishment of a procedure under which the instrumentality of the State responsible for approving capital expenditures related to health care within the State will obtain the recommendation of a Health Systems Agency with respect to any such expenditure within the health service area of the Agency; and further provide that a decision of that instrumentality to approve or disapprove any such expenditure against the recommendation of the Health Systems Agency shall be reviewed, upon petition of the Agency, by the chief executive officer of the State, or such other instrumentality (other than the instrumentality rendering the decision) as the chief executive officer may designate;

"(D) provide that the State will make such reports, in such form and containing such information, as the Secretary may from time to time require, and keep such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of such reports;

"(E) provide for such fiscal control and

fund accounting procedures to be undertaken by the State, or prescribed by it for entities receiving assistance from the State under this section in aid of the performance of any function described by subsection (a), as may be necessary to assure proper disbursement of and accounting for funds paid to the State under this section; and

"(F) contain such additional information and assurances as the Secretary may find necessary to carry out the purposes of this section.

"(d) TERMINATION OF ASSISTANCE.—Whenever the Secretary, after reasonable notice and opportunity for hearing to the State, finds that with respect to any portion of its allotment under this subsection there is a failure to comply with the agreement entered into under subsection (c), the Secretary shall make no further payments to the State from its allotment (or, in his discretion, no further payments from its allotment for the activities in which there is such failure) until he is satisfied that there will no longer be such failure. In addition to, or in lieu of, such termination of assistance, the Secretary may request the Attorney General to take such action to compel compliance, or to recover amounts improperly expended by the State under this section, as may be authorized by law.

"(e) APPROPRIATIONS AUTHORIZED.—There are authorized to be appropriated, for the purposes of this section, such sums as may be necessary for the fiscal year ending June 30, 1975, and each of the next two fiscal years. Sums appropriated under this subsection shall remain available for obligation for the fiscal year succeeding the fiscal year for which appropriated.

"GENERAL DEFINITIONS

"SEC. 316B. For the purposes of sections 316 and 316A—

"(1) The term 'State' means each of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands; and the term 'United States' means all of the States, as so defined, or the Federal Government, as the context may dictate.

"(2) The term 'chief executive officer of a State' means the governor of each of the fifty States and the Commonwealth of Puerto Rico, the Commissioner or Mayor of the District of Columbia, and, with respect to each remaining State, such officer or employee of the United States having principal responsibility for its management or administration as the Secretary of the Interior shall designate.

"(3) The term 'nonprofit' as applied to any entity means an entity no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual, and which, if owned or operated by another entity, is owned or operated only by a nonprofit entity.

"(4) The term 'expenses of operation' means, with respect to any fiscal year, expenses chargeable to that year under generally accepted accounting principles, including debits for the depreciation of assets."

TECHNICAL AND CONFORMING CHANGES

SEC. 4. The Public Health Service Act is amended—

(1) in sections 310A and 310B, by striking out "314(a), 314(b), 314(c),";

(2) in sections 311(a) and 311(b), by striking out "section 314" and inserting "sections 314, 316, and 316A" in lieu thereof;

(3) in section 314(g)(1), by striking out the first sentence thereof;

(4) in section 314(g)(2), (A) in the first sentence thereof, by inserting "or section 316" after "this section", and (B) in the second sentence thereof, by striking out "subsection (a) or (d)" and inserting "subsection (d), or the amount of Federal assistance under section 316" in lieu thereof;

(5) in section 329(e)(1), (A) by striking out the text of subparagraph (C) and inserting in lieu thereof "Three members shall be appointed from the membership of Health Systems Agencies or State health planning agencies."; and (B) by striking out subparagraphs (E) and (F);

(6) in section 329(f)(3)(C), by striking out "section 314(b)" and inserting "section 316" in lieu thereof;

(7) in section 721(c)(7), by striking out clauses (A) and (B) and inserting in lieu thereof "the Health Systems Agency for the health service area (designated under section 316(b)) in which the project is to be located,";

(8) in section 721(d)(2), (A) by striking out "in a State which has in existence a State planning agency, or" and inserting in lieu thereof "in a health service area (designated under section 316 (b)) with respect to which there is certified a Health Systems Agency, or in a State"; (B) by striking out "by such agency" each time it appears and inserting "by either such agency" in lieu thereof; and (C) by striking out "such State" and inserting "such health service area or State, respectively," in lieu thereof.

(9) in section 728, by inserting after "health personnel" the following: ", or to Health System Agencies to assist in planning such programs";

(10) by striking out section 791(b)(5)(C) and inserting in lieu thereof the following:

"(C) in the case of an applicant in a health service area (designated under section 316 (b)) for which there is certified a Health Systems Agency, the relationship of the application to the construction or training program described in the plan of the Agency promulgated under action 316(f) and, if the Agency has reviewed the application, any comment thereon submitted by it.''

(11) by striking out the text of section 802(c)(2) and inserting in lieu thereof a text identical with the text of section 791(b)(5)(C) as amended by paragraph (10) of this section.

TRANSITIONAL ASSISTANCE TO EXISTING AGENCIES

SEC. 5. In the case of an entity to whom the Secretary has awarded financial assistance, for the fiscal year ending June 30, 1974, under title VI or IX, or section 314(a) or 314(b) of the Public Health Service Act, as in effect in that year, the Secretary is authorized to provide to such entity, prior to July 1, 1975, such technical assistance as it may require to qualify for provisional certification as a Health Systems Agency under section 316(c)(3) of the Public Health Service Act as amended by this Act. The Secretary may condition the provision of that assistance upon such reorganization of the entity, or such merger of the entity with one or more other entities, as will facilitate the performance of its functions as such Health Systems Agency with respect to the health service area for which it is certified.

EFFECTIVE DATE

SEC. 6. Except for section 5, which shall become effective upon enactment, this Act is effective with respect to appropriations for fiscal years beginning after June 30, 1974.

By Mr. TOWER:

S. 3167. A bill to amend title II of the Social Security Act to eliminate the special dependency requirements for entitlement to husband's and widower's insurance benefits, so that benefits for husbands and widowers will be payable on the same basis as benefits for wives and widows;

S. 3168. A bill to amend title II of the Social Security Act to permit the payment of benefits to a married couple on their combined earnings record;

S. 3169. A bill to amend title II of the Social Security Act to provide that an insured individual otherwise qualified may retire and receive full old-age insurance benefits, at any time after attaining age 60, if he has been forced to retire at that age by a Federal law, regulation, or order; and

S. 3170. A bill to amend title II of the Social Security Act to provide that any individual who has 40 quarters of coverage, whenever acquired, will be insured for disability benefits thereunder. Referred to the Committee on Finance.

Mr. TOWER. Mr. President, over the last several months I have undertaken a thorough review of the problems being experienced by my constituents under the current provisions of the Social Secuity Act. In most cases, I have discovered that the majority of these problems arise out of a misunderstanding of the ever-changing provisions and regulations governing the program and from inadvertent errors on the part of the Social Security Administration. However, my constituents have brought to my attention several provisions of the act itself which provide inequitable coverage for certain groups of individuals.

Certainly this is not surprising; nor is it unexpected when we consider the fact that the social security program is the most comprehensive, complex and expensive program the Congress has ever approved. Cash benefits for social security alone amount to more than one-fifth of the total Federal budget, and about 33 million persons—1 out of every 6 Americans—benefit now either as direct recipients, survivors or dependents. Nevertheless, the fact that social security is America's most important domestic program at the Federal level, makes it all the more important that it be as fair as possible to each and every person. This requires a continuing reassessment of the program and continuing efforts on the part of the Congress to improve its coverage as well as the efficiency of its administration.

Today, I am introducing four bills to amend title II of the Social Security Act, which are designed to remedy inequities I have discovered under the present act, as it has been amended.

The first would eliminate the special dependency requirements for entitlement to husband's or widower's benefits, so that benefits for husbands and widowers would be payable on the same basis as benefits for wives and widows.

Under the present law, a widower must be able to show that half of his support was derived from his wife's earnings in order to qualify for survivors benefits on her social security record. The law presumes that a widow received half her support from her husband's earnings, and no such proof is required.

Considering the number of wives who are presently working and contributing substantially to their family's income, it is no longer appropriate to presume that a widow derived half of her support

from her husband's earnings. Survivor's benefits for husbands and widowers should, therefore, be payable on the same basis as benefits for wives and widows. My bill is designed to accomplish this.

The second proposal would permit the payment of benefits to a married couple on their combined earnings record.

Under current law, a wife who works, upon retirement, is permitted to draw on her own working record or that of her husband, whichever is greater. Consequently, in most cases, a woman draws on the account of her husband, since usually his earnings have been greater. She is, therefore, collecting a wife's benefit, which she would have been entitled to draw had she never worked in her life or contributed to the social security fund. Most significantly, however, she is not receiving benefits in proportion to the taxes she paid into social security while employed.

Under this system, obviously, earnings are replaced, but only in a standardized fashion. The social security system fails to consider the total of combined funds paid into the system by the working couple. This measure would permit married couples to combine their social security credits and draw higher benefits based on those combined earnings credits. It would insure that couples in which both partners work and contribute to social security would receive at least as high a benefit as a couple in which only one partner has worked.

My third proposal provides that an insured individual otherwise qualified, may retire and receive full old-age insurance benefits, at any time after attaining the age of 60, if he has been forced to retire at that age by a Federal law, regulation or order.

Under Federal Aviation Administration regulations, airline pilots are required to stop flying at age 60. Many of these individuals are understandably unable to obtain other employment at that age; however, the law specifically states that age 62 is the earliest age of eligibility for retirement benefits, with retirement benefits taken before age 65 reduced to take account of the longer period over which social security recipients in general would be paid.

My proposal today would correct a situation which results from action of the Federal Government; in other words, if the Federal Government requires a pilot to retire, the retirement payment made by the Federal Government should be computed in a way which takes this into account.

While it may be reasonable to assume that most people who retire before 65 do so voluntarily, this is not the situation with the airline pilots. There is nothing voluntary about a pilot's retirement, for neither he nor his employer can do anything to prevent it—it is illegal for a pilot to fly. Therefore, in all fairness, the Government should make a special exception for computing a pilot's benefit, just as it has with respect to his employability after age 60.

The final proposal I am offering today would provide that any individual who has 40 quarters of coverage, whenever acquired, will be insured for disability benefits.

As my colleagues know, one of the requirements of the Social Security Act, in its present form, is that a person whose disability began at age 31 or later must have social security credits for 20 calendar quarters—5 years—of work during a 10-year period ending in or after the calendar quarter in which he became disabled. In essence, this means that if a person is disabled more than 5 years after retirement, no matter how many credits he has amassed, he is ineligible for social security disability coverage.

The bill I am introducing today would simply provide for a relaxation of this rather arbitrary earnings requirement to allow disability coverage to any individual who has worked under social security for 40 quarters or more at any time during his life, in addition to the current allowance for 20 quarters of coverage in the 10 years preceding disability.

Certainly, Mr. President, these four measures in themselves, will not remedy all the inequities in the law as presently written. The conference committee is now considering H.R. 3153, approved by the Senate last December, the Senate version of which contains another of my proposals to raise the earnings ceiling on outside earnings to $3,000 before deductions are made, and lower the age limit from 72 to 70 after which no deduction would be made at all for outside earnings.

Furthermore, a number of my colleagues have introduced legislation already designed to remedy other inequities. One of these proposals, S. 2815, introduced by the Senator from Hawaii (Mr. FONG), would increase the increment in old-age benefits payable to individuals who delay their retirement beyond age 65. I am a cosponsor of this important measure.

Another bill, S. 1051, introduced by the Senator from Indiana (Mr. HARTKE), would eliminate the requirement that a recipient of disability insurance benefits under title II wait for 24 months before becoming eligible for coverage under medicare.

Indeed, there are countless other meritorious proposals now pending before the Committee on Finance. At this point, however, Mr. President, I feel it is important to also point out the problems confronted by the Committee on Finance in considering these important measures.

The most insurmountable problem, of course, is, and has always been, the cost of social security to the middle-income family, and this is a problem I have addressed frequently. As important as I feel it is to provide equitable coverage to our social security beneficiaries, we cannnot overlook the increasing burden of social security taxes on our working people. In this decade of rampant inflation and controlled wages, any major increase in social security taxes will inevitably be unwelcome. Consequently, the members of the Senate Finance Committee must weigh priorities carefully and report their recommendations objectively for consideration by this entire body and the Congress as a whole.

Undoubtedly, these recommendations will seem inadequate to some while seeming irresponsible to others. This is the heavy burden of their responsibility.

Understanding that, I do not intend to urge the distinguished chairman of that committee (Mr. LONG) or any of its members to expedite or even accept the proposals I offer today in their present form. I offer them basically as a means of calling their attention to the inequities being experienced by my constituents today, and to simply ask that the committee undertake a thorough review of our social security laws at the earliest possible date for the express purpose of identifying these and any other inequities in the program. Then I would ask that they consider legislation to remedy these inequities before considering proposals to expand the scope of the program even further. I am not even inalterably committed to the specific language of my proposals. I simply would like to see legislation reported which would remedy these inequities without placing an unconscionable burden on our nation's taxpayer.

I am presently compiling certain statistical data, including cost estimates on the four specific proposals I have introduced, which I shall forward to the committee as soon as it has been prepared. I know that Chairman LONG and the members of his committee will give this serious matter most careful consideration.

Mr. President, I ask unanimous consent that the full text of each of my four proposals be printed at this point in the RECORD.

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

S. 3167

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 202(c)(1) of the Social Security Act is amended—

(1) by adding "and" at the end of subparagraph (B);

(2) by striking out subparagraph (C); and

(3) by redesignating subparagraph (D) as subparagraph (C).

(b) Section 202(c) of such Act is further amended by striking out paragraph (2), and by redesignating paragraph (3) as paragraph (2).

(c) Section 202(p)(1) of such Act is amended by striking out "subparagraph (C) of subsection (c)(1),".

(d) Section 202(s)(3) of such Act is amended by striking out "Subsections (c)(2)(B) and (f)(2)(B)" and inserting in lieu thereof "Subsection (f)(2)(B)".

SEC. 2. (a) Section 202(f)(1) of the Social Security Act is amended—

(1) by adding "and" at the end of subparagraph (C);

(2) b ystriking out subparagraph (D); and

(3) by redesignating subparagraphs (E), (F), and (G) as subparagraphs (D), (E), and (F), respectively.

(b) Section 202(f) of such Act is further amended by striking out paragraph (2), and by redesignating paragraphs (3) through (7) as paragraphs (2) through (6), respectively.

(c)(1) Section 202(f)(1)(B) of such Act is amended by striking out "paragraph (6)" and inserting in lieu thereof "paragraph (5)".

(2) The subparagraph of section 202(f)(1) of such Act redesignated as subparagraph (F) by subsection (a)(3) of this section is amended by striking out "paragraph (6)" and "paragraph (7)" and inserting in lieu thereof "paragraph (5)" and "paragraph (6)", respectively.

(3) Subparagraph (A) of the paragraph of section 202(f) of such Act redesignated as paragraph (2) by subparagraph (b) of this section is amended by striking out "paragraph (5)" and inserting in lieu thereof "paragraph (4)".

(4) The paragraph of section 202(f) of such Act redesignated as paragraph (4) by subsection (b) of this section is amended by striking out "paragraph (4)" and "paragraph (3)" and inserting in lieu thereof "paragraph (3)" and "paragraph (2)", respectively.

(5) The paragraph of section 202(f) of such Act redesignated as paragraph (6) by subsection (b) of this section is amended by striking out "paragraph (1)(G)" and "paragraph (6)" and inserting in lieu thereof "paragraph (1)(F)" and "paragraph (5)", respectively.

(d)(1) Section 202(k) of such Act is amended—

(A) by striking out "or (f)(5)" wherever it appears in paragraph (2)(B) and (3)(B) and inserting in lieu thereof in each instance "or (f)(4)"; and

(B) by striking out "or (f)(3)" in paragraph (3)(A) and inserting in lieu thereof "or (f)(2)".

(2) Section 202(p) of such Act is amended by striking out "clause (i) or (ii) of subparagraph (D) of subsection (f)(1), or".

(3) Section 202(s)(2) of such Act is amended by striking out "Subsection (f)(4)" and inserting in lieu thereof "Subsection (f)(3)".

(4) Section 202(s)(3) of such Act (as amended by subsection (d) of the first section of this Act) is amended by striking out "Subsection (f)(2)(B) of this section, so" and inserting in lieu thereof "So".

SEC. 3. The amendments made by this Act shall apply with respect to monthly insurance benefits payable under title II of the Social Security Act for months after the month in which this Act is enacted, on the basis of applications filed in or after the month in which this Act is enacted.

S. 3168

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 202(a) of the Social Security Act is amended to read as follows:

"(a)(1) Every individual who—

"(A) is a fully insured individual (as defined in section 214(a)),

"(B) has attained age 62, and

"(C) has filed application for old-age insurance benefits or was entitled to disability insurance benefits for the month preceding the month in which he attained age 65,

shall be entitled to an old-age insurance benefit for each month beginning with the first month in which such individual becomes so entitled to such insurance benefits and ending with the month preceding the month in which he dies.

"(2) Except as provided in subsection (q), such individual's old-age insurance benefit for any month shall be equal to his primary insurance amount for such month as determined under section 215(a), or as determined under paragraph (3) of this subsection if such paragraph is applicable and its application increases the total of the monthly insurance benefits payable for such month to such individual and his spouse. If the primary insurance amount of an individual for any month is determined under paragraph (3), the primary insurance amount of his spouse for such month shall, notwithstanding the preceding sentence, be determined only under paragraph (3).

"(3) If an individual and his spouse are living in the same household (as determined by the Secretary on the basis of evidence available to him), and each of them is entitled to benefits under this subsection (or section 223), or one of them is so entitled and the other would upon satisfying subparagraphs (A) and (C) of paragraph (1) be entitled to benefits under this subsection, then the primary insurance amount of such individual, and the primary insurance amount of such spouse (who shall be deemed to be entitled to benefits under this subsection, whether or not satisfying such subparagraphs, beginning with the later of the month in which such spouse attains age 62 or the month in which such individual became entitled to benefits under this subsection), for any month, shall each be equal to the amount derived by—

"(A) adding together such individual's average monthly wage and such spouse's average monthly wage, as determined under section 215(b),

"(B) applying section 215(a)(1) to their combined average monthly wage determined under subparagraph (A) (subject to the next sentence) as though such combined average monthly wage were such individual's average monthly wage determined under section 215(b), and

"(C) multiplying the amount determined under subparagraph (B) by 75 percent.

In no event shall the combined average monthly wage of such individual and his spouse be greater than the average monthly wage that would result under section 215(b) with respect to a person who became entitled to benefits under this subsection (without having established a period of disability) in the calendar year in which the primary insurance amounts of such individual and spouse are determined under this paragraph, and who had the maximum wages and self-employment income that can be counted, pursuant to section 215(e), in all his benefit computation years. The primary insurance amount of an individual and his spouse determined under this paragraph shall not be increased unless there is an increase in the primary insurance amount of either of them pursuant to provisions of this title other than this paragraph.

"(4)(A) Paragraph (3) shall also apply to an individual and his spouse who are not living in the same household for any month with respect to which both such individual and such spouse have indicated, in such manner and form as the Secretary shall by regulations prescribe, that they desire to have their primary insurance amounts determined under paragraph (3).

"(B) Paragraph (3) shall not apply—

"(i) for any month with respect to which an individual or his spouse indicates, in such manner and form as the Secretary shall by regulations prescribe, that he or she does not desire to have his or her primary insurance amount determined under paragraph (3), or

"(ii) for purposes of determining the amount of any monthly benefits which (without regard to section 203(a)) are payable under the provisions of this section other than this subsection on the basis of the wages and self-employment income of an individual or his spouse."

(b)(1) Section 202(e)(2) of such Act is amended by striking out "shall be equal to 82½ percent of the primary insurance amount of such deceased individual" and inserting in lieu thereof "shall be equal to the larger of (A) 82½ percent of the primary insurance amount of such deceased individual for such month as determined under section 215(a), or (B) 110 percent of the primary insurance amount of such individual as determined under subsection (a)(3) of this section (assuming for purposes of this clause that such subsection was applicable) for the month preceding the month in which he died".

(2) The paragraph of section 202(f) of such Act redesignated as paragraph (2) by section 3(b) of this Act is amended by striking out "shall be equal to 82½ percent of the primary insurance amount of his deceased wife" and inserting in lieu thereof "shall be equal to the larger of (A) 82½ percent of the primary insurance amount of his deceased wife for such month as determined under section 215(a), or (B) 110 percent of the primary insurance amount of his deceased wife as determined under subsection (a)(3) of this section (assuming for purposes of this clause that such subsection was applicable) for the month preceding the month in which she died".

(c) Section 203(a) of such Act is amended by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", or", and by inserting after paragraph (3) the following new paragraph:

"(4) when the primary insurance amount of the insured individual is determined under section 202(a)(3), such total of benefits for any month shall not be reduced to less than the larger of—

"(A) that amount determined under this subsection without regard to this paragraph, or

"(B) the amount appearing in column V of the table in section 215(a) on the line on which appears in column IV the amount determined under subparagraph (B) of such section 202(a)(3) for such individual and his spouse (or, if the amount determined under such subparagraph (B) does not appear in column IV, on the line on which appears in column IV the next higher amount)."

(d)(1) Section 215(f)(1) of such Act is amended by inserting "(or section 202(a)(3))" after "determined under this section".

(2) The second sentence of section 215(f)(2) of such Act is amended by inserting before the period at the end thereof the following: ", or as provided in paragraph (3) of section 202(a) if such paragraph is applicable (but disregarding any increase which might result under the second sentence of such paragraph solely from changes in the maximum wages and self-employment income that can be counted in the years involved)".

(e) Section 223(a)(2) of such Act is amended by insertnig after "section 215" the following: "or under section 202(a)(3)".

(f)(1) The amendments made by subsections (a), (b), and (c) shall apply only with respect to monthly insurance benefits under title II of the Social Security Act for and after the second month following the month in which this Act is enacted.

(2) In the case of an individual or his spouse who became entitled to benefits under section 202(a) or section 223 of the Social Security Act prior to the second month following the month in which this Act is enacted (but without regard to section 202(j)(1) or section 223(b)(2) of the Social Security Act), the average monthly wage of such individual or spouse, as the case may be, for purposes of section 202(a)(3)(A) of the Social Security Act, shall be the figure in the column headed "But not more than" in column III of the table in section 215(a)(1) of the Social Security Act in effect immediately prior to the enactment of this Act on the line on which in column IV of such table appears the primary insurance amount of such individual or spouse, as the case may be, for the month in which this Act is enacted, unless the average monthly wage of such individual or such spouse, as the case may be, is, after the enactment of this Act, redetermined under section 215(b) of the Social Security Act.

S. 3169

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 202 (a) (2) of the Social Security Act is amended to read as follows:

"(2) (A) has attained age 62, or (B) has attained age 60 and has been required by his employer (after having been employed by such employer for 5 or more years) to retire at such age in compliance with an Executive order of the President, a regulation or order issued by a Federal department or agency and published in the Federal Register, or a Federal law, and".

(b) Section 202 of such Act is further amended by adding at the end thereof the following new subsection: "Special Rule for Determining Eligibility for Benefits in the Case of Certain Dependents and Survivors

"(w) For purposes of determining entitlement to monthly insurance benefits under subsection (b), (c), (e), or (f), and the amount of such benefits, in the case of any person on the basis of the wages and self-employment income of an individual who is entitled to old-age insurance benefits and who satisfies subsection (a) (2) by reason of clause (B) thereof, such person—

"(1) shall be deemed to satisfy subsection (b) (1) (B), (c) (1) (B), (e) (1) (B) (i), or (f) (1) (B) (i), as the case may be, if he or she has attained the age of 60, and

"(2) shall be deemed for purposes of subsection (q) to have attained retirement age as defined in paragraph (9) thereof at the time such individual first satisfies subsection (a) (2) by reason of clause (B) thereof, at the time such person becomes entitled to such benefits, or at the time such person attains the age of 60, whichever is the latest (but in no event later than the time such person actually attains retirement age as so defined)."

SEC. 2. (a) Section 202(q) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(10) Notwithstanding any other provision of this title, no reduction shall be made under this subsection in the old-age insurance benefit of any individual (or in any other benefit payable under this section to an individual who is also entitled to an old-age insurance benefit) for any month if such individual (upon becoming entitled to old-age insurance benefits) satisfies subsection (a) (2) by reason of clause (B) thereof."

(b) (1) Section 202(q) (1) of such Act is amended by striking out "If" and inserting in lieu thereof "Subject to paragraph (10), if".

(2) Sections 202(q) (3) (A) and 202(q) (3) (E) of usch Act are each amended by striking out "If" and inserting in lieu thereof "Subject to paragraph (10), if".

SEC. 3. The last sentence of section 215 (b) (3) of the Social Security Act is amended—

(1) by striking out ", any calendar year" and inserting in lieu thereof "(i) any calendar year", and

(2) by inserting before the period at the end thereof the following: ", and (ii) an individual who satisfies section 202(a) (2) by reason of clause (B) thereof after 1971 and before the year in which he or she attained (or would attain) the applicable age specified in clause (A), (B), or (C) of such sentence shall be deemed to have attained such age in the year in which he or she first satisfies such section 202(a) (2)".

SEC. 4. (a) Section 216(i) (2) (B) of the Social Security Act is amended by inserting before the period at the end thereof the following: "or satisfies section 202(a) (2) by reason of clause (B) thereof".

(b) Section 216(i) (2) (D) of such Act is amended by inserting after "attains age 65" the following: "or satisfies section 202(a) (2) by reason of caluse (B) thereof".

SEC. 5. (a) Section 223(a) (1) (B) of the Social Security Act is amended by inserting before the comma at the end thereof the following: "and has not satisfied section 202(a) (2) by reason of clause (B) thereof".

(b) Section 223(a) (1) of such Act is further amended by inserting after "age 65" in the matter following subparagraph (D) the following: "or satisfies section 202(a) (2) by reason of clause (B) thereof".

SEC. 6. The amendments made by this Act shall apply with respect to monthly insurance benefits under title II of the Social Security Act for months after the month in which this Act is enacted; except that, in the case of an individual who is not entitled to a monthly insurance benefit under section 202 of such Act for the month in which this Act is enacted, such amendments shall apply only on the basis of applications filed on or after the date of the enactment of this Act.

S. 3170

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 223(c) (1) of the Social Security Act is amended by inserting "if he has not less than 40 quarters of coverage or" immediately before "if—".

(b) The amendment made by subsection (a) shall apply only with respect to disability benefits payable under title II of the Social Security Act for months after the month in which this Act is enacted on the basis of application therefor filed in or after the month in which this Act is enacted.

By Mr. COOK (for himself and Mr. HUDDLESTON):

S. 3171. A bill to amend section 133 of title 28, United States Code, to increase by two the number of district judges for the eastern district of Kentucky. Referred to the Committee on the Judiciary.

Mr. COOK. Mr. President, today Senator HUDDLESTON is joining with me in introducing legislation which would increase the number of Federal district judges in the eastern district of Kentucky from two to four.

There has been a phenomenal increase in the caseload of the eastern district in recent years. Just to cite a number of examples:

First. During the fiscal year ending June 30, 1973, trails per judgeship were 78.4, the highest number in the entire sixth circuit, compared to lows in the circuit of 34.9 in the western district of Kentucky, and 39.5 in the western district of Michigan.

Second. Civil cases commenced in the eastern district of Kentucky in the fiscal year 1956 totaled 265, during the fiscal year 1966, totaled 480, and in the fiscal year 1973 totaled 660.

Third. As of October 30, 1973, there were pending for administrative review in the social security offices located in the eastern district of Kentucky 13,121 cases.

Fourth. In the fiscal year 1973, the eastern district of Kentucky ranked seventh in the weighted filing per judgeships in the U.S. judicial system.

Fifth. As of the close of business on October 31, 1973, there were pending before Chief Judge Moynahan 439 civil cases, 143 criminal cases involving 192 defendants; there were pending before Judge Swinford 100 civil cases and 74 criminal cases involving 134 defendants; and there were pending before Judge Hermansdorfer 380 civil cases and 82 criminal cases involving 126 defendants.

Mr. President, I feel the statistics above clearly indicate the need and justification for two additional judges for the eastern district of Kentucky.

By Mr. GRAVEL:

S. 3172. A bill to amend title 39, United States Code, to eliminate certain restrictions on the rights of officers and employees of the U.S. Postal Service, and for other purposes. Referred to the Committee on Post Office and Civil Service.

RIGHT TO STRIKE FOR POSTAL EMPLOYEES

Mr. GRAVEL. Mr. President, I am today introducing legislation to give postal employees the right to strike.

The right to strike is the employee's most fundamental tool in labor-management relations. Yet under the Postal Reorganization Act, which reshaped the U.S. Postal Service in the image of a business enterprise, the right to strike was denied the postal unions. This despite the fact that 700,000 employees of the Postal Service were told by the Congress that they would no longer have the protections of the civil service laws enjoyed by other employees in the Federal Government. Postal employees were told they could bargain collectively, just as private employees. But at the same time they were denied the one essential tool possessed by private employees to attain a fair agreement.

To give postal employees the right to strike will not mean more strikes. The historical evidence demonstrates that exactly the reverse will be true. The present absence of that right has not prevented strikes in the past. There was the massive strike by postal employees in 1970, and we are periodically confronted with wildcat strikes on a more localized basis. Despite the overwhelming pressure of antistrike laws, strikes by public sector workers have been increasing dramatically over the past several years.

As paradoxical as it may seem, the right to strike is the best insurance against its use. The very existence of equality at the bargaining table is the surest incentive to mutual agreement in an atmosphere of fair and free negotiation. Labor history demonstrates that most strikes are precipitated when one side or the other holds an unfair advantage.

The argument is frequently made that Government employees are essential to the public interest and therefore should not have the right to strike. But private employees working on Government contracts, many of whom are engaged in supplying absolutely essential goods and services to the Government, nevertheless possess the right to strike. And of course many private industries serve the public interest directly as well, but the right to strike is not seen as an unacceptable threat in those cases.

All indications are that the public interest—as well as the rights of postal employees—would be better protected by allowing postal employee strikes. But to assure that even a rare postal strike would not impose undue burdens on our citizens, my bill provides that delivery of the following categories of mail would continue even in a strike situation: first, social security checks; second, railroad retirement checks; third, Veterans' Administration subsistence and benefit

checks; fourth, annuity checks paid under any retirement system of the Federal, State, or local government; fifth, education subsistence checks; and sixth, food stamps and welfare and unemployment checks.

Mr. President, I believe this bill will not only insure fair treatment for our 700,000 postal employees, but will in fact also result in a more efficient Postal Service. I urge early action by the Senate on this important subject.

By Mr. INOUYE:

S. 3173. A bill to amend the Intercoastal Shipping Act, 1933. Referred to the Committee on Commerce.

Mr. INOUYE. Mr. President, I introduce for appropriate reference a measure to amend section 6 of the Intercoastal Shipping Act of 1933.

The 1933 act, as originally enacted, was intended to promote rate stability in the intercoastal trade—between Atlantic/Gulf and Pacific coasts via Panama Canal—and to generally protect the public interest by subjecting carriers in that trade to economic regulation. A review of the act's legislative history reveals that section 6—originally section 4—was proposed as an amendment to the introduced bill by the Federal Coordinating Service—a predecessor agency of General Services Administration—which said:

> The clause suggested is similar to that contained in Section 22 of the Interstate Commerce Act. By providing this clause in the Act, the intercoastal steamship carriers will be placed on a parity with the all-rail carriers and will be permitted to accord the Government reduced rates which the rail carriers are now permitted to do under the Interstate Commerce Act.

Reduced rates for Government impelled cargo has its origins in section 22 of the Interstate Commerce Act, such provision representing a consideration for the land grants received from the Federal Government by the railroads; the domestic off-shore carriers owe no obligation of this kind to the Government.

In 1938 the provisions of the 1933 act were made applicable to offshore carriers, and therefore such trade is today regulated under a statute that authorizes free or reduced transportation of Government property for underlying reasons totally unrelated to the domestic offshore trades.

Section 6 provides:

> That nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates, for the United States, State, or municipal Government, or for charitable purposes.

Pursuant to this provision common carriers by water in the domestic offshore trades are permitted to transport Government-impelled cargo at rates reduced without limitation from those applying to the same cargoes moving under commercial bills of lading; although such reduced rates must be filed on an informational basis with the Federal Maritime Commission, the effect of the provision is to strip that agency of any authority to exercise economic regulation over such rates including the right to determine, prescribe, and enforce just and reasonable minimum rates; commercial rates are however subject to the full exercise of economic regulation.

The regulation of commercial rates affords shippers with protection from unreasonable rates or discriminatory or unduly preferential conditions of carriage. Large aggregations of Government-impelled cargo are particularly prone to special rate or preferential service arrangements with the cost of such preferential treatment potentially borne by commercial shippers in the form of either higher rates or less efficient service. Such special rates or preferential arrangements being nonregulated pursuant to section 6 leaves the commercial shippers with no regulatory means with which to protect himself from those adverse results.

It is true that when a carrier in the domestic offshore trade files a general reasonableness and lawfulness of such increase in his commercial rates the increase is established by the Federal Maritime Commission on the basis of that portion of total costs and rate base allocated to commercial cargoes. The result is that the Commission's ultimate finding goes to the lawfulness of the carrier's rate of return on that portion of his total rate based to the exclusion of revenues, costs and rate base attributable or allocated to nonregulated Government cargoes.

However, from the viewpoint of the investors who provide the capital for what is now a capital intensive industry there is no distinction made between regulated and nonregulated results in terms of the overall financial results of the carrier's operations. To the extent that increases in rates on Government impelled cargoes lag substantially behind increases in commercial rates these overall results can be less than satisfactory and contribute to hastening that point in time when additional increases in commercial rates must be sought. In an era of continuing escalation in operating costs and with the experienced lag in passing through a share of those costs to the Government rate payer it may become necessary to not only file an earlier time for increases in commercial rates, but also to seek a greater percentage of return on the commercial rate base in order to offset the effects of such lag.

For example, in the case of my own State, Hawaii, in January of 1971 Matson filed a 12½-percent general increase in its commercial rates which was determined after hearing and investigation to be lawful by the Federal Maritime Commission in January of 1973. After expiration of the statutory suspension period for a portion of that increase, commercial shippers were paying the full 12½-percent increase for a period of approximately 18 months prior to issuance of the Commission's final decision. Customarily nonregulated contracts rates for government cargo are not adjusted to reflect increased operating costs until such final decision as to the commercial rate structure is issued. Therefore, in March of 1973 Matson placed a demand on the Military Sealift Command for an increase in rates and as of this date negotiations for such increase have not been completed. This lag in assumption by the Government of its share of increased costs is unfair in its effects on both the carrier and the commercial rate payer.

There would appear to be three basic reasons justifying the repeal of section 6. First, it would provide equal treatment as to rate adjustments to all rate payers. Second, it would eliminate the potential for more frequent increases or greater percentages of increase in commercial rates occasioned by either the depressed level of rates for government cargoes or the lag in passing through increases in operating costs to government rate payers. Third, such amendment would contribute to rate stability in the trade and assist in maintaining the carrier's economic viability in terms of his ability to accumulate capital for future fleet improvements.

Repealing the applicability of section 6 would subject all government cargo rates in that trade to economic regulation. As a consequence the government shipper, as does now the commercial shipper, would have the right to file a formal protest with the Federal Maritime Commission as to any change in rates or attendant conditions filed by a carrier, requesting that the effective date of the matter be suspended and set down for hearing and investigation. In this way the Government, as does any shipper, would have full protection from any pricing action taken by the carrier that it may believe to be unreasonable, unduly preferential or unfair.

By Mr. McGOVERN:

S. 3177. A bill to regulate commerce and promote the general welfare by providing incentives and assistance, based on detailed data and information, that will increase the amount of transportation by railroad rather than by less energy-efficient modes in order to conserve limited resources of energy, and for other purposes. Referred to the Committee on Commerce.

THE RAIL REVITALIZATION AND ENERGY CONSERVATION ACT OF 1974

Mr. McGOVERN. Mr. President, I introduce for appropriate reference the Rail Revitalization and Energy Conservation Act of 1974.

First of all, I wish to commend the chairman of the Surface Transportation Subcommittee, Senator HARTKE, and the ranking minority member, Senator PEARSON, for their work to help revitalize our neglected railroads. Last year we passed in the Senate a Northeast rail bill which provided some measure of assistance to railroads throughout the Nation for equipment modernization, aid to States to acquire certain lines, and operating subsidies. Unfortunately, the House struck virtually all of the Senate amendments thus limiting all but one section of the bill to the Northeast alone.

But while the decay of the Northeastern railroads is perhaps more pronounced than that of railroads generally, we can no longer neglect those communities in other parts of the country which depend on rail service for their economic well-being. Throughout rural America, farmers and small businessmen will not be able to market their products or secure supplies if branch lines are discontinued.

In the Plains States we have been unable to obtain sufficient boxcars to bring our grain to market. And in a number of areas, the track is in such poor repair that we have had what the industry calls "standing derailments." That is when the track is so bad that the train falls off while standing still.

I know that sounds incredible, but I understand it is becoming a more common occurrence each year. In fact, 60 percent of Midwestern mainline track is under "slow orders"; in some cases the maximum safe speed is below 10 miles per hour.

Revitalization of our railroads would not only strengthen our transportation system but would make a significant contribution to solving the energy crisis. Prior to World War II, railroads were the principal source of transportation in this country. Since that time cars, buses, planes, and trucks, aided by Government subsidies for highways and airports, have gradually supplanted rail service. As a consequence, approximately 10 percent of the track in operation in 1944 has been abandoned and service between many points has been discontinued.

Yet, rail service remains the most energy efficient means of transportation. The Europeans and the Japanese, who have long had to pay high prices for imported fuel, recognize this, and they have retained and upgraded their rail systems. But we, initially blessed by an abundance of oil, have come to rely increasingly on the most wasteful means of transportation.

Some say that the railroads have deteriorated to their present state because of an unrealistic and unsubsidized rate structure; others that the railroads have permitted their plants and service to decay in order to force the Government to permit them to abandon lines which they consider bad business to operate.

But the point now is not who is to blame, but what can be done. The railroads are now caught in a vicious circle: they cannot regenerate their plant because their earnings are low, and their earnings are low because they cannot regenerate their plant.

In 1972, the railroads had their best year in terms of revenue ton miles; yet their rate of return on net investment was only 2.95 percent. Preliminary figures for last year indicate that freight business ran at an annual rate of 850 billion ton miles, or nearly 10 percent above 1972's record level. Yet no one predicts better profits.

On the contrary, one of the ironies of increased business is that it has brought profits down. The increased use of worn-out cars, track, and locomotives have increased repair bills substantially. That, plus bad weather, made earnings decline for many railroads, as much as 63 and 77 percent in some cases.

In 1972, the industry had operating revenues of less than $13.5 billion. For 1974 and over the next 10 years, the experts say that the industry should spend between $3.6 and $4 billion for capital improvements. But their revenues and equity are sufficient to support only half the level of needed investment.

So, unless some means is found to increase the capital flow by $2 billion or more per year, the railroads will continue to decline. And because a deteriorating plant wears down at a higher rate than sound equipment, the capital requirements for repair and replacement will increase geometrically each year.

The administration's answer is to increase rates and permit wholesale abandonment of lines and service. While this would make the railroads more profitable, it would leave many of the communities they serve to die on the vine. And it would lead to still greater reliance on energy wasteful means of transportation.

The realistic and responsible answer is to provide the railroads with the means to upgrade and expand their existing facilities and thus provide more and better service.

Unfortunately, the administration has repeatedly resisted efforts to formulate a national transportation policy. As with the energy crisis, the food shortage last summer, and many of the other problems which beset the Nation, we are left without foresight, imagination, or a sound analysis of the coming transportation crisis.

The bill I am introducing today would provide, along with the development of a long-term national transportation plan, immediate relief for the most significant railroad problems.

Under my bill:

First, abandonment of rail lines and discontinuation of rail service would be halted immediately;

Second, within 90 days of enactment, the Department of Transportation would set track standards for high speed energy efficient freight and passenger service;

Third, railroads which operate unprofitable lines or are financially unable to meet the track standards could apply for Federal operating subsidies, modernization loans, or acquisition of their track, rights-of-way and appurtenant structures by a publicly financed but privately managed corporation, the Consolidated Rail Corporation, or by a regional, local, or State transportation authority;

Fourth, the CRC would maintain, modernize, and expand the rail beds it acquired. Railroads operating on CRC lines would be charged a fee on a ton-mile basis and carriers from whom the lines were acquired would receive a credit against such fees based on the value of the acquired property and other factors;

Fifth, an allocation program for railcars would be established where manufacturers were unable to deliver within 1 year of receipt of order;

Sixth, $2 billion in Federal loan guarantees would be available to railroads to acquire additional rolling stock;

Seventh, a nation rolling stock information system would be established to keep track of, and insure maximum utilization of, existing rolling stock;

Eighth, if these measures and the efforts of private industry do not prove adequate in solving the boxcar shortage, the establishment of a Railroad Equipment Authority to acquire and operate a reserve pool of rolling stock is authorized; and

Ninth, the Secretary of Transportation is directed to develop a national rail services and transportation plan within 1 year of enactment, subject to review by the Interstate Commerce Commission and ultimately the Congress. This plan would be based on a series of detailed studies and program cost evaluations and would result in recommendations by the Secretary for coordinated national transportation programs designed to meet the transportation needs of the Nation in the most energy efficient manner.

Over the short term, the two most pressing problems from both an economic and an energy standpoint are the boxcar shortage and the deplorable condition of mainline track.

As a practical matter the demand for cars is so high that in many cases there is an 18-month backlog of cars presently under order.

Some experts have voiced doubt that a genuine shortage exists. Because of antiquated car deployment systems and "car jams" the average freight car travels only 56 miles per day. For example, the Southern Pacific which bought 13 percent of all freight cars purchased in 1972 estimates that they lost 15,000 carloads of lumber simply because their existing cars were not available when and where the shippers needed them.

As Worthington L. Smith, president of the Milwaukee Road, has said:

> I'm opposed to calling the experience of the first half of 1973 a car shortage. That implies that adding more cars would have solved things. With ports and terminals backed up, twice the number of cars available for loading would have resulted in twice the number of loaded cars with no place to go.

Poor management by the administration was in part responsible. The budget cutters curtailed the grain storage loan program which permitted farmers to store grain on their farms, characteristically not looking beyond the papers they were red penciling. Simultaneously, grain was called up to meet the commitments our Government had negotiated with Russia, China, and other foreign governments. The result was that the farmer moved many more tons of grain onto boxcars than the terminals and ports could handle in an orderly way. And this created the monumental car jam and an even lower use of cars which would otherwise have been possible.

My bill directs the Secretary of Transportation to examine the impact of the commodity credit and other Federal programs and report to the Congress his findings and program changes which might help alleviate the situation or prevent it from occurring again.

This combined with the provisions for $2 billion in equipment loan guarantees, the national computerized car utilization system, and the federally managed emergency reserve pool of cars, should bring the boxcar shortage to an end.

The problem of bringing track up to proper standards is considerably more difficult. The decay and neglect has been permitted for so long that major overhaul and replacement are necessary. And this will take some time.

The place to start is by setting the proper standards as my bill requires rather than continuing the minimum safety standards provided for in existing law. Once that is done, the task of modernizing and improving the lines can begin—by private industry with Federal

assistance and by the publicly financed Consolidated Rail Corporation.

Over the long term, we need to develop comprehensive policies for coordinated programs for rail, truck, and air transport. We can meet the needs of all our communities for reasonably priced transportation, while making a significant contribution to energy conservation as well, if we proceed in an orderly and planned fashion. The national rail services and transportation plan required under my bill would give us this capability.

In conclusion, Mr. President, let me express the hope that the Congress can deal with the railroad emergency effectively and promptly rather than in the piecemeal fashion suggested by the administration. Abandonment of lines and discontinuation of service is no answer for either our cities or our rural areas. By improving and expanding rail service we can significantly reduce the demand for energy. But if we fail to act promptly, enormous harm will be done to many communities and the ultimate cost to the taxpayer will be considerably higher.

Mr. President, I ask unanimous consent that a section-by-section analysis of my bill be printed at the conclusion of my remarks.

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

SECTION-BY-SECTION ANALYSIS—THE McGOVERN RAIL REVITALIZATION AND ENERGY CONSERVATION ACT OF 1974

The bill is divided into six titles.

TITLE I—GENERAL PROVISIONS

Section 101 (Declarations of policy)

The Congress makes findings in subsection (a) that essential rail service to rural and urban communities throughout the United States is threatened with discontinuation and abandonment; that this is caused in part by the financial inability of many railroads to regenerate track, plant, rolling stock and other equipment; that high speed freight and passenger rail service is the most energy efficient means of transportation presently available; that the shortage of energy supplies and the economic well being of the United States require the expansion and improvement of rail service; that further abandonment of rail lines and discontinuation of rail service would be against the national interests of the United States; and that these needs cannot be met without substantial action by the Federal government.

In subsection (b), the Congress declares that the purpose of the bill is to provide for (1) a moratorium on abandonment of rail lines and discontinuation of rail service except where such abandonment or discontinuation would not adversely affect the economic well being of any community; (2) financial assistance to carriers which operate unprofitable lines; (3) the establishment of track standards for high speed energy efficient rail service; (4) acquisition, maintenance and modernization of track, rights of way and appurtenant structures by a publicly financed corporation from railroads financially incapable of maintaining and modernizing such equipment; (5) the establishment of a rail car allocation system for rail cars in short supply; (6) full utilization of existing rolling stock through the establishment of a National Rolling Stock Information System; (7) a reserve supply of rolling stock to be utilized in emergencies; (8) a Federal loan guarantee program for carriers to acquire needed rolling stock; and (9) accomplishing these objectives at the lowest possible cost to the general taxpayer.

Section 102 (Definitions)

This section defines various terms used in the Act.

TITLE II—ABANDONMENT, MORATORIUM, TRACK STANDARDDS, AND ALTERNATIVE SERVICE

Section 201 (Moratorium on abandonment)

Abandonment of rail lines and discontinuation of rail service would be precluded except in accordance with Section 203 of this Title, or in the case of the Northeast region, Section 304 of P.L. 93-236.

Section 202 (Track standards)

Within 90 days after enactment the Secretary is required to prescribe standards (effective one year later) for all main track based upon certain factors including high speed operation, energy conservation, and the needs of manufacturers, farmers, and other rail users as distinct from present minimum safety requirements.

Section 203 (Abandonment and discontinuation)

Abandonment of rail lines or discontinuation of rail service would be permitted only where it would not adversely affect the economic well being of any community or where alternative means of transportation are available at a reasonable cost.

Section 204 (Alternatives to abandonment)

If a carrier is financially unable to meet the track standards, or continue service on a line which cannot be abandoned, it may apply for (a) an acquisition or modernization loan, (b) a continuation subsidy, (c) a rate increase or (d) local, state, or Consolidated Rail Corporation (CRC) acquisition of the line(s) under Section 205 of this Title.

Section 205. (Acquisition of rights-of-way by others)

In lieu of a petition for abandonment the ICC may approve the transfer to a State, local, or regional transportation authority, or the CRC, of all or part of a railroad's equipment and/or rights in their lines, provided the railroad agrees to provide service on the lines. The CRC would maintain, upgrade, consolidate, and expand such lines, and assume the payment of state and local property taxes thereon.

Section 206. (Procedures and judicial review)

Upon petition for abandonment or alternative service the ICC would conduct public hearings with adequate notice in the communities affected. Political officials, rail service consumers, and other interested parties must be given the opportunity to testify and comment. Appeals, hearings and judicial review would be governed by the appropriate sections of the Interstate Commerce Act.

Section 207. (Interim financial assistance)

Pending final determination of an application for abandonment or alternative service the Secretary is authorized to provide financial assistance to lines which could not continue to function without such assistance.

Appropriations for interim subsidies of $50,000,000 for the first fiscal year and $25,000,000 for the second fiscal year are authorized.

TITLE III—AMENDMENTS TO THE REGIONAL RAIL REORGANIZATION ACT OF 1973

Section 301. (Conforming amendment)

This section authorizes the CRC to acquire lines outside the Northeast Region.

Section 302. (Conforming amendments)

This section adds the following new sections to P.L. 93-236: "Sec. 305—Acquisition of Other Rail Lines—This section authorizes the CRC to acquire rail lines pursuant to an application for alternative service under Section 205. The carrier and the CRC would negotiate a fee to be paid to the CRC for the future use of the lines calculated on revenue mile basis and a credit against such fees based on the value of the properties acquired, subject to ICC approval. The ICC would evaluate the agreement based upon the fair market value of the property, the capital investment needed to restore the line, the capital investment needed to modernize the facilities, the degree of past maintenance and average yearly investment, the anticipated fee the CRC may receive from users, the amount of loss petitioner would have suffered if acquisition did not take place.

If the CRC and petitioner could not agree upon fee and credit arrangements, the ICC would determine the amounts based on the above considerations. Also, the ICC would establish a description and schedule of service on lines acquired by the CRC. (For hearings and judicial review, see Section 206.)

Section 306. (Rehabilitation and maintenance)

Upon acquisition by the CRC, it would assume the rehabilitation, maintenance and improvement of the lines including centralized traffic control, improved safety devices, extra track, new sidings, removal of restrictive clearances, reduction of curves and grades, and improved crossing protection.

Section 307. (Freight service)

Any railroad company which conveys its line to the CRC, or which uses a line conveyed to the CRC, would have the right to continue its regular freight service thereon. Other carriers may apply for use of the lines in return for a fee calculated upon gross ton miles of locomotive and train operations.

Section 308. (Passenger service)

This section is similar to Section 307 and applies to passenger service.

Section 309. (Operating rules)

The CRC is given the power to regulate its lines as to speeds, size and weight limits. Users may appeal ruling to the Secretary.

Section 310. (Liability for injury and damage)

The CRC would be responsible for all injury and harm caused by defects in their track, roadbeds, signals, communications, or other facilities owned or controlled by them or their employees. Carriers would be responsible for all other accidents.

Section 311. (Reduction of capacity of rail lines)

The CRC, after notice, could reduce the capacity of its lines, if such a reduction will not result in elimination of service to any point.

Section 312. (Conforming amendment)

This section makes a conforming amendment to Title IV of P.L. 93-236.

TITLE IV—CAR ALLOCATION PROGRAM

Section 401. (Car allocation priorities)

If a railroad car manufacturer cannot deliver orders within one year after receipt, the Secretary would establish priorities for manufacture and delivery based upon the following criteria: the supply and delivery of health and food products, conservation of the nation's energy supply, and improvement of mass transit systems.

TITLE V—EQUIPMENT IMPROVEMENT

Section 501. (Formal provisions)

This title may be cited as the "Rolling Stock Utilization and Financing Act of 1973" (subsection (a)).

Congress finds that there is a shortage of railroad freight cars caused by an inadequate number of such cars and the underutilization of the cars which are in service. Congress further finds that this shortage of available general service freight cars has caused losses to producers and manufacturers of goods and products, higher prices to consumers of goods and products, and losses of revenue for railroads (subsection (b)).

In subsection (c) Congress declares that the purposes of this title are to improve the utilization and distribution of railroad rolling stock, to assist railroads to acquire additional rolling stock and equipment or facili-

ties so as to provide expeditious service, and to assist in achieving full employment by insuring enough adequate equipment to transport the products of American industry.

Subsection (d) contains definitions applicable to this section:

"Fund" is defined in paragraph (7) as the Obligation Guarantee Fund which a special Obligation Guarantee Board (paragraph (2)) in the Department of Transportation administers. "Authority is defined in paragraph (1) as the Railroad Equipment Authority authorized under section 510, and "Directors" is defined in paragraph (4) as the board of directors of that Authority. "Equipment obligation", the instrument which the Board is authorized to guarantee through the Fund, is defined in paragraph (6) to include a variety of debt and security instruments "issued or granted to finance or refinance rolling stock or equipment or facilities". One form of equipment obligation, a "lease obligation" is defined separately in paragraph (10). Paragraph (12) defines "principal" as it pertains to lease obligations. "Lease" is defined in paragraph (9) to include only a rental agreement under which either a "railroad" (defined in paragraph (13)) or a "car pooling company" (defined in paragraph (3)) receives available tax benefits in the form of reduced rentals. "Railroad" includes an express company.

The Board is authorized to guarantee equipment obligation financing or refinancing of two types of property which are defined in this section: rolling stock and equipment or facilities "Rolling stock" is defined in subsection (14) to include locomotives, cabooses, refrigerator cars, any type of general service railroad freight car, including boxcars, gondolas, open top and covered hopper cars, and flatcars, including those suitable for transportation of building and construction materials, or any express van. An express van would include a truck for use on flatcars, a tractor to pull such truck, and any delivery vehicle which could be used in conjunction with rail service. The Board is authorized, upon a written finding, to make other types of cars eligible for financing guarantees under this title by designating them as rolling stock, provided such designation "is consistent with the purposes of this title." "Equipment or facilities" is defined in subsection (5) to mean property which can be used to improve the performance or utilization of rolling stock (e.g., computer systems, freight yards, loading and unloading machines and ferries, and shoreside facilities for moving rolling stock by water).

Sec. 502 (Obligation Guarantee Board)

There is to be established in the Department of Transportation an independent agency, the Obligation Guarantee Board, composed of five members representing shippers, consumers and State regulatory commissions, and the Secretaries of Transportation and the Treasury, which shall administer the Obligation Guarantee Fund established under section 503. Board members who are not government employees are to receive $150 per diem plus expenses incurred when performing their duties as board members. As designated by the President, the terms of office of board members shall initially be either 3 or 6 years. Succeeding board members shall serve the terms of 6 years.

Section 503. (Guarantee of equipment obligations)

Subsection (a) authorizes the Board to guarantee payment of the interest and principal on equipment obligations and specifies the application process for such guarantees. Anyone who meets the requirements and conditions for equipment obligation guarantees is eligible to apply. Applicants are not limited to railroads or car-pooling companies except in the case of lease obligation guarantees and guarantees of over 80% of the value of the property to be financed. In order to encourage the maximum use of lease financing where it is the most economic financing vehicle, the measure permits guarantees of equipment obligations entered into by, for example, leasing companies and other institutions seeking to garner certain tax benefits as the lessors of capital equipment. Under the Internal Revenue Code's investment tax credit and advanced depreciation rate system, companies with large cash flows may benefit greatly by becoming lessors of capital equipment. These benefits are passed on to lessees in the form of reduced effective rates of interest. Thus, the railroad in financial straits is likely to be able to acquire equipment at the least cost through a lease financing arrangement rather than through direct purchase of equipment. This bill is designed to promote such equipment leasing.

Since one of the major factors underlying the freight car problem is segmented ownership of management of freight cars it is intended that this bill give incentive to more efficient coordination of the nation's railroad operations. One of the ways in which the bill does this is by encouraging the development of car-pooling companies for operation of freight cars on a pooling basis. A car-pooling company, whether a corporation, railroad subsidiary, or a formal or informal arrangement between railroads, furnishes freight cars to participating railroads. Such cars would be free running on and between those lines, subject to distribution in accordance with the pooling plan without reference to the ordinary car service rules of distribution among railroads. On other lines of the railroads participating in a pool, such cars could be utilized as required to meet the loading and traffic requirements of the participating railroads.

Such cars may move off the lines of the participating railroad. In that event, it becomes subject to the ordinary car service rules, except that the pool becomes the "home road" (unless otherwise modified by order of the Interstate Commerce Commission or agreement within the industry). Car pooling companies will monitor the utilization of their cars and will take action when necessary to increase the utilization of their cars. The provisions of this title which permit guarantee of equipment obligations of eligible applicants, including car pooling companies, are intended to encourage the rail industry to experiment with this technique of freight car management as a means of achieving better utilization.

Subsection (b) directs the Board to establish the revolving fund to carry out these provisions. In subsection (c), limits are placed on the amount of the principal of an equipment obligation which may be guaranteed: 80% of the value of the property being financed except that 95% of such value for railroads or car pooling companies otherwise unable to acquire such property on reasonable terms may be guaranteed and, in the case of lease obligations of bankrupt railroads, the Board may guarantee the full amount of such lease obligations. It is expected that the Board will consider such factors as the cash position of the railroads, available interest rates, and the likelihood that the railroad would be able to provide improved car service if funds made available at a lower interest rate through the guarantee of obligations were used for the improvement of railroad operations when determining guarantee levels. In subsection (d) the Board is authorized to approve any equitable and non-prejudicial modification of any provision of a guarantee or commitment to guarantee. Subsection (e) provides a maximum obligational authority of $2 billion—no more than 30% of such sum may guarantee obligations financing or refinancing equipment or facilities. Subsection (f) sets the standards by which the Board sets rates of interest. Notice must be given before an obligation is guaranteed (subsection (g)).

A series of requirements are listed in subsection (h) which must be met before the Board can enter into a guarantee agreement. The requirements for a guarantee or a commitment to guarantee an equipment obligation are as follows:

(1) The obligation is secured by rolling stock or equipment or facilities to be financed thereby; (2) The payment of obligations is to be required within 15 years of their execution; (3) The leasing, financing or refinancing of equipment is justified by the present and probable future demands for services to be rendered by applicants; (4) the applicant has given reasonable, independently verified, assurances that the *rolling stock*, equipment or facilities to be acquired with the equipment obligations will be economically and efficiently utilized; (5) The purchase or lease of the rolling stock or equipment or facilities will serve to meet demonstrable needs for rail services and to provide shippers with improved service; (6) The probable value of such rolling stock or equipment or facilities is sufficient to provide the United States reasonable protection in case of default and repossession by the holder of the equipment obligation or in case of possession or purchase by the Board; and (7) The transaction will result in a net increase of the total load carrying capacity of the applicant's rolling stock, or an improvement in the applicant's capability, efficiency, or effectiveness with respect to the utilization or performance of rolling stock.

Subsection (i) provides that guarantees can be issued only on the condition that: (1) There will be no net decrease in the load carrying capacity of the applicant; (2) there will be no increase in discretionary dividend payments except when the Secretary finds that such increased dividends will not decrease the ability of the obligor to provide improved car service; (3) there will be no use of assets or revenues for non-railroad operations by obligors unless such use will not decrease the ability of the obligor to provide improved car service; and (4) the obligor must take all reasonable steps to improve utilization.

Subsection (j) provides that upon breach of any subsection (i) condition the Secretary may seek to enjoin the activity in violation of the condition. Any person violating a condition may be subject to a civil penalty. Subsection (k) sets terms in case of default on a lease obligation. Subsection (l) provides for an investigation charge: subsection (m) provides for a guaranteed obligation premium charge; and subsection (n) provides that administrative costs may be paid from the proceeds collected as annual premium charges, up to 5% of that amount.

Section 504. (Issuance of notes of obligations)

The Board is authorized to provide notes or obligations to finance activities under section 503 and to dispose of property it acquires. Revocation of guarantees, except in accordance with lawful terms and conditions prescribed by the Board, is prohibited.

Section 505. (Audit of transactions)

The Comptroller General is authorized to audit transactions of the Board and if necessary in such audit, is given access to the records of companies for whom obligations have been insured. Subsection (c) declares that he shall make a report of such audits to the Congress.

Section 506. (Default)

The rights of parties under the guaranteed obligation, including rights under any security agreements, are established and the Board is given a right of action against defaulting obligors.

Section 507. (National rolling stock information system)

The Secretary shall develop and direct implementation of a plan for a national rolling stock information system. He may provide technical assistance to railroads in the establishment of such a system.

An anti-trust exemption is granted (subsection (c)) to the extent necessary to carry out the plan. The Secretary may establish a rolling stock information center (subsection (d)). Semiannually, DOT must report to Congress on the progress made in implementing the plan. Subsection (f) authorizes $10 million to be appropriated for the purposes of this section.

Section 508. (Utilization measurement and oversight)

The Secretary is authorized to promulgate a standard index by which to measure the degree of utilization of each piece of rolling stock. At present, the overage railroad freight car is utilized for freight transportation less than 10% of the time. Every 3 months DOT must publish a report on rolling stock utilization, and 30 days after each DOT report, the ICC must comment on it. Legal action must be taken by the Secretary to improve the utilization of rolling stock.

Section 509. (Prerequisites to establishment)

The Railroad Equipment Authority (authorized under section 510) may be established only under the following conditions:

(1)(a) 2 years or more after the date of enactment of the title, (i) if the Commission finds that as a result of inadequate utilization or inadequate supply, there still is a continuing shortage of rolling stock, or (ii) if the Secretary finds there has not been a significant increase in utilization of rolling stock since enactment; and

(b) 6 months after such finding, the Secretary finds efforts to establish a not-for-profit non-governmental car pooling corporation have not succeeded or met standards set in title; and

(c) the Congress, by affirmative concurrent resolution, authorizes the establishment of the Authority; or

(2)(a) the Secretary or the Commission makes either finding (1)(a) or (1)(b) above 7 years after the enactment of this Act; and

(b) the Congress by affirmative concurrent resolution, authorizes the establishment of the Authority.

Section 510. (Railroad Equipment Authority)

This section authorizes the establishment of the Authority when the prerequisites set out in section 509 have been met; outlines the purposes of the Authority; establishes the status of the Authority; and provides for the appointment by the President, by and with the advice and consent of the Senate, of a Board of Directors from lists of qualified individuals recommended by (a) the Association of American Railroads, (b) the AFL–CIO, (c) the National Academy of Sciences, (d) shippers and consumers, (e) the Secretary of Defense, and (f) the Secretary of Transportation.

All of the Authority's powers are to be exercised by direction of the Board of Directors (subsection (f)) and the antitrust laws are declared to be inapplicable, to the extent necessary for persons contracting with the Authority for the operation or maintenance of rolling stock or for the design or implementation of a national rolling stock information system (subsection (g)).

Section 511. (General powers of the Authority)

This section provides the Authority with powers necessary to carry out its functions under sections 510 through 518.

Section 512. (Financing)

Railroads incurring a car hire charge must, pursuant to subsection (a), pay the Authority a per diem surcharge of 50c per car day. Subsection (b) authorizes and directs the Authority to issue negotiable debentures in the amount of the surcharges. The surcharge is to be returned in the event of liquidation of the Authority (subsection (c)). The Authority may incur debt for capital purposes and the Secretary of the Treasury may purchase obligations of the Authority guaranteed by the United States in an amount not to exceed $1 billion.

The Secretary of the Treasury may finance any purchase of the obligations of the Authority under the title by a public debt transaction (subsections (d), (e), (f)). The appropriation of $10 million for the acquisition of capital stock of the Authority is authorized as is the appropriation of sums necessary to meet the obligations of the United States which are incurred as a consequence of any guarantee made under this section (subsection (g)). Securities guaranteed under this section are a lawful investment (subsection (h)). The Authority may issue capital stock in such amounts and of such classes as it determines, except that no railroad may own, directly or indirectly, more than 5% of the shares outstanding in the Authority (subsection (i)). So long as the United States owns any capital stock in it, the Authority is subject to audit and examination pursuant to the Government Corporation Control Act, (subsection (j)).

Section 513. (Conversion to private ownership)

Although the Authority, if it is established as a result of the inability to solve by any other means the freight car shortage problem, is to be started as a Federal Government corporation, the Committee contemplates its speedy conversion to private ownership.

Subsection (a) establishes a panel composed of the Secretaries of Transportation and Treasury, and the Chairmen of the Securities and Exchange Commission and the Interstate Commerce Commission to prepare, along with the chairman of the board of directors of the Railroad Equipment Authority, a plan for the public sale of stock. The plan is to be submitted "as soon as practicable" to the President and the Congress, upon a finding that a market exists for the public offering and that it will serve the purposes of this title.

Under subsection (b) it is declared that the plan for the sale of stock must specify a program for systematically reducing the Authority's obligations to the United States. Subsection (c) authorizes the board of directors to be enlarged by the addition of members elected by the owners of the publicly-offered stock. Subsection (d) directs that the proceeds from the sale of stock to the public be applied to retire the capital stock held by the United States. When all such stock is retired, all except three of the Directors shall be elected by the owners of the stock.

After the Authority is completely privately held, it shall pay an annual fee to the Federal Government equal to the difference between the amount of interest it is paying on its outstanding obligations and the amount it would have to pay were it not for the guarantee of such obligations by the credit of the United States plus ¼%. It is directed to make every effort to refinance to terminate the contractual liability of the United States with respect to those obligations (subsection (e)). If, on the other hand, the Authority defaults in the payment of obligations guaranteed by the United States, the Federal Government is directed "to take control and appoint a new Board of Directors" according to the original formula (subsection (f)).

Section 514. (Information system)

If an effective computerized system for locating and tracking freight cars and other rolling stock has not been developed under section 507, the Authority is directed to establish and maintain one (subsection (a)).

It shall make data from the system available on an equal basis to all railroads and shippers (subsection (b)), and it shall report to Congress annually on the progress made in implementing the national system (subsection (c)).

Section 515. (Use of equipment supplied by the Authority)

The Authority is empowered to maintain a schedule of charges for the use of its freight cars and other rolling stock and equipment related to utilization of rolling stock (subsection (a)). User charges may not, however, be assessed for rolling stock located on any railroad which has no need for that stock in originating traffic, if that stock is not subject to a car service order by the Authority or the ICC and provided that railroad furnishes appropriate notice in advance (subsection (b)). Subsection (c) provides for the Authority to establish rates, terms and conditions, just and reasonable car service rules, and other enumerated conditions on the use of the freight cars and other rolling stock which it owns, leases, controls, or manages. Each railroad is directed to comply with those conditions (subsection (d)). Subsection (e) prohibits any railroad from refusing to transport any rolling stock of the Authority, whether loaded or empty so long as safety and other reasonable requirements are met.

Section 516. (Commission review)

The Railroad Equipment Authority, although not a common carrier by railroad, is made subject to section 1(10) through 1(17) of the Interstate Commerce Act and applicable Commission rules under those provisions.

Section 517. (Enforcement)

The Authority is given the power to initiate court action in Federal court to enforce compliance with any obligation owing it under this title or under any agreement entered into pursuant to this title (subsection (a)). It is authorized also to secure equitable relief and the district courts of the United States are authorized to grant such relief (subsection (b)).

Section 518. (Annual report)

Each year the Authority is directed to submit a comprehensive report to the President and Congress which is to include information regarding its activities, methods, effectiveness, and problems and on the state of railroad freight service in the United States. Every 2 years the ICC and the Secretary of Transportation are directed to investigate and evaluate its performance and report their findings to the President and Congress.

Section 519. (Protective arrangements for employees)

Employees adversely affected by actions taken under title V are to be provided adequate employment protection, including the same labor protections as are provided under section 405 of the Rail Passenger Service Act of 1970, section 13 of the Urban Mass Transit Act of 1964, and section 6 of the High Speed Ground Transportation Act of 1973. The program adopted under this section is to be coordinated by the Secretary of Labor with these earlier laws. These provisions apply to employees of railroads and car pooling companies which are the beneficiaries of actions taken under the title.

Additionally, construction contracts awarded by the Authority (if it comes into existence) to railroads are not to be subcontracted; the Authority is to divide such contracts between railroads and car building companies on the basis of the ratio of building during the 5 years preceding the date of the contract. If contract awards vary more than 5% from such ratio the labor protection arrangements described above shall go into effect. To the extent possible, repair and maintenance contracts are to be awarded to railroads with facilities for performing such work.

All work financed with the assistance of funds provided under this title is to be performed by labor paid at the prevailing rate for such work in the same locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. Wage rates negotiated under the Railway Labor Act and

the National Labor Relations Act are in compliance with the Davis-Bacon Act and the highest of such wages in the locality shall be paid employees engaged in car building under Authority contract who are not covered under the RLA or the NLRA.

Employees adversely affected by actions taken pursuant to title V are entitled to be restrained and/or reassigned and are entitled to continued representation in the same class or craft. Job positions affected by such changes may be eliminated as they become vacant through deaths, retirement, or voluntary resignation.

TITLE VI—NATIONAL RAIL SERVICE AND TRANSPORTATION PLAN

Section 601. (National rail services plan)

This section requires the Secretary to prepare a National Rail Service and Transportation Plan and supporting studies (see sections 602–608) to be submitted to Congress and the ICC one year after enactment.

Section 602. (Financial analysis)

This section is designed to provide working data on the requirements for railroad capital investment over the next ten years for equipment maintenance, rolling stock, railyards, track construction and rehabilitation among other categories. The analysis is to take into account different kinds of possible Federal assistance and make recommendations to achieve greater economies.

Section 603. (National rail survey)

This section is designed to provide current data on a region by region basis for existing railroad equipment including the number, type, and condition of rail lines, rolling stock, railbeds, employees, rights-of-way, railyards, the number of lines proposed to be abandoned, the number of lines which may effectively be consolidated without affecting service, the percent of rolling stock utilized and the systems used to coordinate and deploy it.

Section 604. (Rail rehabilitation study)

This section requires the Secretary to project railroad equipment and facilities necessary to meet the transportation requirements of the United States, based upon (1) different transportation models, utilizing various coordinated modes of transportation and (2) alternative kinds of federal assistance.

Section 605. (Program cost evaluation)

The Secretary is required to evaluate and develop cost estimates for the transportation models developed under section 604. In studying alternatives for federal assistance, the Secretary is to consider direct federal subsidies, the expansion of (1) Amtrak, (2) the Consolidated Rail Corporation, and (3) the U.S. Railway Association as well as Federal or State acquisition of railbeds and rights-of-way, Federal or State acquisition and maintenance of low density branch lines, and changes in other Federal rail-related programs such as the crop storage program.

Section 606. (Essential services report)

The Secretary is required to set forth his conclusions as to which present and future rail services are essential to the transportation needs of the United States.

Section 607. (Passenger service report)

The Secretary is to submit to Congress a report on the feasibility and desirability of expanding Amtrak based upon certain enumerated factors including energy conservation.

Section 608. (National transportation policy)

Based on the foregoing studies the Secretary is to submit to Congress a National Transportation Policy including his recommendations for all modes of transportation.

Section 609. (Review by Interstate Commerce Commission)

The reports required under Sections 602–608 are to be studied and evaluated by the ICC. The ICC is required to (1) solicit and study the views of governors, mayors, shippers, the Secretary of Defense, wholesalers, and retailers within each region, farmers, consumers of goods shipped by rail, and other interested parties in public hearings held in the various regions of the country and (2) recommend changes in the National Rail Service and Transportation Plan.

Section 610. (Review by Congress)

The Secretary and the ICC are to deliver their reports to both Houses of Congress and the appropriate congressional committees. The National Rail Service and Transportation Plan as recommended by the Secretary and amended by the ICC will be considered approved unless either the House or the Senate passes a disapproving resolution within 60 calendar days of continuous session. If either the House or the Senate disapproves of the Plan, the Secretary and the ICC are to revise the plan and resubmit it.

Section 611 (Authorization for appropriation)

Appropriations of $25,000,000 for the DOT reports and $10,000,000 for the ICC evaluation are authorized.

By Mr. STEVENSON:

S. 3180. A bill to amend the Emergency Petroleum Allocation Act of 1973, Public Law 93–159, to clarify services directly related to agricultural operations, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Mr. STEVENSON. Mr. President, I introduce today an amendment to the Emergency Petroleum Allocation Act of 1973. This amendment would make it clear that the production and distribution of fertilizer for domestic use is a service directly related to agricultural operations and, therefore, is entitled to receive 100 percent of its current fuel requirements.

Section 4 of the Emergency Petroleum Allocation Act directed the President to promulgate regulations for the mandatory allocation of fuel which would "to the maximum extent practicable" provide for the "maintenance of agricultural operations, including farming, ranching, dairy, and fishing activities, and services directly related thereto." Under current Federal Energy Office—FEO—directives, agricultural operations receive 100 percent of their current fuel needs. Section 221.51 of FCO's regulations defines agriculture as "commercial farming, dairy, poultry, livestock, horticulture, forestry, and fishing activities and services directly related to the planting, cultivation, harvesting, processing, and distribution of fiber, timber, tobacco and food intended for human consumption and animal feed."

Unfortunately, FEO has not recognized the essential link between fertilizer and farming, and, as a result, the production and distribution of fertilizer has not been receiving a high-priority fuel allocation.

Mr. President, it is crucial for the fertilizer industry to receive 100 percent of its fuel requirements for the production and distribution of fertilizer intended for domestic use.

Approximately one-third of the total food and fiber production in the United States is directly attributable to the applicaton of fertilizer. In an effort to rebuild diminished U.S. grain reserves, almost 20 million more acres of land will be in production this year than last year. This increase in acreage will require an additional 4 million tons of fertilizer.

Unfortunately, U.S. fertilizer production capacity is insufficient to satisfy all the increased farmer requirements for fertilizer. The U.S. Department of Agriculture recently reported that its field surveys continue to show fertilizer shortages, with nitrogen shortages being most severe. Its report stated:

> Nitrogen is short in 40 states and tight iin five. Mixed fertilizer is short in 29 states and tight in 15. Phosphate and potash supplies were reported up somewhat from two weeks ago with phosphate still short in 30 states and potash in 24.

That report is probably optimistic. In my own State, the Illinois Department of Agriculture estimates a fertilizer shortfall of 20 to 25 percent.

Planting decisions must be made in the next 30 to 60 days and, therefore, it is essential that everything possible be done to immediately increase the supply of fertilizer available to U.S. farmers at equitable prices.

The Senate recognized the importance of increasing the availability of fertilizer when it passed Senate Resolution 289 on February 27. In essence, Senate Resolution 289 exhorts the fertilizer industry and the appropriate Federal agencies and departments to give the highest priority to the production and distribution of fertilizer at reasonable prices. Senator McGOVERN and the entire Committee on Agriculture and Forestry are to be commended for their work in trying to alleviate the current fertilizer shortages. Additional legislative and administrative action is, however, required.

First, fertilizer producers need to receive 100 percent of their full requirements for that part of their production destined for domestic use. This is the purpose of the amendment I am introducing today to the Emergency Petroleum Allocation Act. Under this amendment fertilizer producers will continue to receive their regular fuel allocation for production of fertilizer that may be exported, but they will have the added incentive of a 100-percent fuel allocation for that share of their production which is destined for domestic markets.

Hopefully, this approach will increase domestic fertilizer supplies without resort to an embargo on U.S. fertilizer exports. An embargo could have serious economic and political consequences for the United States since we are still net importers of fertilizer, and are about 60 to 70 percent dependent on Canadian potash.

However, some form of export control may be necessary. That is a subject which will be addressed in forthcoming hearings of the Senate Subcommittee on International Finance, which I chair.

Second, fertilizer producers need to receive a high priority allocation of natural gas for the production of nitrogen fertilizers destined for domestic use. Anhydrous ammonia is the most serious nitrogen fertilizer shortage confronting our farmers. Anhydrous ammonia and other nitrogen fertilizers are essential to the production of corn. Unless farmers are assured adequate supplies of nitrogen fertilizer, they may have to shift their acreage into soybeans—which can

be grown without nitrogen fertilizers. This shift would create an unbalanced U.S. agricultural crop, and could lead to a critical shortage of corn. The Consumer Energy Act of 1974, of which I am a principal sponsor, contains a high priority allocation of natural gas for the production of fertilizer. The Commerce Committee is now in the process of marking up the act, and I am hopeful that the Senate will be able to act on it soon.

Third, it is imperative that the Interstate Commerce Commission issue car service and/or distribution orders to expedite the transport of fertilizer. Fertilizer shortages are due, in part, to transportation problems, particularly the availability of railroad cars. According to the Department of Agriculture, fertilizer producers currently lack about 4,000 railroad cars for fertilizer now available for shipment to dealers.

I am writing to the Chairman of the Interstate Commerce Commission to urge him to exercise the Commission's emergency authority under the Interstate Commerce Act to break the transport logjam now affecting the delivery of fertilizer.

Finally, the Cost of Living Council must act to assure that individual fertilizer producers and dealers do not take advantage of the current shortages and resort to price gouging. Senate Resolution 289 expressed the sense of the Senate that the Cost of Living Council establish an investigatory program to monitor and analyze any reports of fertilizer price gouging at either the wholesale or retail levels. Today I have also written the Chairman of the Cost of Living Council requesting a status report on the Council's efforts to enforce this antiprice gouging policy.

As Senator McGOVERN highlighted during fertilizer shortage hearings recently held by his Subcommittee on Agriculture Credit and Rural Electrification, the adequacy of the country's and the world's food supplies for next year depend on how well we can produce and transport the maximum amount of fertilizer.

The steps I am taking are designed to help achieve maximum production and the rapid distribution of fertilizer to American farmers. These actions are designed to deal with the fertilizer crisis we face in the short term. But, once these actions are taken, I will not forget, and I am confident my colleagues in the Congress will not forget, that the fertilizer shortage crisis is really a long-term problem. We must act to make sure we do not have shortages next year or ever again.

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

S. 3181. A bill to amend the Public Health Service Act to revise the National Health Service Corps programs and the Public Health and National Health Service Corps scholarship training program. Referred to the Committee on Labor and Public Welfare.

THE NATIONAL HEALTH SERVICE CORPS AMENDMENTS OF 1974

Mr. KENNEDY. Mr. President, on behalf of myself, Senator MAGNUSON, and Senator JAVITS, I have today introduced a bill to extend the authority for the National Health Service Corps through fiscal year 1977, and to strengthen the Health Service Corps ability to recruit health professionals and prepare underserved communities to recruit and retain health professionals. The authority for the Corps, section 329 of the Public Health Service Act, expires on June 30 of this year.

This bill contains a variety of changes which merit the careful consideration of the Senate, and on which the Health Subcommittee will hold hearings in the very near future. It is identical to the bill filed today in the House of Representatives by Congressman ROGERS. The Senate and House have cooperated closely in the past on this program, and I am pleased that we can continue to closely coordinate our initial proposals for improvement to the program.

However, I sponsor this proposal as a good basis for hearings, and I and the Health Subcommittee will be open to all serious amendments. I invite my colleagues in the Senate to offer such proposals.

Indeed, of all the problems we face in delivering health care to Americans, one of the most widely recognized is the problem of attracting health professionals into rural and innercity communities. There are still over 5,000 communities without a physician in our Nation and, according to the American Medical Association, 140 counties with no physician whatsoever. This problem has grown in recent years as the number of medical students entering specialty practices has increased, and as earlier generations of family physicians and general practitioners have retired. Every Senator knows stories of how community leaders have interviewed hundreds of potential physicians, dentists, and nurses, in an effort to attract them into their community. Every Senator knows how more and more innercity residents are forced into long waiting lines in city hospital emergency rooms. I believe this is a problem that we can all recognize; and I believe it is an area where we can legislate on a bipartisan basis to help solve the problem.

In recent years the Senate has passed legislation which addresses this problem from a variety of perspectives.

First. In 1971 we established and strengthened loan forgiveness programs under the Comprehensive Health Manpower and Nurse Training Acts. These programs forgive up to 85 percent of student loans to any professional who practices in an underserved area—whether he serves on his own, or as a member of the National Health Service Corps.

Second. In 1971 as well, based on an amendment by Senator RANDOLPH, the Senate established a National Health Manpower Clearinghouse to assist communities in their search for physicians who might be willing to consider service in their area.

Third. The Comprehensive Health Manpower Act also included a family-practice-of-medicine grant aimed at increasing the number of physicians trained in the form of practice most suitable to many rural and innercity communities.

Fourth. Finally, in December of 1970, the Congress enacted the Emergency Health Personnel Act under the sponsorship of Senator MAGNUSON. This act was extended during the last Congress to June 30, 1974, and the organization it created was named the National Health Service Corps. Since its early conception, this program has been fathered by Senator MAGNUSON, and I am pleased to join him in introducing this bill today.

The purpose of the National Health Service Corps is to recruit health professionals into the Corps for service in communities which cannot obtain health services in any other way. As of July 1, 1973, there were approximately 400 health professionals, predominately physicians, working in 170 communities of this type. The program continues to grow, and under the legislation introduced today should reach 500 communities, through approximately 1,250 health professionals.

The major problem faced by the Corps today is recruitment. In 1972 the Health Subcommittee reported and the Senate passed an amendment by Senator STEVENS of Alaska, establishing a major new scholarship program which essentially offers young people an education in medicine or dentistry in exchange for service in an underserved community. The bill I introduce today strengthens that scholarship program, which has been endorsed this year by the administration, and in addition allows the Corps to pay young physicians and dentists a salary competitive with what they could earn in other areas with equal experience and training. These two features are critical to recruitment given the termination of the military draft.

In addition to its success in supplying communities with health professionals, the Corps is showing evidence of success of other kinds.

Although it is still too early for clearly significant evaluative data about the program, and although there have certainly been some areas where problems have been experienced, the program has, in general, begun on an exceedingly optimistic pattern of performance. What hard evidence there is for the success of the program is encouraging. The initial 20 health personnel ordered to duty in January of 1972 were recruited under the most adverse conditions and none remained in the program when their assignment was finished. But it was significant, that 50 percent of those 20 changed their career planning from a practice in a medical or dental subspecialty into a primary care area. Equally encouraging is the fact that several of the communities served by these initial 20 health personnel were able to recruit their own replacements because of the expertise they had gained during their assignment from the Corps. The next wave of 150 physicians that were newly assigned in July 1972 was hastily and unscientifically recruited and matched to eligible shortage areas, but it appears at the present time that about 25 percent of those will remain in their communities following the conclusion of their obligated period of service in July 1974. In addition, a

number of communities where assignments are terminating are replacing them with non-Federal employees recruited by the community. With enough time for careful recruitment and matching there is no doubt that the percentages can be significantly increased. In addition, a number of communities are successfully demonstrating their ability to manage a new health practice in their areas and are returning to the Corps funds collected from fee-for-service, third-party, or other sources in amounts sufficient to cover the costs that the Corps incurred in placing and maintaining personnel in the areas.

It is clear, therefore, that in its initial years of operation the National Health Service Corps has demonstrated its viability as a mechanism to begin to correct the need for health professionals in the rural and innercity areas of our country.

I urge my colleagues to give their consideration to this bill.

I ask unanimous consent that certain material relating to the bill be printed in the RECORD.

REDUCTION OF THE GRANDFATHER CLAUSE IN THE BUDGET BILL

Mr. President, I send to the desk an amendment to S. 1541, the Congressional Budget Act of 1974, and I ask that it may lie on the table and be printed.

The purpose of the amendment is to make the so-called "two-major-committee" limitation in the Senate rules applicable to the new Senate Budget Committee in 1977, instead of 1979 as the bill now provides.

As reported by the Government Operations Committee and the Rules Committee, the proposed Congressional Budget Act will establish comprehensive, far-reaching and long-overdue reforms in the way Congress handles the Federal budget. The proposed act holds out the promise of a historic new era in congressional control and responsibility over Federal spending.

All of us in the Senate are aware of the exhaustive joint effort that has produced this outstanding piece of legislation, and I commend the Senators, the committees, and their staffs who have worked so industriously, skillfully, and successfully over the past 2 years to prepare the bill we are about to debate. Surely, the new act will become a landmark achievement of the 93d Congress, and a centerpiece in the continuing efforts by the Senate and the House to assert their long-dormant responsibilities and prerogatives under the Constitution.

The amendment I am proposing is a relatively minor modification in one aspect of the bill—the transition rule proposed as part of the creation of the new Senate Budget Committee to be established by the act.

As it should, the new committee will be a major committee of the Senate—a "category A" committee under paragraph 6(a) of Senate rule XXV. As a result, the so-called "two-major-committee" limitation would ordinarily be applicable, under which Senators are limited to serving on two major Senate committees. Therefore, under the Senate rules, a Senator who now holds two major committee assignments would be required to give up one of those committees in order to serve on the new Budget Committee.

In dealing with this issue, the bill reported by the Rules Committee contains a provision exempting the members of the new Budget Committee from the two-major-committee limitation until January 1979, when the 96th Congress convenes.

The amendment I am introducing would make the limitation applicable in January 1977, when the 95th Congress convenes. The amendment would thus limit the exemption to one full Congress instead of two full Congresses, as now proposed in the bill reported to the Senate.

In general, the theory of an exemption from the limitation is a wise one. The new Budget Committee will unquestionably be an important one, but the details of its role and its workload are so uncertain and so unpredictable at the outset, that it would be unreasonable to require Senators to choose in advance whether to give up an existing major committee assignment in order to serve on the Budget Committee. Therefore, it is appropriate, during the initial period of operation of the new budget procedures, to waive the two-major-committee rule.

Atlhough the principle of the grandfather clause thus seems sound in its application here, the difficulty in the Committee bill is that it stretches out the "get acquainted" period for too long.

There is every expectation that the Budget Act will clear Congress and be signed into law by the President within the next few weeks. Certainly, no one expects it to be delayed beyond the end of this Congress. Thus, in all likelihood, the new Budget Committee and the new Congressional Office of the Budget will be established promptly, and can begin staffing and assuming their responsibilities at once.

In addition, as the bill requires, the transition to the new fiscal year proposed in the bill will take place relatively quickly also, by extending the 1976 fiscal year until September 30, 1976, at which time the new October 1-September 30 cycle for fiscal years will be in place.

Why, then, should there be two full Congresses before the two-major-committee limitation comes into effect? By 1977, the Budget Committee will have had ample opportunity to develop its procedures and assume its workload, and by 1977, the regular Senate rules should apply.

The two-major committee limitation serves an extremely useful purpose in guaranteeing that the important responsibilities of Senate committees are shared widely among the Members, and the limitation should certainly be applied to the preeminent anticipated role of the new Budget Committee at the earliest practicable opportunity.

Mr. President, I urge the Senate to consider this amendment and to act favorably upon it, and I ask unanimous consent that it may be printed in the RECORD.

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

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; to create a budget committee in each House; to create a congressional office of the budget; and for other purposes

On page 107, lines 16 and 17, strike out "Ninety-sixth Congress" and insert "Ninety-fifth Congress".

CHANGES IN THE NHSC MADE BY THE NATIONAL HEALTH SERVICE CORPS AMENDMENTS OF 1974

1. Changes the definition of a "medically underserved area" to conform to the definition of a "medically underserved population" used in the HMO Act of 1973. Clarifies the present legislative intent that the Secretary is to publish a list of all of the underserved populations in the United States by requiring a report to Congress by September 1, 1974, on the criteria used in designating medically underserved populations, and the publication of such a list by January 1, 1975. Provides a new mechanism by which representatives of populations which are not designated by the Secretary as underserved may apply to him for such designation, and lists the indicators of the availability of health services which should be considered when reviewing such applications. Sec. 329(b)(1), (b)(2), and section 1(b).

2. Clarifies the existing requirements for applying for the assignment of NHSC personnel to make it clear that a community seeking such assignment must make application to the Secretary, and specifying that, in communities with several medical or dental societies, the approval of any one of these societies will be sufficient for the approval of an application. Section 329(c)(1)(A).

3. Adds a new requirement that the Secretary may approve applications for NHSC personnel for periods which do not exceed four years, and that, if a community desires assignment of NHSC personnel for more than four years, it must reapply to the Secretary at the end of the original four-year assistance period. Requires the Secretary in considering applications for continued assistance for a community to apply the criteria necessary for the original approval of an application and, in addition, to evaluate the community's continued need for NHSC personnel, the use of personnel assigned to date, the growth of the practice of the assigned personnel, the community's support for the assignment, the community's continued efforts to secure its own health manpower, and the quality of the management of the NHSC practice. Section 329(c)(2).

4. Adds a new requirement that the Secretary, in assigning Corps personnel to communities, make an effort to match the characteristics of the personnel (and their spouses) and the communities to which they may be assigned in such a way as to maximize the likelihood that the personnel will remain in the community after the completion of their assignment and leaving the NHSC. Further requires the Secretary to review the assignment of each Corps assignee and the situation in the community to which he is assigned for the purpose of determining the appropriateness of extending his assignment. Section 329(c)(4).

5. Makes new authority available to the Secretary to make grants, not in excess of $25,000, to medically underserved populations to be used for the purpose of establishing medical practices for NHSC personnel. This provision is written to repay to the Federal government the amounts of such grants using revenues generated by the practice. Section 329(d)(3) and (e)(1)(G).

6. Provides authority to the Secretary to sell to NHSC communities at fair market

value any equipment in his ownership which has been used by NHSC assignees in providing health services. Sec. 329(d)(4).

7. Clarifies the financial arrangement that the Secretary and communities receiving NHSC personnel must enter into. Provides that a community must:

(1) charge patients seen for health services received.

(2) make reasonable efforts to collect the amounts of such charges, and

(3) pay to the United States the lesser of either:

(a) the amount collected under (2) or

(b) the pay and allowances of the NHSC personnel plus the amounts of any start-up grants provided to the community (suitably pro-rated over the period of NHSC assignment).

These provisions have the effect of assuring that NHSC communities will be responsible for payment to the Federal government of the reasonable costs incurred by it in the operation of the program, but, that in the event the practice generates additional revenues, these additional revenues may be retained by the community for its use in improving or expanding the practice, or recruiting its own health manpower. The ability of the community to retain some funds is intended to provide the community with a significant incentive for the efficient and effective collection of charges billed to patients. Sec. 329(e)(1).

8. Requires the Secretary, under regulations which he prescribes, to adjust the monthly pay of physicians and dentists serving in the NHSC so that their pay will be competitive with that of physicians and dentists in established practices with equivalent training. This provision constitutes, in effect, a pay bonus and is modeled after physicians and dentists serving in the Armed Forces. It will be limited to an amount, not to exceed $1,000 per month, which is intended to make service in the NHSC attractive on a financial basis for young physicians. Further, the pay bonus would be available in its full amount only during the first three years in which an individual served in the NHSC. Subsequently his salary would be held constant so that as the practice grows it will become financially wise for the NHSC personnel to leave the Corps and enter private practice in the community in which they are assigned. Sec. 329(f)(4).

9. Adds new requirements to the existing requirements for an annual report to the Congress that the report indicate the number of patients visits recorded in the previous year by the NHSC, the results of evaluations conducted by the NHSC, and the amounts charged, collected, and paid to the Federal government by NHSC communities. Sec. 329(g).

10. Renames the existing national advisory council as the National Advisory Council on the NHSC, requires membership on the Council from communities served and NHSC personnel assigned, and gives the Council the authority to review and approve program regulations. Sec. 329(h).

11. Provides the Secretary authority to seek appropriations for the NHSC a year in advance so that stable budget planning will be possible in order to facilitate long-range recruitment of physicians and dentists for the Corps. This is important because most physicians and dentists make their career plans as much as a year in advance and therefore the Corps must know as much as a year in advance how many physicians its appropriations bill will support. Sec. 329(i)(2).

12. Requires the Secretary of HEW to conduct or contract for studies of methods of assigning personnel in the NHSC with the purpose of identifying the characteristics of health manpower who are likely to remain in practice in medically underserved populations, the characteristics of areas which have been able to retain health manpower, the appropriate conditions for the assignment of independent nurse practitioners and physicians' assistants in medically underserved populations, and the effect of primary care residency training in such populations on the health care provided and the decisions of the residents respecting areas in which to locate their practice. Sec. 1(b)(2).

13. Amends the NHSC scholarship program to follow the provisions of the military health manpower scholarship program respecting monthly payments to participants and support by the Secretary for the costs born by institutions who increase their enrollment in order to accept participants in the scholarship program. Sec. 225(c)(1)(A) and (c)(2).

14. Provides that the payments under the scholarship program for individual living expenses may be adjusted by the Secretary in proportion to any inflation in living costs. Sec. 225(c)(1)(B).

15. Clarifies the legislative specification that individuals completing the scholarship program be available first for service in the NHSC or Indian Health Service, second, if no positions are available in the above, for service in the Federal Health Programs Service, and third, if no positions are available in any of the above, for any service deemed appropriate by the Secretary. Sec. 225(d)(2).

16. Provides a penalty provision similar to the one contained in H.R. 7724, the Biomedical Research Training legislation, which would require individuals who fail to perform obligated service to pay back their scholarship and related Federal contributions to their education at twice their original value. This provision is responsive to the experience of existing, primarily state, loan and scholarship training programs which have been that without such penalty a substantial portion of the participants will repay the dollar value of their scholarship rather than perform the obligated service. Sec. 225(e)(1).

17. Authorizes appropriations for the NHSC as follows:

	Million
Fiscal year 1975	$30
Fiscal year 1976	35
Fiscal year 1977	40
Total	105

Authorizes appropriations for the NHSC scholarship program as follows:

	Million
Fiscal year 1975	$20
Fiscal year 1976	25
Fiscal year 1977	30
Total	75

Mr. MAGNUSON. Mr. President, having authored the legislation that created the National Health Service Corps in 1970, I am pleased to join the distinguished chairman of the Health Subcommittee, Mr. KENNEDY, in introducing this first draft of legislation to extend the corps' authorization through fiscal year 1977. This legislation also proposes several modifications in the corps to make it more attractive to physicians, dentists, and other health professionals. Out of the hearings on this measure will emerge, I hope, final legislation that will strengthen the National Health Service Corps so that it can go much further toward satisfying the needs of the some 5,000 U.S. communities that still lack adequate health manpower.

Mr. President, today there are some 400 corpsmen providing health care in 170 communities around the country—communities which otherwise would still be without adequate health care manpower. In my own State of Washington there are now 10 NHSC assignees serving 7 communities and later this year that number should increase to 11 communities. From my visits in some of those communities, I know what an extremely important job these men and women are doing. Consequently, I find it very hard to understand why the administration continues to refuse to give the corps the dollar support and administrative attention its mission merits.

As chairman of the Labor-HEW Appropriations Subcommittee, I can attest to Congress' support for the corps. For every complete fiscal year since the program's inception, Congress has appropriated more for it than the administration has requested or been willing to spend.

That would not be so disturbing if we were speaking of billions or hundreds of millions of dollars, or if we were talking about some part of the huge HEW bureaucracy downtown. But we are not. Instead, we are speakng of a few million dollars for a program that is taking health care into the small towns of America and into the everyday lives of everyday Americans. That is why I find the administration's position so hard to comprehend.

The corps has also too often been the victim of administrative oversight. Let me cite just one example. In 1971, Congress enacted legislation authorizing HEW to repay 60 percent of any educational loan used by an individual to obtain professional health training if that individual served 2 years in health manpower shortage areas. That was in 1971, but it took HEW until June 1973, to just get the necessary Government forms printed for NHSC assignees to sign. Then followed more months of paper shuffling. Then the doctors and others who had been serving in the corps since 1971 were told that if their 2-year tour with the corps in a health manpower shortage area expired before all the paperwork had been completed they would not qualify for the loan repayment. In other words, they were told, the critical issue was not the 2 years they had spent working in health manpower shortage areas—but the date upon which all the paper shuffling had been completed. The Secretary has informed me that legislation to rectify this bureaucratic tangle is being readied for submission to the Congress. If that legislation has not arrived by the time hearings begin on the measure we have introduced today, then an appropriate remedy will, it seems to me, have to be provided through our bill.

Mr. President, in looking back over the first few years of the corps, I would conclude that its success despite the administration is testimony to the fine work of the health professionals who are serving in it and to the soundness of the program's original concepts. The National Health Service Corps has proved its value to thousands of Americans in small towns and big-city slums. It is fully deserving of extension.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 2422

At the request of Mr. MATHIAS the Senator from Michigan (Mr. HART) was added as a cosponsor of S. 2422, to establish a National Center for the Prevention and Control of Rape and provide financial assistance for a research and demonstration program into the causes, consequences, prevention, treatment, and control of rape.

S. 2495

At the request of Mr. DOMENICI, his name was added as a cosponsor of S. 2495, to provide for the more effective utilization of our scientific and technological resources.

S. 2782

At the request of Mr. JACKSON, the Senator from West Virginia (Mr. RANDOLPH) was added as a cosponsor of S. 2782, the Energy Information Act.

S. 2854

At the request of Mr. CRANSTON, the Senator from Missouri (Mr. EAGLETON), the Senator from Maine (Mr. HATHAWAY), the Senator from Alabama (Mr. ALLEN), the Senator from Texas (Mr. BENTSEN), the Senator from Indiana (Mr. HARTKE) and the Senator from Georgia (Mr. NUNN) were added as cosponsors of S. 2854, to amend the Public Health Service Act to expand the authority of the National Institute of Arthritis, Metabolism, and Digestive Diseases in order to advance a national attack on arthritis.

S. 2871

At the request of Mr. MCGOVERN, the Senator from Alabama (Mr. SPARKMAN) was added as a cosponsor of S. 2871, to amend the Food Stamp Act of 1964, as amended, and for other purposes.

S. 2938

At the request of Mr. JACKSON, the Senator from Massachusetts (Mr. BROOKE) was added as a cosponsor of S. 2938, the Indian Health Care Improvement Act.

S. 3057

TVA ENVIRONMENTAL FINANCING

Mr. BAKER. Mr. President, I ask unanimous consent that Senator COOK be added as a cosponsor of S. 3057 at its next printing.

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

Mr. BAKER. Mr. President, I also would make a correction of a figure which appeared in my statement at the time of introducing that legislation. The Tennessee Valley Authority is required to retire annually $20 million of the appropriation investment which the Federal Government had prior to 1959 invested in the TVA power program. Credits under the bill would be charged against that amount and not against $20 billion as appeared in the RECORD.

I hope this error has not caused any inconvenience or concern to my colleagues.

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

S. 3069

At the request of Mr. RIBICOFF, the Senator from New York (Mr. BUCKLEY) was added as a cosponsor of S. 3069, to extend through December 1974 the period during which benefits under the supplemental security income program on the basis of disability may be paid without the interruption pending the required disability determination, in the case of individuals who received public assistance under State plans on the basis of disability for December 1973 but not for any month before July 1973.

S. 3075

At the request of Mr. EASTLAND, the Senator from Oregon (Mr. PACKWOOD) was added as a cosponsor of S. 3075, a bill to amend the Agricultural Adjustment Act of 1938, with respect to the emergency transfer of rice allotments.

S. 3098

At the request of Mr. DOLE, the Senator from Connecticut (Mr. RIBICOFF) 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. 3108

At the request of Mr. STAFFORD, the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Pennsylvania (Mr. SCHWEIKER) were added as cosponsors of S. 3108, to amend the Rehabilitation Act of 1973.

S. 3154

At the request of Mr. RIBICOFF, the Senator from Pennsylvania (Mr. SCHWEIKER) was added as a cosponsor of S. 3154, the Comprehensive Medicare Reform Act of 1974.

SENATE JOINT RESOLUTION 188

At the request of Mr. HELMS, the Senator from Massachusetts (Mr. BROOKE), the Senator from Washintgon (Mr. JACKSON), the Senator from Ohio (Mr. TAFT), and the Senator from Utah (Mr. MOSS) were added as cosponsors of Senate Joint Resolution 188, to authorize the President to declare by proclamation Aleksander L. Solzhenitsyn an honorary citizen of the United States.

SENATE CONCURRENT RESOLUTION 73—SUBMISSION OF A CONCURRENT RESOLUTION RELATING TO A COMMITTEE PRINT OF THE SENATE SELECT COMMITTEE ON NUTRITION AND HUMAN NEED

(Referred to the Committee on Rules and Administration.)

Mr. MCGOVERN submitted the following concurrent resolution:

SENATE CONCURRENT RESOLUTION 73

Resolved by the Senate (the House of Representatives concurring), That there be printed for the use of the Senate Special Committee on Nutrition and Human Needs five thousand (5,000) additional copies of its committee print entitled "To Save The Children: Nutritional Intervention Through Supplemental Feeding."

SENATE CONCURRENT RESOLUTION 74—SUBMISSION OF A CONCURRENT RESOLUTION AND BILL RELATING TO ADVANCE FUNDING OF EDUCATION PROGRAMS

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

RATIONAL FUNDING OF EDUCATIONAL PROGRAMS

Mr. MCGOVERN. Mr. President, one of the principal problems school administrators face today is the delay in appropriating funds for education programs. Even if the administration were more cooperative, the actual appropriations would not be made until the late spring or early summer before the start of the new school year with notice of the individual school district entitlements some months later.

For the school districts to plan the next school year properly and negotiate teacher contracts, they ought to know the amount of Federal funds they will receive the following year by early spring at the latest. So, even under the best of circumstances, the present fiscal year appropriations process does not meet school district administrative needs.

This problem has been compounded further in recent years by the callousness this administration has shown toward educational programs in general. While pressing for increased military spending and foreign aid, the administration has attempted to balance the budget by cutting back on domestic programs such as education. The so-called Better Schools Act of 1973, for example, which sought to substitute a revenue sharing approach for the historical categorical grant program, would have amounted to a wholesale retreat from the traditional Federal commitment to quality elementary and secondary education.

Fortunately, the Congress has seen through the administration's false rhetoric on its commitment to education and consistently appropriated substantially higher sums than the President requested. But this yearly duel on the amount of Federal aid to education has further delayed the commitment of funds to school districts. The President has twice vetoed education appropriations, forcing the Congress to rely on continuing resolutions. And even then, the school districts have been unable to obtain the funds the law entitles them to because the administration impounded the funds on a variety of pretexts.

What this has meant for a school administrator is that he or she does not know what Federal funds to expect for the school year until 2 or 3 months after school has opened. Since an administrator cannot plan on dollars which may not come, this has meant less education for students and economic uncertainty for teachers.

During the last year of the Johnson administration, the Congress enacted a statute which would have avoided much of this chaos, had that statute been followed.

The law (15 U.S.C. 1223) authorizes appropriations for educational programs

administered by the Commissioner of Education in "the fiscal year preceding the fiscal year for which they are available for obligation." In other words, this statute would move the appropriations process back 1 year so that appropriations for fiscal year 1976 would be passed in fiscal year 1975 even though they would not be available for obligation until the following year. If this procedure were followed, school officials would know the amount of funds they would receive 1 year earlier than is presently the case. Further, this process would have no effect on the size of the Federal budget because the funds, although appropriated, would show up as "outlays" only for the year in which they were to be expended.

The statute also provides for a 2-year appropriation in the first year it is implemented in order to effectuate a transition to this method of appropriating educational funds.

Mr. President, I am introducing for appropriate reference two separate measures to implement this statute.

The first is a concurrent resolution (S. Con. Res. 74) expressing the sense of the Congress that the statute authorizing advance funding for educational programs should be immediately and continually implemented.

The second is an amendment to the Budget and Accounting Act of 1921 directing the President to include in the budget a request for advance funding of educational programs for the fiscal year ending June 30, 1976, and each succeeding year thereafter (S. 3164).

I also intend to offer an amendment to the Labor, HEW appropriations bill implementing the forward funding statute for this year when that bill is sent over from the House for Senate consideration.

In conclusion, Mr. President, I ask unanimous consent that the text of my resolution and bill be printed at the conclusion of my remarks.

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

Concurrent resolution to express the sense of Congress that advance funding of education programs should be implemented so as to afford responsible State, local, and Federal officials education offices adequate notice of available Federal financial assistance for education programs

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that section 412 of the General Education Provisions Act, relating to advance funding for education programs, should be immediately and continually implemented so as to afford responsible State, local, and Federal officers adequate notice of available Federal financial assistance for education.

S. 3163

A bill to amend the General Education Provisions Act to require that the budget of the President include proposed appropriations for carrying out section 412 relating to advance funding of education programs

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 412 of the General Education Provisions Act is amended by inserting "(a)" immediately after the section designation and by adding at the end thereof the following new subsection:

"(b) In order to carry out the provisions of this section, the President shall include in the budget required to be transmitted to the Congress under section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11), for the fiscal year ending June 30, 1976, and for each succeeding fiscal year thereafter, proposed appropriations to be made during the fiscal year to which that budget applies, and which is to be obligated in the immediately succeeding fiscal year for grants, contracts, or other payments under any applicable program."

ADDITIONAL COSPONSOR OF CONCURRENT RESOLUTION—SENATE CONCURRENT RESOLUTION 40

At the request of Mr. BROCK, the Senator from Colorado (Mr. DOMINICK) was added as a cosponsor of Senate Concurrent Resolution 40, to express the sense of the Congress with respect to certain vocational and career student organizations.

DEVELOPMENT OF A FAIR WORLD ECONOMIC SYSTEM—AMENDMENT

AMENDMENT NO. 1021

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

Mr. BUCKLEY (for himself and Mr. DOMINICK) submitted an amendment, intended to be proposed by them, jointly, to the bill (H.R. 6767) to promote the development of an open, nondiscriminatory, and fair world economic system, to stimulate the economic growth of the United States, and to provide the President with additional negotiating authority therefor, and for other purposes.

(The discussion of this amendment, when it was submitted, appears earlier in the RECORD.)

AMENDMENT OF EXPORT-IMPORT BANK ACT OF 1945—AMENDMENT

AMENDMENT NO. 1022

(Ordered to be printed, and referred to the Committee on Banking, Housing and Urban Affairs.)

Mr. BUCKLEY (for himself and Mr. DOMINICK) submitted an amendment, intended to be proposed by them, jointly, to the bill (S. 1890) to amend the Export-Import Bank Act of 1945, as amended, to extend for 4 years the period within which the Bank is authorized to exercise its functions, to increase the Bank's loan, guarantee, and insurance authority, to clarify its authority to maintain fractional reserves for insurance and guarantees, and to amend the National Bank Act to exclude from the limitations on outstanding indebtedness of national banks liabilities incurred in borrowing from the Bank, and for other purposes.

(The discussion of this amendment, when it was submitted, appears earlier in the RECORD.)

FEDERAL ACT TO CONTROL EXPENDITURES AND ESTABLISH NATIONAL PRIORITIES—AMENDMENT

AMENDMENT NO. 1023

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

Mr. BROCK. Mr. President, today I am submitting an amendment to S. 1541, the Congressional Budget Act, on behalf of myself and Senator METCALF.

S. 1541 is a landmark in our legislative history. It will give Congress the tools to examine spending decisions in a comprehensive macroeconomic framework. It will allow us to control spending so as to maintain greater economic health as a Nation. It will allow us to make a much more sensible determination of our priorities. The reforms it embodies are vitally needed.

We believe, however, that if we are to keep abreast of changing times, the budgetary process should be subject to continuing study and change where appropriate. We must avoid falling into another period of inattention to the importance of our budget making role. While S. 1541 calls for changes of truly major significance, we should not assume that it will complete the job of assuring that Federal dollars are spent as effectively as possible in meeting national needs.

During the lengthy consideration of S. 1541 by the Committees on Government Operation and Rules and Administration, several proposals for reform were suggested which are not included in the bill which will soon come before us. Some of those suggestions are particularly deserving of further study and consideration.

Our amendment, therefore, calls upon the Budget Committees of both Houses to conduct continuing study of proposals for improving budgeting procedures. The committees may study such proposals as it believes appropriate and will report its findings and recommendations to Congress. To facilitate this effort, they are authorized to create task forces of experts drawn from congressional and executive agencies.

The amendment lists several areas where study would be especially fruitful in leading to further improvements. These areas correspond generally to specific suggestions offered by various members and budgeting experts during the development of S. 1541, and should be included among those to be considered by the Budget Committees.

We think it is useful and desirable to indicate an agenda for future search for further improvements in our budget making procedures, and to explicitly charge the Budget Committees with the responsibility for promoting such an inquiry. In this way we can demonstrate our resolve to attend more constantly to upgrading our budget making procedures than we have in the past.

AMENDMENT NO. 1024

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

Mr. CHILES. Mr. President, on behalf of the Senator from New York (Mr. JAVITS), the Senator from Maine (Mr. MUSKIE), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Utah (Mr. Moss), and myself, I submit an amendment, intended to be proposed by us, jointly, to Senate Bill 1541, the Congressional Budget Act. I ask unanimous consent that the amendment be printed in the RECORD.

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

AMENDMENT NO. 1024

On page 116, after line 25, insert the following:

REPORT ON NATIONAL GOALS AND PRIORITIES

SEC. 203. (a) ANNUAL REPORT.—The Director shall submit to the Congress on or before May 1 of each year (beginning with 1978) a national goals and priorities report, which shall include, but not be limited to, a description and discussion of—

(1) the President's recommendations on national priorities reflected in the proposed allocation of budget authority and budget outlays for each major national need as set forth in the budget submitted by the President for the fiscal year beginning on October 1 of such year;

(2) the goals, or objectives, associated with each major national need and the goals, or objectives, being sought by all Federal programs directed at meeting such national need;

(3) an assessment of the adequacy of the resources allocated to each national need in view of the goals or objectives being sought; and

(4) alternative allocations of budget authority and budget outlays to major national needs to reflect alternative sets of priorities and associated goals or objectives.

(b) ASSISTANCE TO COMMITTEES AND MEMBERS.—At the request of any committee or Member of the Senate or the House of Representatives or any joint committee of the Congress, the Office shall provide to such committee, Member, or joint committee further information, data, or analysis relevant to an informed determination of national goals and priorities.

(c) DEFINITIONS.—For purposes of this section—

(1) The term "national needs" means those Federal functions and sub-functions which are, at a given time, being performed by the Government in order to provide for the well-being of the Nation. National needs (functions and sub-functions) describe the purposes being served by budget authority and outlays without regard to the means that may be chosen to meet those purposes.

(2) The term "agency missions" means those responsibilities for meeting national needs which may be variously assigned to the agencies of the executive branch. Agency missions can be expressed in terms of those functions or sub-functions which may be, at a given time, the responsibility of that agency and its component organizations.

(3) The term "program" means that organized set of activities and actions which may be undertaken by an executive agency in order to solve a particular problem, meet a particular objective, and achieve a particular set of goals directly related to fulfilling that agency's mission responsibilities and which, over the course of the program, entails significant expenditure of resources.

(4) The following are four of the basic steps in the process by which new programs, or major modifications to existing programs, are formulated and executed:

(A) "Establishing needs and goals" means defining the particular problem to be solved and the objective measures of the end results, or goals, to be sought and attained as a consequence of the program. Goals describe the level of mission capability the agency is seeking, when it is to be made available, and the total cost within which that capability is to be provided without regard to the means used to achieve those results.

(B) "Exploring alternatives" means the creation, definition, and evolution of competing means to solve a particular problem, drawing on the base of technology in order to identify and evolve those approaches that are promising, to eliminate those that are not promising, and to supply information on the expected costs and benefits of each approach.

(C) "Choosing the preferred program approach" means the evaluation and choice of the preferred program approach from among remaining alternatives. The evaluation will determine which approach will best meet the updated goals of the program and the costs and benefits accruing to each alternative in meeting the agency's mission.

(D) "Implementation" means putting the preferred program approach into operation and monitoring its effectiveness, including final development preparation of the chosen approach, operational support and maintenance, and modification based on review of program effectiveness.

On page 117, line 2, strike out "203" and insert "204".

On page 168, line 3, strike out the closing quotation marks and after line 3 insert the following:

"(i) The Budget transmitted pursuant to subsection (a) for each fiscal year, beginning with the fiscal year ending September 30, 1979, shall contain a presentation of budget authority, proposed budget authority, outlays, proposed outlays, and descriptive information in terms of—

"(1) national needs (as defined in section 203(c)(1) of the Congressional Budget Act of 1974);

"(2) agency missions (as defined in section 203(c)(2) of such Act); and

"(3) a summary of agency programs and basic program steps (as defined in sections 203(c)(3) and 203(c)(4) of such Act), with a detailed description to be provided directly by the agencies to the cognizant committees of Congress to the extent applicable to agency activities.

"(j) To assist the President in carrying out the provisions of subsection (i)—

"(1) each agency shall furnish information in support of its budget requests in accordance with its assigned missions in terms of Federal functions and sub-functions, including mission responsibilities which may be delegated to component organizations;

"(2) each agency shall relate all programs to agency missions and shall furnish information to describe the program step being executed and for which budget authority is being requested or outlays made to the extent applicable to agency activities;

"(3) not later than December 31, 1975, the Director of the Office of Management and Budget, in cooperation with the heads of executive agencies, the Comptroller General of the United States, and the Director of the Congressional Office of the Budget, shall develop a detailed structure of Federal functions and sub-functions, to be updated and modified as appropriate, which shall be used to reference all agency missions and programs; and

"(4) not later than June 30, 1976, the Comptroller General shall report to the Congress on the adequacy of the structure developed pursuant to paragraph (3) for the purposes of representing agency missions and programs."

On page 182, line 14, before the period insert "and section 201(i) of such Act (as added by section 601) shall apply with respect to the fiscal year beginning on October 1, 1978, and succeeding fiscal years".

AMENDMENT NO. 1028

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

REDUCTION OF GRANDFATHER CLAUSE FOR BUDGET COMMITTEE

Mr. KENNEDY. Mr. President, on behalf of Senator PEARSON and myself, I send to the desk an amendment to S. 1541, the Congressional Budget Act of 1974, and I ask that it may lie on the table and be printed.

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

Mr. KENNEDY. The purpose of the amendment is to make the so-called two-major committee limitation in the Senate Rules applicable to the new Senate Budget Committee in 1977, instead of 1979 as the bill now provides.

As reported by the Government Operations Committee and the Rules Committee, the proposed Congressional Budget Act will establish comprehensive, far-reaching and long-overdue reforms in the way Congress handles the Federal budget. The proposed act holds out the promise of a historic new era in congressional control and responsibility over Federal spending.

All of us in the Senate are aware of the exhaustive joint effort that has produced this outstanding piece of legislation, and I commend the Senators, the committees, and their staffs who have worked so industriously, skillfully, and successfully over the past 2 years to prepare the bill we are about to debate. Surely, the new act will become a landmark achievement of the 93d Congress, and a centerpiece in the continuing efforts by the Senate and the House to assert their long-dormant responsibilities and prerogatives under the Constitution.

The amendment I am proposing is a relatively minor modification in one aspect of the bill—the transition rule proposed as part of the creation of the new Senate Budget Committee to be established by the act.

As it should, the new committee will be a major committee of the Senate—a "Category A" committee under paragraph 6(a) of Senate Rule XXV. As a result, the so-called two major committee limitation would ordinarily be applicable, under which Senators are limited to serving on two major Senate committees. Therefore, under the Senate rules, a Senator who now holds two major committee assignments would be required to give up one of those committees in order to serve on the new Budget Committee.

In dealing with this issue, the bill reported by the Rules Committee contains a provision exempting the members of the new Budget Committee from the two-major-committee limitation until January 1979, when the 96th Congress convenes.

The amendment I am introducing would make the limitation applicable in January 1977, when the 95th Congress convenes. The amendment would thus limit the exemption to one full Congress instead of two full Congresses, as now proposed in the bill reported to the Senate.

In general, the theory of an exemption from the limitation is a wise one.

The new Budget Committee will unquestionably be an important one, but the details of its role and its workload are so uncertain and so unpredictable at the outset, that it would be unreasonable to require Senators to choose in advance whether to give up an existing major committee assignment in order to serve on the Budget Committee. Therefore, it is appropriate, during the initial period of operation of the new budget procedures, to waive the two-major-committee rule.

Although the principle of the grandfather clause thus seems sound in its application here, the difficulty in the Committee bill is that it stretches out the "get acquainted" period for too long.

There is every expectation that the Budget Act will clear Congress and be signed into law by the President within the next few weeks. Certainly, no one expects it to be delayed beyond the end of this Congress. Thus, in all likelihood, the new Budget Committee and the new congressional Office of the Budget will be established promptly, and can begin staffing and assuming their responsibilities at once.

In addition, as the bill requires, the transition to the new fiscal year proposed in the bill will take place relatively quickly also, by extending the 1976 fiscal year until September 30, 1976, at which time the new October 1–September 30 cycle for fiscal years will be in place.

Why, then, should there be two full Congresses before the two-major-committee limitation comes into effect? By 1977, the Budget Committee will have had ample opportunity to develop its procedures and assume its workload, and by 1977, the regular Senate rules should apply.

The two-major-committee limitation serves an extremely useful purpose in guaranteeing that the important responsibilities of Senate Committees are shared widely among the Members, and the limitation should certainly be applied to the preeminent anticipated role of the new Budget Committee at the earliest practicable opportunity.

I urge the Senate to consider this amendment and to act favorably on it, and I ask unanimous consent that it may be printed in the RECORD.

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

AMENDMENT No. 1028

On page 107, lines 16 and 17, strike out "Ninety-sixth Congress" and insert "Ninety-fifth Congress."

AMENDMENT OF NATURAL GAS ACT—AMENDMENT

AMENDMENT NO. 1025

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

THE $5 MILLION VETO

Mr. McGOVERN. Mr. President, with Mr. Nixon's veto of the Emergency Energy bill, the oil interests have added another to their unbroken string of victories over the consumer. And the Senate by failing to override that veto has made the Congress an accomplice to this unwise and unjust act.

The sole issue involved was the rather modest rollback in consumer fuel prices the bill required. The President supported, or at least was willing to accept, the other major provisions of the bill for—

Reduction of propane prices;

Emergency rationing authority;

Stripper well regulation;

And emergency unemployment compensation for the tens of thousands of workers who have lost their jobs because of the energy crisis.

While the influence of consumers may be less than that of the major oil companies, their numbers are larger. And they will not soon forget this veto or that:

The profits of the major oil companies increased at ridiculous rates last year: more than 100 percent for Shell; 79 percent for Gulf and 60 percent for Exxon;

The price of fuel has increased 10 cents or more per gallon in the last 15 weeks alone and will continue to climb;

The price of propane and home heating fuel has gone up in some cases from 200 to 300 percent above last year's level;

The oil interests contributed more than $5 million or over 12 percent of the total campaign funds raised by the Committee to Re-Elect the President.

I recognize that the President's veto and Congress failure to override it will make the task of harnessing the arrogance of the major oil companies and restoring equity to the fuel prices more difficult. The temptation now for some will be to press for cosmetic measures to appease an aroused public. But in my opinion that course is as bad politics as it is bad policy.

The Congress and the President are held in low esteem and not without reason. We have been long on rhetoric and short on action. And if we fail to act responsibly and promptly, the people, quite rightly, will find others who will.

Mr. President, I send to the desk an amendment to S. 2506 which incorporates some of the provisions of the vetoed bill and adds others.

My bill would—

First, roll back propane prices to the May 15 price levels;

Second, place stripper wells under regulation as requested by Mr. Simon;

Third, roll back domestic crude prices to the December 18 level;

Fourth, permit future domestic crude price rises only where the President demonstrates that this would increase the energy supply of the United States;

Fifth, require congressional review of future administration price increases; and

Sixth, abolish the so-called released oil program under which the administration has exempted oil from old fields from price controls.

Today the United States produces approximately 9.2 million barrels of crude oil a day. About 71 percent of that oil is flowing from fields developed prior to 1973 and is controlled at a price of $5.25 per barrel. The remaining 29 percent is exempt from price controls on various grounds and sells for about $9.50 a barrel. Only about one-third of this exempt oil is "new"—from fields not flowing in 1972 or before.

Under the formula in the vetoed bill, the price for all domestic crude would be nominally set at $5.25 per barrel. But the President was expressly given the power to raise the price as much as 35 percent—for a maximum ceiling of $7.09 per barrel.

The practical effect of this proposal therefore would have been to impose roughly a $2.41 reduction on the 30 percent which is not presently controlled. No change in the price of the other 70 percent was mandated. Indeed, further price increases on this oil totaling nearly $2 a barrel, or 5 cents a gallon at the consumer level, were permitted.

I expressed reservations about the conference approach for three reasons. First, the plan would have left intact the President's recent decision to raise the price of controlled or "old" oil by $1 per barrel—from $4.25 to $5.25. Second, the administration would have retained the right to further increase the price of old oil by nearly $2 more. And third, the conference formula would have resulted in only small savings to the consumer.

During the last 15 weeks, consumer fuel prices have increased on the average approximately 10 cents a gallon. In some cases, particularly propane and home heating fuel, consumers have paid as much as 200 to 300 percent more this year than last.

At the same time, the profits of the major oil companies have gone up even more rapidly than fuel costs. During the first 9 months of last year, the 31 largest oil companies posted a 47-percent increase over the comparable 1972 period—a 63-percent increase in the third quarter alone. For the largest companies, the results were even more dramatic: Exxon's third-quarter profits were up 81 percent; Gulf's 91 percent. Although the final figures for all companies are not yet in, one company, Gulf, reported a 153-percent increase in its fourth-quarter profits and a full year profit rise of 79 percent. Exxon posted a 60-percent overall profit increase last year.

Although the majors stress that a substantial portion of their new riches come from foreign operations, the rising price for domestic crude has been a significant factor. In 1958, domestic crude sold for an average price of $3.09 a barrel. The price of crude, which averaged less than $3 a barrel during the 1960's, increased gradually to about $3.40 in late 1972. On May 15, 1973, the administration permitted a 35-cent increase in the then controlled price of $3.90 a barrel. This new $4.25 price was further increased by executive fiat to $5.25 last December.

Thus, under the Nixon price controls, crude oil went up 36 percent in less than a year. That $1.35 increase was greater than the 81-cent rise during the prior 15 years.

According to Ervin Wolf, chairman of one of the largest exploration companies and other industry experts:

Approximately 80 to 90 percent of all the old oil which was recently increased $1 per barrel is owned by the major oil companies.

He estimates that the dollar increase was worth approximately $30 billion to the majors on their existing inventory of crude oil. It must be stressed that this oil was found and developed years ago.

It would have continued to be produced without any increase in price.

As Senator JOHNSTON of Louisiana pointed out in debate on February 7, this dollar increase amounts to a pure windfall profit to the major oil companies. It was granted for wells which were developed and flowing prior to 1973. For these wells there is no exploration or development risk. Those costs were incurred 10 and 20 years ago. The only present costs are in pumping it up from the ground. Business Week sets that cost at $1.10 a barrel and many other experts put it even lower. The rest is pure unadulterated profit—at present prices more than $4 a barrel.

As Senator JOHNSTON pointed out, an increase in the price of old oil is by no stretch of the imagination an incentive to produce new oil. And in a colloquy with him, Senator JACKSON admitted that the dollar increase was, and I quote, "clear windfall."

And so I ask Senator JOHNSTON: Why not roll back the price of old oil—which represents approximately 70 percent of domestic crude—to its December price of $4.25 and eliminate the $1 per barrel windfall that was allowed despite the fact that it is not really a viable incentive to produce more oil?

My second objection followed logically from the first. If, as Senator JACKSON has said, the dollar increase on old oil was "clear windfall" why should we give the President specific authority to grant nearly $2 in future increases?

The conference report expressed the expectation that this new authority would have been used only with respect to newly produced crude and oil extracted through expensive technology such as secondary and tertiary recovery. But the same could have been said before the December price increase.

Moreover, the administration has announced plans to gradually increase the price of crude to $7 per barrel over the next 3 years. Treasury Secretary Shultz described the administration's so-called windfall profits tax to the Ways and Means Committee on February 4 as:

> A tax which bites hard on immediate price increases (but would) not interfere with the production of needed oil supplies if it gradually phases out so that after three years there would be no tax on oil prices at around $7 or less per barrel.

Under the mechanics of the plan the Secretary described, the base not subject to the proposed tax would be increased by 80 cents a year for a non-taxed price of $7.15 in 3 years. His precise calculations furnish a good benchmark against which to judge the administration's intentions regarding oil price control policies.

The third question I had on the conference report was on how much the proposed limited price rollback would have saved the consumer. Senator JACKSON estimated that it would have reduced consumer prices by 4 cents a gallon or more, and that it would have saved the consumer upward of $4 billion. Yet the unanimous testimony of expert witnesses before the Interior Committee just 2 weeks ago was that a 25-percent decrease in the price of uncontrolled oil—roughly equivalent to the conference report formula—would save the consumer perhaps 1 cent a gallon.

The administration estimated that the December dollar increase on 71 percent of domestic production would increase fuel prices by 2.5 cents per gallon and cost the consumer approximately $2.5 billion a year. On that basis a $2.41 reduction on 29 percent would save the consumer about $2.3 billion which works out to about 2.3 cents per gallon.

But under the price control regulations, the fuel presently being consumed is priced according to the average cost of crude oil in the refiner's inventory at the time the fuel was refined. In general, fuel consumed today is based on crude refined 30 days ago or more. In many cases that crude was purchased weeks or months before at substantially lower prices. Expensive Arabian crude, for example, takes 45 days just to be shipped in tankers to the United States.

Since uncontrolled crude sold for less than $7 60 days ago and about $8.25 30 days ago, the effect of the conference proposal would have been at best to stabilize fuel costs at their present levels. In some cases, costs would have continued to increase because of the higher cost of foreign crude. In others, it would have decreased because of greater stability in foreign prices. This would have depended on the source of oil for individual companies contracted for weeks and months ago, and it explains why Exxon recently raised its price on the same day that Amoco announced a reduction.

The price for new oil adopted in my bill is about $7 per barrel. That is the price the administration and the industry originally said was adequate to provide a sufficient incentive for the development of new sources such as oil shale and to supply the capital needed to finance new expensive recovery techniques and deep wells. Predictably enough their estimates have drifted upward with the price.

I am not suggesting an absolute limit of $7 for new oil. What I am suggesting is a present $7 price which could be adjusted upward if the President showed proper reasons for doing so and the Congress concurred.

So far as this released oil program is concerned, I can see no justification for it. Under the current price control program, the administration in effect permits one barrel of old oil to be decontrolled for each new barrel of oil produced from an existing field. It seems to me that today's present high prices for new oil, even if they were rolled back to the $7 level, furnish a sufficient incentive for producing the new oil. There is no justification now for adding a bonus barrel.

The steps I propose now would permit us to return to the consumer price levels which prevailed last December, plus the increased costs of foreign crude since then. Today we import nearly 40 percent of our crude and will continue to do so in the months ahead.

I am hopeful that Secretary Kissinger will succeed in his efforts to reduce the world price for oil. Recent statements by Mr. Yamani of Saudi Arabia and other spokesmen of oil exporting nations to the effect that the present price risks a worldwide depression offer some hope that this will be done. If this is done, consumers will benefit not only from lower foreign crude prices but less pressure on domestic prices as well.

But while we wish the Secretary well in his travels, let us at least hold down oil profiteering at home in a rational way. We may not yet have the ability to affect foreign prices, but we have the obligation to restrain domestic prices.

In conclusion, Mr. President, I ask unanimous consent that the text of my amendment be printed in the RECORD at the conclusion of my remarks.

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

AMENDMENT NO. 1025

On page 33, line 11, insert the following new Title:

TITLE IX.—DOMESTIC PRICE ROLLBACK

"SEC. 901(a) Notwithstanding any provision of the Emergency Petroleum Allocation Act of 1973 or of the Economic Stabilization Act of 1970 or of any order or regulation under either such Act, the President shall, upon the enactment of this section, issue an order—

"(1) establishing a ceiling price level for the first sale of domestic crude oil as follows:

"(A) In the case of any amount of crude oil which exceeds the amount produced from that field during the corresponding month of the year 1972, or was heretofore subject to an exemption from price controls under Section 406 of Public Law 93–153, the ceiling price shall be equal to the free market price for that grade of crude oil at that field prevailing on December 18, 1973, or if that grade of crude oil was not produced at that field on that date, the related price for that grade of crude oil which is most similar in kind and quality at the nearest field; and

"(b) In the case of any other crude oil, the ceiling price shall be the sum of (i) the highest posted price at 6:00 AM, local time, May 15, 1973, for that grade of crude oil at that field, or if there were no posted prices at that field for that grade of crude oil on that date, the related price for that grade of crude oil which is most similar in kind and quality at the nearest field at which prices were posted on that date; and (ii) not more than $.35 per barrel; and

"(2) establishing a ceiling price for the first sale of propane:

"(A) allocating only those costs directly related to the production of propane to such gas for purposes of establishing any price for propane, and

"(B) prices for propane shall be based on the prices for propane in effect on May 15, 1973.

"(b) The order issued under subsection (a) shall provide (1) for an equitable allocation of costs among different refined petroleum products and (2) that any reduction under such order in the price of crude oil or propane gas shall, to the maximum extent practicable, be passed through to all subsequent purchasers of crude oil or products refined from crude oil or propane gas on a proportional basis.

"(c) No other price rules for the first sale of domestic crude oil other than those contained in subsection (a) of this section shall apply and no exemption from, exception to, or waiver of the requirements of this section shall be made. Any order or regulation heretofore issued establishing any price rule, exemption, exception, or waiver for the first sale of domestic crude oil, or any category or classification thereof, which is different from, or inconsistent with, the requirements of subsection (a) of this section shall be of no force and effect.

"(d) The President is authorized from time to time to adjust the ceiling price levels

established under subsection (a) to the extent that any adjustment is justified by

(1) changes in the cost of producing domestic crude oil or propane, as the case may be, or

(2) the need for an additional economic incentive to increase the supply of domestic crude oil or refined petroleum products, except that any such adjustment which results in an increase in any ceiling price shall not take effect until the expiration of the first period of 30 calendar days of continuous session of the Congress after the date of publication in the Federal Register of a description of the adjustment together with the reasons therefor as provided in subsection (e) of this section (or at such later date as may be stated in the publication), unless between the date of publication and the expiration of such period, either House of Congress passes a resolution stating in substance that such House does not favor such adjustment.

"(e) Every price proposed to be specified pursuant to subsection (d)(ii) of this section which specifies a different price or manner for determining the price for domestic crude oil provided for in subsection (a) of this section, and every price specified for (or every prescribed manner for determining the ceiling price of) residual fuel oil and refined petroleum products, shall be transmitted to the Congress and shall be accompanied by a detailed analysis setting forth—

"(1) the additional quantities of crude oil, residual fuel oil, refined petroleum products, or if any, that can reasonably be expected to be produced;

"(2) the effect, if any, upon the demand for crude oil, residual fuel oil, refined petroleum products,

"(3) the impact upon the economy as a whole, including the impact upon consumers and the profitability of and employment in industry and business;

"(4) any significant problems of enforcement or administration; and

"(5) the impact on the preservation of existing competition within the petroleum industry,

resulting from the proposed change in the price of crude oil or manner for determining the price of residual fuel oil or refined petroleum products. Notwithstanding the provisions of this subsection or subsection (a) of this section, the President may at any time act to establish ceiling prices lower than those provided if he determines that lower ceiling prices will permit the attainment of the objectives of this Act.

"(f) For the purpose of subsection (d) of this section—

"(1) continuity of session is broken only by an adjournment of Congress sine die; and

"(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period."

SEC. 2. Section 406 of Public Law 93-153 is repealed.

ELEMENTARY AND SECONDARY EDUCATION AMENDMENTS ACT—AMENDMENT

AMENDMENT NO. 1026

(Ordered to be printed, and referred to the Committee on Labor and Public Welfare.)

GUARANTEEING EDUCATIONAL OPPORTUNITY FOR MILITARY DEPENDENTS

Mr. McGOVERN. Mr. President, I send to the desk an amendment to S. 1539, the Elementary and Secondary Education Amendments Act, and ask that the text of my amendment be printed at the conclusion of my remarks.

The substitute bill for S. 1539 which the Education Subcommittee is currently considering would continue to provide assistance to heavily impacted school districts—25 percent or more category A students—at 100 percent of entitlement but would prorate funds for such districts in the event that insufficient funds were appropriated. Under the formula in the bill, such districts might suffer a 15-percent reduction in impact aid assistance.

In South Dakota, Nebraska, and some other States there are school districts which are as much as 75 percent impacted. At the Douglas school system near Ellsworth Air Force Base, S. Dak., for example, approximately 76 percent of the students live on base; of the nearly 3,400 students only about 450 are not federally connected.

The Douglas schools were forced to close last Spring because of insufficient Federal funding. They were able to reopen only because of the amendment to the supplement appropriation bill which Senator YOUNG and I offered last spring which provided funding at 100 percent of entitlement for schools with 25 percent or more "A" students. I am hopeful that the Congress will pass and the President will sign an appropriations bill providing for full funding of the impact aid program.

But I am fearful that if this does not occur, the present language of the bill the committee is considering will result in the Douglas schools having to close their doors once again. The district has already cut back on educational services and could not weather a further 15 percent cutback. For the nearly 90 percent of the students whose parents are connected with the Air Force, this would mean they would have no school to attend.

I suggest that the present language of the bill be amended to provide that districts with 25 percent or more category A students would not be subject to the proration formula. This would protect those school districts which exist essentially to educate children from military bases without upsetting the scheme of the bill.

I recognize that the committee has been faced with difficult policy choices in drafting a bill to preserve the impact aid program in the face of administration opposition. But I believe the Congress has an obligation to guarantee educational opportunities for military dependents and that this can be done in a way which is consistent with the overall purposes of the bill.

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

On page 10, between lines 4 and 5, insert the following new section:

ENTITLEMENT TO PAYMENTS WITH RESPECT TO HIGH CONCENTRATIONS OF CHILDREN WHO RESIDE ON OR WHOSE PARENTS ARE EMPLOYED ON FEDERAL PROPERTY

SEC. 203. (a) Section 3 of the Act of September 30, 1950, (P.L. 874, 81st Congress) is amended by adding at the end thereof the following new subsection:

"(f) Notwithstanding any other provision of this Act (including the provisions of section 5(c)) a local educational agency with respect to which the number of children determined for any fiscal year under subsection (a) amounts to at least twenty-five per centum of the total number of children who were in average daily attendance at the schools of such agency during such fiscal year and for whom such agency provided free public education, shall be entitled to 100 per centum of the amounts to which such agency would be otherwise entitled under this Act. The provisions of section 5(c) shall not apply to any local educational agency to which this subsection applies.".

(b) The amendment made by this section shall be effective on and after July 1, 1974.

On page 10, line 8, strike out "SEC. 203" and insert in lieu thereof "SEC. 204".

INCREASE OF PERIOD DURING WHICH BENEFITS MAY BE PAID UNDER TITLE XVI OF THE SOCIAL SECURITY ACT—AMENDMENT

AMENDMENT NO. 1027

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

Mr. HARTKE. Mr. President, I submit an amendment to the bill (H.R. 13025) to increase the period during which benefits may be paid under title XVI of the Social Security Act on the basis of presumptive disability to certain individuals who received aid, on the basis of disability, for December 1973, under a State plan approved under title XIV or XVI of that act.

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

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

AMENDMENT NO. 1027

At the end of the Act, add the following new section:

SEC. 2. (a) Section 226(c)(1) of the Social Security Act is amended by striking out "and post-hospital home health services" and inserting in lieu thereof "post-hospital home health services, and eligible drugs".

(b) Section 1811 of such Act is amended by inserting "and eligible drugs" after "related post-hospital services".

(c) Section 1812(a) of such Act is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and "; and

(3) by adding after paragraph (3) the following new paragraph:

"(4) eligible drugs.".

(d) Section 1813(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(4) The reasonable allowance, as defined in section 1823, for eligible drugs furnished an individual pursuant to any one prescription (or each renewal thereof) and purchased by such individual at any one time shall be reduced by an amount equal to the applicable prescription copayment obligation which shall be $1."

(e)(1) Section 1814(a) of the Social Security Act is amended—

(A) by striking out "and" at the end of paragraph (6);

(B) by striking out the period at the end of paragraph (7) and inserting in lieu thereof "; and"; and

(C) by inserting after paragraph (7) the following new paragraph:

"(8) with respect to drugs or biologicals furnished pursuant to and requiring (except for insulin) a physician's prescription, such drugs or biologicals are eligible drugs as defined in section 1861(t) and the participating pharmacy [as defined in section 1861(dd)] has such prescription in its possession,

or some other record (in the case of insulin) that is satisfactory to the Secretary."

(2) Section 1814(b) of such Act is amended—

(A) by inserting "(1)" after "(b)".

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B) respectively,

(C) by redesignating in subparagraph (A), as redesignated, clauses (A) and (B) as clauses (i) and (ii);

(D) by inserting "(other than a pharmacy)" immediately after "provider of services", and

(E) by adding at the end thereof the following new paragraph:

"(2) The amount paid to any participating pharmacy which is a provider of services with respect to eligible drugs for which payment may be made under this part shall, subject to the provisions of section 1813, be the reasonable allowance (as defined in section 1823) with respect to such drugs."

(f) Section 1814 of such Act is amended by adding at the end thereof the following new subsection:

"LIMITATION OF PAYMENT FOR ELIGIBLE DRUGS

"(j) Payment may be made under this part for eligible drugs only when such drugs are dispensed by a participating pharmacy; except that payment under this part may be made for eligible drugs dispensed by a physician where the Secretary determines, in accordance with regulations, that such eligible drugs were required in an emergency or that there was no participating pharmacy available in the community, in which case the physician (under regulations prescribed by the Secretary) shall be regarded as a participating pharmacy for purposes of this part with respect to the dispensing of such eligible drugs."

(g) Part A of title XVIII of such Act is further amended by adding after section 1819 the following new sections:

"MEDICARE FORMULARY COMMITTEE

"SEC. 1820. (a) (1) There is hereby established, within the Department of Health, Education and Welfare, a Medicare Formulary Committee (hereinafter referred to as the 'Committee'), a majority of whose members shall be physicians and which shall consist of the Commissioner of Food and Drugs and of four individuals (not otherwise in the employ of the Federal Government) who do not have a direct or indirect financial interest in the composition of the Formulary established under this section and who are of recognized professional standing and distinction in the fields of medicine, pharmacology, or pharmacy, to be appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The Chairman of the Committee shall be elected annually from the appointed members thereof, by majority vote of the members of the Committee.

"(2) Each appointed member of the Committee shall hold office for a term of five years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and except that the terms of office of the members first taking office shall expire, as designated by the Secretary at the time of appointment, one at the end of each of the first five years. A member shall not be eligible to serve continuously for more than two terms.

"(b) Appointed members of the Committee, while attending meetings or conferences thereof or otherwise serving on business of the Committee, shall be entitled to receive compensation at rates fixed by the Secretary (but not in excess of the daily rate paid under GS–18 of the General Schedule under section 5332 of title 5, United States Code), including travel time, and while so serving away from their homes or regular places of business they may be allowed travel expenses, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(c) (1) The Committee is authorized, with the approval of the Secretary, to engage or contract for such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Committee such secretarial, clerical, and other assistance as the Formulary Committee may require to carry out its functions.

"(2) The Secretary shall furnish to the Committee such office space, materials, and equipment as may be necessary for the Formulary Committee to carry out its functions.

"MEDICARE FORMULARY

"SEC. 1821. (a) (1) The Committee shall compile, publish, and make available a Medicare Formulary (hereinafter in this title referred to as the 'Formulary').

"(2) The Committee shall periodically revise the Formulary and the listing of drugs so as to maintain currency in the contents thereof.

"(b) (1) The Formulary shall contain an alphabetically arranged listing, by established name, of those drug entities within the following therapeutic categories:

"Adrenocorticoids
"Anti-anginals
"Anti-arrhythmics
"Anti-coagulants
"Anti-convulsants (excluding phenobarbital)
"Anti-hypertensives
"Anti-neoplastics
"Anti-Parkinsonism agents
"Anti-rheumatics
"Bronchodilators
"Cardiotonics
"Cholinesterase inhibitors
"Diuretics
"Gout suppressants
"Hypoglycemics
"Miotics
"Thyroid hormones
"Tuberculostatics

which the Committee decides are necessary for individuals using such drugs. The Committee shall exclude from the Formulary any drug entities (or dosage forms and strengths thereof) which the Committee decides are not necessary for proper patient care, taking into account other drugs entities (or dosage forms and strengths thereof) which are included in the Formulary.

"(2) Such listing shall include the specific dosage forms and strengths of each drug entity (included in the Formulary in accordance with paragraph (1)) which the Committee decides are necessary for individuals using such drugs.

"(3) Such listing shall include the prices at which the products (in the same dosage form and strength) of such drug entities are generally sold by the suppliers thereof and the limit applicable to such prices under section 1823(b)(1) for purposes of determining the reasonable allowance.

"(4) The Committee may also include in the Formulary, either as a separate part (or parts) thereof or as a supplement (or supplements) thereto, any or all of the following information:

"(A) A supplemental list or lists, arranged by diagnostic, prophylactic, therapeutic, or other classifications of the drug entities (and dosage forms and strengths thereof) included in the listing referred to in paragraph (1).

"(B) The proprietary names under which products of a drug entity listed in the Formulary by established name (and dosage form and strength) are sold and the names of each supplier thereof.

"(C) Any other information with respect to eligible drug entities which in the judgment of the Committee would be useful in carrying out the purposes of this part.

"(c) In considering whether a particular drug entity (or strength or dosage form thereof) shall be included in or excluded from the Formulary, the Committee is authorized to obtain (upon request therefor) any record pertaining to the characteristics of such drug entity which is available to any other department, agency or instrumentality of the Federal Government, and to request suppliers or manufacturers of drugs and other knowledgeable persons or organizations to make available to the Committee information relating to such drug. If any such record or information (or any information contained in such record) is of a confidential nature, the Committee shall respect the confidentiality of such record or information and shall limit its usage thereof to the proper exercise of its authority.

"(d) (1) The Committee shall establish such procedures as it determines to be necessary in its evaluation of the appropriateness of the inclusion in or exclusion from the Formulary, of any drug entity (or dosage form or strength thereof). For purposes of inclusion in or exclusion from the Formulary the principal factors in the determination of the Committee shall be:

"(A) the factor of clinical equivalence in the case of the same dosage forms in the same strengths of the same drug entity, and

"(B) the factor of relative therapeutic value in the case of similar or dissimilar drug entities in the same therapeutic category.

"(2) The Committee, prior to making a final decision to remove from listing in the Formulary any drug entity (or dosage forms or strengths thereof) which is included therein, shall afford a reasonable opportunity for a formal or informal hearing on the matter to any person engaged in manufacturing, preparing, compounding, or processing such drug entity who shows reasonable ground for such a hearing.

"(3) Any person engaged in the manufacture, preparation, compounding, or processing of any drug entity (or dosage forms or strengths thereof) not included in the Formulary which such person believes to possess the requisite qualities to entitle such drug to be included in the Formulary pursuant to subsection (b), may petition for inclusion of such drug entity and, if such petition is denied by the Formulary Committee, shall upon request therefor, showing reasonable grounds for a hearing, be afforded a formal or informal hearing on the matter in accordance with rules and procedures.

"LIMITATIONS ON MEDICARE PAYMENT FOR CHARGES OF PROVIDERS OF SERVICES

"SEC. 1822. (a) Any provider of services as defined in section 1861(u), whose services are otherwise reimbursable, under any program under this Act in which there is Federal financial participation on the basis of 'reasonable cost', shall not be entitled to a professional fee or dispensing charge or reasonable billing allowance as determined pursuant to this part.

"(b) A fee, charge, or billing allowance shall not be payable under this section with respect to any drug entity that (as determined in accordance with regulations) is furnished as an incident to a physician's professional service, and is of a kind commonly furnished in physicians' offices and commonly either rendered without charge or included in the physicians' bills.

"REASONABLE ALLOWANCE FOR ELIGIBLE DRUGS

"SEC. 1823. (a) For purposes of this part, the term 'reasonable allowance' when used in reference to an eligible drug (as defined in subsection (h) of this section) means the following:

"(1) when used with respect to a prescription legend drug entity, in a given dosage form and strength, such term means the lesser of—

"(A) an amount equal to the customary charge at which the participating pharmacy

sells or offers such drug entity, in a given dosage form and strength, to the general public, or

"(B) the price determined by the Secretary, in accordance with subsection (b) of this section, plus the professional fee or dispensing charges determined in accordance with subsection (c) of this section.

"(2) When used with respect to insulin such term means the charge not in excess of the reasonable customary price at which the participating pharmacy offers or sells the product to the general public, plus a reasonable billing allowance.

"(b)(1) For purposes of establishing the reasonable allowance in accordance with subsection (a) the price shall be (A) in the case of a drug entity (in any given dosage form and strength) available from and sold by only one supplier, the price at which such drug entity is generally sold (to establishments dispensing drugs), and (B) in any case in which a drug entity (in any given dosage form and strength) is available and sold by more than one supplier, only each of the lower prices at which the products of such drug entity are generally sold (and such lower prices shall consist of only those prices of different suppliers sufficient to assure actual and adequate availability of the drug entity, in a given dosage form and strength, at such prices in a region).

"(2) If a particular drug entity (in a given dosage form and strength) in the Formulary is available from more than one supplier, and the product of such drug entity as available from one supplier possesses demonstrated distinct therapeutic advantages over other products of such drug entity as determined by the Committee on the basis of its scientific and professional appraisal of information available to it, including information and other evidence furnished to it by the supplier of such drug entity, then the reasonable allowance for such supplier's drug product shall be based upon the price at which it is generally sold to establishments dispensing drugs.

"(3) If the prescriber in his handwritten order, has specifically designated a particular product of a drug entity (and dosage form and strength) included in the Formulary by its established name together with the name of the supplier of the final dosage form thereof, the reasonable allowance for such drug product shall be based upon the price at which it is generally sold to establishments dispensing drugs.

"(c)(1) For the purpose of establishing the reasonable allowance (in accordance with subsection (a)), a participating pharmacy shall, in the form and manner prescribed by the Secretary, file with the Secretary, at such times as he shall specify, a statement of its professional fee or other dispensing charges.

"(2) A participating pharmacy, which has agreed with the Secretary to serve as a provider of services under this part, shall, except for subsection (a)(1)(A), be reimbursed, in addition to any price provided for in subsection (b), the amount of the fee or charges filed in paragraph (1), except that no fee or charges shall exceed the highest fee or charges filed by 75 per centum of participating pharmacies (with such pharmacies classified on the basis of (A) lesser dollar volume or prescriptions and (B) all others) in a census region which were customarily charged to the general public as of June 1, 1972. Such prevailing professional fees or dispensing charges may be modified by the Secretary in accordance with criteria and types of data comparable to those applicable to recognition of increases in reasonable charges for services under section 1842.

"(3) A participating pharmacy shall agree to certify that, whenever such pharmacy is required to submit its usual professional fee or dispensing charge for a prescription, such charge does not exceed its customary charge."

(h) Section 1861(t) of such Act is amended—

(1) by inserting ", or as are approved by the Formulary Committee" after "for use in such hospital"; and

(2) by adding at the end thereof the following new sentence: "The term 'eligible drug' means a drug or biological which (A) can be self-administered, (B) requires a physician's prescription (except for insulin), (C) is prescribed when the individual requiring such drug is not an inpatient in a hospital or extended care facility, during a period of covered care, (D) is included by strength and dosage forms among the drugs and biologicals approved by the Formulary Committee, (E) is dispensed (except as provided by section 1814(j), by a pharmacist from a participating pharmacy, and (F) is dispensed in quantities consistent with proper medical practices and reasonable professional discretion."

(i) Section 1861(u) of such Acts is further amended by striking out "or home health agency" and inserting in lieu thereof "home health agency, pharmacy."

(j) Section 1861 of such Act is further amended by adding at the end thereof the following new subsection:

"Participating Pharmacy

"(aa) The term 'participating pharmacy' means a pharmacy, or other establishment (including the outpatient department of a hospital) providing pharmaceutical services, (1) which is licensed as such under the laws of the State (where such State requires such licensure) or which is otherwise lawfully providing pharmaceutical services in which such drugs are provided or otherwise dispensed in accordance with this title, (2) which has agreed with the Secretary to act as a provider of services in accordance with the requirements of this section, and which complies with such other requirements as may be established by the Secretary in regulations to assure proper, economical, and efficient administration of this title, (3) which has agreed to submit, at such frequency and in such form as may be prescribed in regulations, bills for amounts payable under this title for eligible drugs furnished under part A of this title, and (4) which has agreed not to charge beneficiaries under this title any amounts in excess of those allowable under this title except as is provided under section 1813(a)(4), and except for so much of the charge for a prescription (in the case of a drug product prescribed by a physician, of a drug entity in a strength and dosage form included in the Formulary where the price at which such product is sold by the supplier thereof exceeds the reasonable allowance) as is in excess of the reasonable allowance established for such drug entity in accordance with section 1823."

(k)(1) The first sentence of section 1866(a)(2)(A) of such Act is amended by striking out "and; (ii)" and inserting in lieu thereof the following: "(ii) the amount of any copayment obligation and excess above the reasonable allowance consistent with section 1361(aa)(4), and (iii)".

(l) Notwithstanding any other provision of this Act, the amendments made by this section shall apply with respect to eligible drugs furnished on and after the first day of July 1974.

ADDITIONAL COSPONSORS OF AMENDMENT

AMENDMENT NO. 1004

At the request of Mr. KENNEDY, the Senator from South Dakota (Mr. ABOUREZK), the Senator from Kansas (Mr. DOLE), and the Senator from Kentucky (Mr. HUDDLESTON) were added as cosponsors of amendment No. 1004, to H.R. 13025.

NOTICE OF FIELD HEARINGS ON FEDERAL COAL LEASING PROGRAM

Mr. METCALF. Mr. President, as I announced on February 25 and February 28, the Subcommitte on Minerals, Materials, and Fuels of the Committee on Interior and Insular Affairs has scheduled a series of oversight hearings on the Department of the Interior's future leasing program for the Federal coal resources of the northern Great Plains.

Representatives of the Interior and Agriculture Departments and the Environmental Protection Agency have been scheduled to testify on March 13. The administration witnesses have been asked to respond to questions submitted to them by the subcommittee. These questions are printed in the CONGRESSIONAL RECORD of February 25, 1974, on page 4042.

On April 1 and 2, representatives of the coal industry, national environmental and citizen groups, and other interested persons will testify. We have asked these witnesses not only to express their views about the Federal coal leasing policy but also to comment on the questions which the subcommittee asked the administration and the administration's answers.

Field hearings have been scheduled in Casper, Wyo., and Billings, Mont., for April 18 and 20, respectively. On April 19, the subcommittee will view a number of present and proposed surface mining operations.

The April 18 hearing will be held in the Wyoming Room of the Ramada Inn, 123 West E Street in Casper. The April 20 hearing will be held in the Federal courtroom, fifth floor, Federal Building, in Billings. The hearings will begin at 9 a.m. on each day.

These field hearings are very important. The subcommittee wants to know the views of the people who will be most directly affected by the development of these coal resources. We wish to allow the maximum number of witnesses to testify. Thus, while all written testimony will be printed in the hearing record in its entirety, oral presentations will be limited to 10 minutes.

Persons who wish to testify at the field hearings should either call or write Mike Harvey of the committee staff. The telephone number is 202–225–1076. The address is Interior and Insular Affairs Committee, U.S. Senate, 3106 Dirksen Senate Office Building, Washington, D.C. 20510.

NOTICE CONCERNING NOMINATION BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. ROBERT C. BYRD. Mr. President, the following nomination has been referred to and is now pending before the Committee on the Judiciary:

Stanley B. Miller, of Indiana, to be U.S. attorney for the southern district of Indiana for the term of 4 years (reappointment).

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in this nomination to file with the committee, in writing, on or before Wednesday, March 20, 1974, any representations or objections they may wish to present concerning the above

nomination, with a further statement whether it is their intention to appear at any hearing which may be scheduled.

NOTICE OF HEARINGS ON S. 1463, THE PAROLE COMMISSION ACT

Mr. BURDICK. Mr. President, as chairman of the Judiciary Committee's Subcommittee on National Penitentiaries, I wish to announce hearings for the consideration of S. 1463, the Parole Commission Act, beginning at 10 a.m. on March 20, 1974, in room 6202 of the Dirksen Office Building.

This legislation is designed to provide the necessary legislative authorization for reorganization of the structure of the Federal parole and authority, and changes in many of the parole procedures. This legislation would abolish the present U.S. Board of Parole and create in its place a U.S. Parole Commission, moving the decisionmaking structure from one central office to regions closer to where the released criminal offenders will take up residence. The paroling authority is of crucial importance to the criminal justice system because the Parole Board controls an important element of the question as to when many offenders will be released from incarceration.

The Subcommittee on National Penitentiaries has previously held 4 days of hearings on this legislation, and has worked closely for more than 20 months with Members of Congress, the present U.S. Board of Parole, and interested groups.

Any person who wishes to testify or submit a statement for inclusion in the record should communicate as soon as possible with the Subcommittee on National Penitentiaries, room 6306, extension 225, 8994.

NOTICE OF NOMINATION HEARING

Mr. WILLIAMS. Mr. President, I wish to announce that the Committee on Labor and Public Welfare has scheduled a hearing on the nomination of Abraham Weiss, of Maryland, to be an Assistant Secretary of Labor, on Tuesday, March 19, at 2 p.m., in room 4232, Dirksen Senate Office Building.

ANNOUNCEMENT OF OPEN HEARINGS BY SUBCOMMITTEE ON PARKS AND RECREATION

Mr. JACKSON. Mr. President, I wish to announce for the information of the Senate and the public that open hearings have been scheduled by the Subcommittee on Parks and Recreation at 9 a.m. on April 8, 1974, at the Boston North Hampton Junior High School and Elementary School, 1930 Bronson Avenue, Peninsula, Ohio 44264, on the following bill:

S. 1862, to provide for the establishment of the Cuyahoga Valley National Historic Park and Recreation Area.

ANNOUNCEMENT OF OPEN HEARINGS BY SUBCOMMITTEE ON PARKS AND RECREATION

Mr. JACKSON. Mr. President, I wish to announce for the information of the Senate and the public that open hearings have been scheduled by the Subcommittee on Parks and Recreation at 10 a.m. on March 21 and 22, 1974, in room 3110, Dirksen Senate Office Building, on the following bills:

S. 334, to authorize the acquisition of the Big Cypress National Fresh Water Reserve in the State of Florida;

S. 783, to establish the Everglades-Big Cypress National Recreation Area in the State of Florida;

S. 920, to authorize the acquisition of the Big Cypress National Fresh Water Reserve in the State of Florida; and

H.R. 10088, to establish the Big Cypress National Preserve in the State of Florida.

NOTICE OF HEARINGS BEFORE THE SUBCOMMITTEE ON INDIAN AFFAIRS

Mr. JACKSON. Mr. President, I wish to inform the Members of the Senate of two hearings scheduled before the Subcommittee on Indian Affairs.

The first hearing will be held on March 25 on the subject of Indian water rights. Because of the importance of this critical issue to Southwest Indian tribes, the subcommittee considers it timely and essential that the affected tribal group be provided an opportunity to state their case through an official hearing record. This hearing is open to the public and will commence at 9 a.m. in room 3110, Dirksen Senate Office Building.

The second hearing will be held on March 26 to consider S. 3007, Indian Claims Commission authorization. Testimony will be taken from the Chairman and members of the Commission and representatives from interested Indian organizations. This hearing is open to the public and will commence at 10 a.m. in room 3110, Dirksen Senate Office Building.

ADDITIONAL STATEMENTS

HANDGUN LEGISLATION

Mr. GOLDWATER. Mr. President, in the State of Arizona the whole idea of relating handgun control to the rate of crime is regarded as unrealistic and not a little ridiculous.

There is in my State also a deep feeling that any person has a right to defend himself against assault by another individual and that this right extends to the possession of adequate weapons to defend his home and his family.

This attitude on the part of the people of Arizona was translated into a resolution by the senate of the State of Arizona on March 4. At that time, the Senate adopted, by a vote of 26 to 4, a memorial urging the President and the Congress to oppose any handgun control proposals for Federal legislation. The memorial pointed out that there are now adequate laws on the books to punish criminals for the misuse of firearms. I ask unanimous consent that this memorial be printed in the RECORD.

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

SENATE MEMORIAL 1001

A memorial urging the President and the Congress of the United States to oppose any handgun control proposals for Federal legislation.

To the President and the Congress of the United States of America:

Your memorialist respectfully represents:

Whereas, defense of one's person against assault by another is a natural right recognized by every generation; and

Whereas, every individual's right to the possession of adequate weapons for his defense or the defense of his home and family is essential to the protection of this natural right; and

Whereas, the Bill of Rights of the Constitution of the United States and Article 2, Section 26 of the Constitution of the State of Arizona guarantee to its citizens the right to keep and bear arms; and

Whereas, the handgun is the most effective weapon for self-defense, and its mere possession frequently is sufficient to repel an invader or attacker; and

Whereas, crime statistics only cover the use of firearms in crimes, and do not disclose the many instances where the lawful possession or use of firearms for defense have prevented crimes; and

Whereas, such legislation would deny a citizen the right to obtain weapons for self-defense, but would not prevent the acquisition of weapons by criminals or their misuse by criminals; and

Whereas, there are adequate laws now on the books to punish criminals for the misuse of firearms in crimes if properly enforced.

Wherefore your memorialist, the Senate of the State of Arizona, prays:

1. That the President and the Congress of the United States take those steps necessary for the proper enforcement and judicial punishment of criminals, rather than consider legislation to curtail the right of honest citizens to acquire weapons for sport or self-defense.

2. That the Secretary of State of the State of Arizona transmit a copy of this Memorial to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the Arizona Congressional delegation.

GROUNDBREAKING CEREMONIES CONDUCTED FOR NATIONAL VISITOR CENTER—SECRETARY MORTON SPEAKS

Mr. RANDOLPH. Mr. President, this morning I was privileged to attend the groundbreaking ceremonies for the National Visitor Center. This was a noteworthy occasion, for it marked the beginning of a project that will add a new dimension of service to one of our city's historic buildings. When the national bicentennial celebration takes place in 1976, venerable Union Station will also house the Visitor Center as the gateway to Washington for millions of visitors.

I have personal and somewhat nostalgic interest in seeing an expanded role of service for Union Station. This monumental terminal was constructed in 1906. As a small boy, I received my first glimpse of Washington from Union Station when I visited here with my father, after riding on a Baltimore & Ohio train from Salem, W. Va.

Mr. President, the development of the National Visitor Center was first approved by the Congress as Public Law 90-264, enacted March 12, 1968. Federal funds were authorized last year to initiate construction.

The ceremony today was attended by several hundred people. Participants in the program represented a variety of interests in Washington, and their presence was perhaps symbolic of the broad impact the Visitor Center will have on many aspects of the city's life. Both the public and private sectors were represented, reflecting the joint government-business nature of the worthwhile enterprise.

It was proper that the presiding official was Ronald H. Walker, Director of the National Park Service, for it is his agency which will have responsibility for operating the Center.

John A. Nevius, Chairman of the District of Columbia City Council, discussed the impact of the Visitor Center on the city. Hays T. Watkins, chairman of the board of the Chessie System, spoke on behalf of the owners of Union Station.

The spokesman for the Congress was Representative KENNETH J. GRAY, chairman of the House Subcommittee on Public Buildings and Grounds, an early supporter of the project. He observed that the Visitor Center will bring together the past and the future. Construction of the Visitor Center, he said, will not only preserve a historic landmark but introduce visitors to the National Capital.

Representative GRAY noted:

At the present time, they see our backs instead of our faces. The center will make all people feel welcome when they come to Washington.

Henri F. Rush, Jr., Deputy Federal Railroad Administrator, spoke for the Department of Transportation which will coordinate the development of a multimodal transportation center at the Visitor Center.

Anne L. Armstrong, counselor to President Nixon, presented a message from our Chief Executive. She also observed, in her own remarks, that the bicentennial symbol of red, white, and blue loops signify heritage, festival, and horizon and that this theme is carried through in the purposes of the Visitor Center.

Secretary of the Interior Rogers C. B. Morton spoke of his department's involvement in the Center and of plans for operating this unique facility.

Mr. President, I was joined at this observance by Representative ROBERT JONES of Alabama, a senior member of the House Public Works Committee and a strong advocate of the Visitor Center. Also attending was the senior Senator from South Carolina, the Honorable STROM THURMOND.

Mr. President, I ask unanimous consent that the text of Secretary Morton's address and excerpts from the remarks of Mr. Watkins and Mr. Rush be printed in the RECORD.

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

ADDRESS BY HON. ROGERS C. B. MORTON

This morning we are participating in an historic event. A groundbreaking where no ground will be broken . . . a start of construction in which no construction is yet visible. But nonetheless, we are marking an occasion that will be long-remembered as the beginning of our country's National Visitor Center.

Plans for the National Visitor Center are great, as befits a great country—great in spirit, great in strength, great in its welcome to all who come to these shores and to this Nation's Capital.

As Secretary of the Interior, I am deeply concerned with all parts of this country. Thus, I am especially pleased that one landmark of the Visitor Center will be aptly named, the "Discover America Hall of States." In this Hall, a visitor will have the opportunity to "discover," or rediscover, each of our 50 States and their scenic beauties, their historic and cultural heritage and all the unique highlights which make each of them beautiful and great in their own magnificent ways.

Here in the Hall of States, citizens from the United States and our friends from abroad can see in a capsule what America is about.

In another area of the Center, the National Park Service will pay special tribute to our Nation's Bicentennial with a 200th birthday salute. Special exhibits, films and other visual and audio presentations will tell visitors about 23 National Park Service sites designated as our nation's Bicentennial Parks. These parks are each linked with the American Revolution to tell a story of compelling drama and enduring significance. Another attraction will be the representation of America's cultural, scenic, historic and recreational areas that so vividly are a part of our past, present and future.

In a phrase, the National Visitor Center will become a showcase for all America.

To help tell these stories, multi-lingual attendants will be here, giving assistance to all visitors, to help all people in ways to better see, appreciate and understand this great country.

While the National Visitor Center is expected to become a focal point for visitors who want to see America, it must be remembered that neither this Center nor the Bicentennial Celebration belongs to Washington alone. They belong to all Americans and will open new understanding of the United States.

While this center will speak of the Lincoln Memorial, the Jefferson Memorial, and of Mount Vernon and Monticello, it will also speak of the Golden Gate in San Francisco and of Virginia's Booker T. Washington National Monument, of Indian pueblos and of cities, towns, rivers, lakes and wheatfields . . . of all that makes America what it is today—the greatest nation in the world and the greatest hope of mankind.

The National Visitor Center is, indeed, the first of its kind in the world. By all indications, it may not be the last.

Already, other nations have expressed interest in the concept of the center and it is quite probable that here, at Union Station, may be the beginnings for a series of events that could lead to similar visitor centers around the world.

Indeed, we are proud that this center will be administered by the National Park Service. Just as a century ago, when the United States established the world's first national park at Yellowstone, today we are "breaking ground" for the nation's first—and the world's first—National Visitor Center, which by its name symbolizes and expresses our country's welcome to all people.

REMARKS BY HAYS T. WATKINS

Chessie System is proud to be participating, through its Baltimore and Ohio, the nation's first common-carrier railroad, in the creation of the National Visitor Center. It is a noteworthy example of cooperation between Government and private industry.

Chessie System's sole responsibility for the private financing and the private construction of the National Visitor Center may surprise those who do not know that the great majority of the nation's railroads are still arranging their financing privately.

Sixty major railroads move the bulk of the nation's freight tonnage. Last year they carried more ton-miles of freight than they carried in any previous year in their history.

These sixty railroads, setting aside only those that are in bankruptcy, are doing their important job without Government loans. They are paying their bills. They are paying their taxes. They are providing a return to their shareowners and the owners of their debt securities.

Last year, the United States railroads collectively operated efficiently enough to earn a profit of over $550 million. That compared with railroad deficits on nationalized systems in foreign nations from the 100 million-dollar range up to the Japanese Railway's estimated 1975 deficit of over one billion dollars.

One year after the nation's bicentennial the Baltimore and Ohio Railroad will celebrate its 150th anniversary. The nation's railroad industry is, indeed, an old one. In the main, the railroad industry, given a fair regulatory climate, will continue vigorous and progressive, no less so than the nation.

REMARKS BY HENRI F. RUSH, JR.

It is my very great pleasure to appear here today and bring you the greetings of the Secretary of Transportation, Claude S. Brinegar on this most auspicious occasion.

This is an historic first step toward a more cooperative approach among surface common carriers of passengers. Cooperation among the various modes of transportation is a matter of constant concern at the Department. As Secretary Brinegar put it when he testified just over a week ago before the House Appropriations Committee, Subcommittee on Transportation, with respect to the Department's continuing efforts to develop a National Transportation Policy:

A major cause of inefficiency in both passenger and freight transportation is the lack of close coordination among the various modes. This problem is compound by the historical development of separate systems of terminals by each of the modes. A priority program is needed to lift unneeded restraints to intermodal cooperation and to encourage the joint use of terminal and other facilities by all transportation modes.

I would only add to that, that the history of the relationship between surface modes has too frequently been marred by essentially negative competitive warfare. I would say to those of you here representing those modes that your common market is the auto driver and not each others passengers. While it is true you can expect help over the short term from the energy problems, it is also true that major breakthroughs will require the sort of affirmative cooperation demonstrated by the creation of the joint intermodal passenger terminal which is such an integral part of this entire Visitor Center complex.

In closing, let me say, without resorting to hyperbole, that if it cannot be fairly said that the eyes of the Nation are upon this project, at least it is clear that the eyes of Congress are upon it. How could it be otherwise with an undertaking of this magnitude right upon the doorstep of the buildings which house the Congress. Thank you.

THE FOOD STAMP PROGRAM IN PUERTO RICO

Mr. BROOKE. Mr. President, I was appalled to learn recently that the Department of Agriculture and the present government of the Commonwealth of Puerto Rico have agreed to a food stamp allocation program which clearly discriminates against the needy people of Puerto Rico and in addition seems to be in violation of Federal law.

In 1973, the Congress added an amendment to the Food Stamp Act which made the program mandatory for every political subdivision of the United States, Puerto Rico, and the U.S. territories. Except in the most extraordinary circumstances where it might be administratively impossible, the program was to be implemented in every jurisdiction by June 30, 1974.

However, under a plan submitted to the Department of Agriculture by the government of the Commonwealth of Puerto Rico, the food stamp program will be implemented on a pilot basis only, in four Puerto Rican cities, during the next year. Oddly enough, the city of San Juan, with a population of nearly a million persons and an extremely high unemployment rate, is the fourth and last city to receive the program under the Commonwealth's plan. It will not be operational in the city of San Juan until March of 1975.

Yet even when the program does become operational, it will not necessarily benefit the people who need it and are eligible for it. The cost of living in Puerto Rico, and particularly in San Juan, is among the highest of any region in the world. It was with this fact in mind that the Congress specified in the 1973 amendments that under no circumstances should the eligiblity schedule for Puerto Rico or any of the territories exceed the standard used in the 50 States. We certainly did not expect, however, that the Department of Agriculture would devise, and the Commonwealth Government would accept a standard which leaves out many thousands of people and makes the people accepted for the program eligible for considerably lower benefits than their mainland compatriots.

Under the proposed plan, instead of basing eligibility on the same standards as apply in continental United States, the Department of Agriculture has devised a formula which anticipates that the diet of the people of Puerto Rico will normally include cheaper and less nutritionally adequate foods than those used by persons on the mainland. Therefore, the coupon allotment plan provides only $122 per month to a family of four, instead of the $142 for which a mainland family would be eligible. In addition, the Department has apparently accepted such lower income guidelines as a basis for determining eligibility for assistance in the first place.

Mr. President, this is not what we intended when we adopted the Food Stamp Act Amendments of 1973. The present plans can result in continuing hardship for many deserving families, and the denial to many otherwise eligible families of the benefits to which we intended that they be entitled under an act of Congress. This situation is untenable, and I urge the appropriate authorities to reconsider their actions, and to provide adequate food stamp benefits to the people of Puerto Rico as soon as possible.

CONGRESS, THE MEDIA, AND REFORM

Mr. HUMPHREY. Mr. President, there has been considerable discussion lately about reforming Congress. We are soon to consider a bill to reform congressional budgetary procedures. The Joint Committee on Congressional Operations has been conducting hearings on "Congress and the Mass Media." And recent public opinion polls, revealing that Congress has slumped to new low ebbs of popular esteem, have prompted numerous pundits both within and outside Congress to try to explain why.

An excellent commentary on the public's sagging estimation of congressional performance and what might be done about it appeared as an editorial in the Washington Star-News of March 9.

Mr. President, the editorial observes, correctly, that Congress has probably been more deserving of low ratings by the public in the past than it is today. But because of a less-developed state of the art of communications, the public lacked the awareness it has today of some aspects of congressional behavior.

The editorial also is right in observing that Congress, by its nature, as the Nation's "great arguing forum" made up of 535 Members of varying natures and constituencies, can never by itself run the country.

I fully agree with the editorial writer's conclusion that these circumstances only provide greater reason why this institution must reform and modernize itself. We must shape up. We must bring ourselves into the second half of the 20th century.

Reform of our system of budgetmaking is described in the editorial as an elementary reform that would represent a start toward demonstrating responsibility and winning back the confidence of the American people.

I agree, but I would carry the argument further.

I have long advocated television and radio news coverage of the proceedings on the Senate and House floors. The editorial suggests that this might only result in "much more public boredom on a massive scale."

I submit that boredom is a low price for the citizens of an enlightened, democratic society to pay for their freedom.

But they would not have to be bored. They might well be enlightened. But only if we did our part. We have in our hands the power to determine whether we look good or bad when the folks back home tune us in.

I am not, however, talking about mere cosmetic adornment. I am talking about fundamental changes that will make us look good, because our operations would, in fact, be of the highest competence and efficiency.

Bringing TV and radio into our chambers would be a partial reform. Building new sense and order and perspective into our budgetary processes would be another partial, though sizable reform.

Both of these would make us better. But both would serve to demonstrate even more graphically the deep need we have for other reforms.

Television and radio in the chamber could help improve the quality of congressional debates and stimulate the expediting of legislative business.

Budget reform would cast a spotlight of its own. It would show us and the public the need for other reforms, including long overdue changes in our committee structures and in our methods of scheduling our work.

If we adopt a budget reform measure that creates committees on the budget in each House of Congress and assigns new timetables and new responsibilities to the other standing committees, then we will quickly see the need to consider using computers to schedule our meetings, and the need to restructure the committee system itself to make it more responsive, efficient, and effective.

Mr. President, over the past months I have offered several legislative proposals along these lines. And last month I introduced omnibus legislation, S. 2992, the Modern Congress Act.

I was privileged to testify recently at a hearing of the Joint Committee on Congressional Operations, on the subject of "Congress and Mass Communications."

In my remarks I urged opening the House and Senate floors to radio and television news coverage. I proposed a privately sponsored program to educate the radio and newspaper reporters and editors from the smaller communities around the Nation about the functioning of Congress, and I suggested making Senators and Representatives more readily accessible to them.

Provisions of the Modern Congress Act which bore directly on the subject under consideration by the committee include:

The establishment by legislative mandate of an annual "state of the Congress" message by the leadership of the two Houses.

Creation of an Office of Congressional Communications, to provide communications and information services for Members and to improve congressional ability to communicate with the public, through the news media.

The opening of committee and subcommittee meetings to the full scrutiny of the press and public.

The Modern Congress Act also would:

Create a Citizens' Committee To Study Congress, which would recommend reforms during a 2-year period.

Authorize a study by the Joint Committee on Congressional Operations of the committee structure of the Senate, to seek jurisdictional reforms and improvements in the Senate's use of personnel and modern technological tools.

Establish an Office of Congressional Counsel, to provide legal services to Congress and its Members including advice on pending legislation and court-related legal activities.

Strengthen the office of the Comptroller General to enforce the will of Congress in the expenditure of public funds.

Implement fiscal and budgetary reforms, including establishment of a Congressional Office of Budget Analysis and Program Evaluation, establishment of budget ceilings at the beginning of each year's budget deliberations, and other reforms including provisions for more openness in the budget process.

Establish a Legislative Review Subcommittee in each standing committee of the Senate, to perform oversight and

related functions dealing with the implementation of previously adopted acts of Congress.

Specifically instruct the Citizens Committee To Study Congress tc undertake a study of the possible use of computers in scheduling Senate work, including meetings of committees and subcommittees.

Create a Joint Committee on National Security, to conduct continuing review and evaluation of the many portions of public policy known as "national security."

Mr. President, I hope that my colleagues have been able to familiarize themselves with the details of this bill. I am pleased that the distinguished Senator from Tennessee (Mr. BROCK) and the distinguished Senator from Colorado (Mr. HASKELL) have already joined in sponsoring this legislation. In addition, Representative WAYNE OWENS, of Utah has introduced a modified version of the bill in the House of Representatives.

Mr. President, I ask unanimous consent that the Washington Star-News editorial, entitled "Congress Reputation," and the text of my prepared statement before the Joint Committee on Congressional Operations be printed in the RECORD.

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

CONGRESS REPUTATION

About the only thing that gives Republicans any satisfaction these days—and this is very small succor at best—is that Congress rates lower than President Nixon in some poll showings. "I can assure you the President will never be as low as 21 percent in the polls," GOP National Chairman George Bush told a cheering crowd at the Louisiana Republican Convention the other day.

Whether Bush is walking on thin ice there, we have no idea, but his theme is familiar wherever Republicans gather. Yes, the President's popularity is mighty low, "yet the respect and feeling that people have for the Congress is even lower." The 21 percent referred to is what one recent survey shows for Congress (though others are more generous), while Mr. Nixon hovers about five points higher. Aside from the obvious fact that a large number of Republicans serve in Congress along with the Democratic majority, and presumably contribute to the rating, there are reasons why no one of any partisan stripe should take cheer from such comparisons. It is chilling commentary on the times that central institutions of government vie on the basis of which is least unpopular, all having been kicked into the cellar of public esteem.

Congress perhaps is the most pitiable, since by nature it is so unwieldy, so incapable of swift and decisive action on matters of high controversy. What the public doesn't realize is that 535 representatives of widely varying constituencies and interests simply cannot, except very rarely, move as one—cannot, in fact, run the country. As the great American arguing forum, Congress seldom can present a unified image, and hence cannot achieve the popularity of a single national leader at his best. So, in its milling diffusion, it always has been an all-purpose punching bag for the public when things go wrong, ridiculed for incompetence by Mark Twain, Mencken and scores of other popular pundits. Never, though, has its low rating matched the current slump. This is due, no doubt, to the poisonous Watergate ambience and assorted federally failures of recent years, but perhaps mainly to the increased visibility afforded by television.

Congress has, after all, been worse in times past than it is today. In much of what is considered the old Golden Age, it was more servile to a few greedy interests, and not long ago it was full of demogogic spewings, racial and otherwise. But Theodore G. Bilbo, and the fixers of yesteryear, did not come into our living rooms in living color, or the faith might have flagged long ago. Now the public is more knowledgeable, and Congress—despite its shortcomings of inaction and profligacy—is more circumspect.

But it must become more so, quite obviously, while continuing to reform its ancient mechanisms for more efficiency and public accountability. We doubt that Senator Muskie's idea of televising its sessions holds the potential for much more than public boredom on a massive scale, and maybe added disillusionment. The real need is for action to demonstrate responsibility—such as setting up a budgetary system through which Congress would plan and control its spending. This elementary reform, by itself, would do much to enhance Congress' image.

CONGRESS AND THE NEWS MEDIA

(By Senator HUBERT H. HUMPHREY)

Mr. Chairman, I commend the Joint Committee for its wise and timely decision in calling this hearing. If anything, we are overdue in considering the subject of the relationship between Congress and the news media.

The Congress suffers doubly for its inattention to this subject in the past. On one hand, we cast a blurred and confusing image for the man on the street; on the other, we are regularly made victim to end-runs and upstaging by the President. We have failed to make ourselves known and understood as an institution, with a recognizable and positive identity in the public mind. And we have been sluggish in meeting the challenge of the Executive's inherent advantage in competing with us for the public eye and ear.

Ask the average citizen what the President did or said today, and then inquire what the Congress did, and you will quickly see how great the imbalance is.

Such an "identity gap" is in some degree inevitable. It stems in part from the differences between the Congress and the President, between the legislative and executive branches. He is one; we are many. He can speak for himself. It is rare if ever that a single voice can express the unanimous view of 535 members of the House and Senate.

When I served as Mayor of the City of Minneapolis before coming to the Senate, I usually found I had the advantage over the City Council in reaching the public. I am sure the chief executive of any governmental unit, from small towns and villages to the states, has also found this true.

But this does not mean there is not ample opportunity for the Congress to improve its performance in this regard. We can make improvements in two basic ways—first, by simply making the Congress and its activities more accessible to the representatives of the news media; and second, by more actively seeking out the media to offer our point of view as an institution.

First, let me offer some thoughts on ways of making Congress more accessible to news coverage. Probably the simplest and most direct means is one I have advocated for 20 years—by opening up the floors of the Senate and House of Representatives to coverage by radio and television. This is also the basic proposal of a recent, excellent study entitled, "Congress and Mass Communications," prepared by Mr. John G. Stewart for the Committee, through contract with the Library of Congress. The report points out that only once, in 1947, for the opening session of the 80th Congress, were television cameras permitted in the House Chamber, while there has never been such coverage allowed during a regular business session of the Senate. But the report alertly observes the irony in the fact that the House Chamber is opened up to television coverage for the delivery of the State of the Union Message—by the President.

This example alone vividly illustrates the need for Congress to update policies and practices regarding the news media. The matter becomes more imperative when considered against the current background of concern that the Executive Branch has severely eroded and undermined the powers of the legislative branch, while the Congress itself has simply failed to exercise the powers and authority it has under the Constitution.

To quote from the report by Mr. Stewart:

"A decision by Congress to permit some form of television and radio coverage of floor proceedings would produce broader and more informative news coverage of the institution. It is hoped that citizens would begin to acquire a new sense of Congress' institutional role by witnessing the legislative process in operation and by seeing their elected representatives openly conduct the public's business."

In short, it would make us shape up.

I'd like to paraphrase another writer, Mr. Ben H. Bagdikian, national correspondent of the *Columbia Journalism Review*, who, in the current issue of that fine publication, voices some strong criticisms of both the news media and Congress, in an article entitled, "Congress and the Media: Partners in Propaganda." I recommend the article for all members of Congress and members of the journalistic profession, as food for serious thought. The portion that should provoke a great deal of concern by this Committee as it continues its deliberations, deals with the numbers of members whose activities in Congress are virtually unseen by most or all of their constituents back home in the state or district they represent. This is due to the lack of personnel in Washington reporting back to the newspapers and radio and television stations in the areas those members serve. Surely many of the smaller newspapers and radio and television stations are unable to hire even a "stringer" to dispatch news to them from Washington. But if Congress opened itself up to national coverage, it would follow that each individual member would thus be exposed to at least some greater degree of news coverage.

I believe this disadvantage at which smaller news outlets are placed in covering the activities of Senators and Congressmen long-distance, from back home, is a serious problem which we should address. I suggest that it is possible for those news outlets to improve their coverage of Congress if the opportunity were made available. The first thing they need is understanding of Congress as an institution, and of the work of individual Senators and Representatives. The second thing they need is access, so they can keep track of those Senators and Representatives.

I have long been a strong supporter of a privately-financed program that provides the first half of that equation, understanding, for news media professionals—and in this case, for political scientists and federal agency personnel as well.

Many of my colleagues in the Senate and in the House are familiar with the Congressional Fellowship Program sponsored by the American Political Science Association. Many of you have had APSA Congressional Fellows work in your offices as part of their studies of Congress. At present, I have two Fellows, both newspapermen, working in my office.

What I would propose is a program on a smaller scale, specifically for editors and reporters from the *smaller* newspapers, the weeklies and dailies of up to perhaps 50,000 circulation, and the local television and radio stations. Rather than extending for a period of nine months, as does the APSA program I would suggest a short-course for-

mat. Two or three weeks would be sufficient. This would make it possible for an organization with a small staff to function with one member absent while he or she attended the short-course, and would hold down the costs.

On the subject of financing the program, I am absolutely not advocating any involvement of federal funds for its support or operation. Only an attempt to mix church and state would set off a howl as great as would be heard if we offered federal money for a program involving government and the Fourth Estate.

But Congress can and should invite and encourage such a program and then go all-out to cooperate with it.

I would propose that we establish an ad hoc, bi-partisan committee of a few members of both Houses of Congress, to go out and talk up this idea with representatives of groups that might logically be interested in sponsoring and helping finance it. I know that we have among our ranks several Senators and Representatives who have had experience in the news media before being elected to their present offices. I don't know how many there are or who all of them are, but a diligent search should identify them quickly, and we could perhaps name them as the committee. They could contact organizations of professional journalists, including both the so-called "working press" groups and those representing the management side, the publishers and station managers and owners.

The cost to the sponsors would depend on the number of journalists who would participate in each short-course, and the extent to which they would be supported by their own employers.

Those are all details that should be worked out once willing sponsors are found, and should be left up to them. But I think we should make an energetic attempt to encourage thinking about establishing such a program.

The object of the program would be to educate reporters and editors about the operations of Congress, so they could go back home and write and select their stories and broadcast reports more intelligently.

But in order to do that, they also need better access to the Senators and Representatives from their states and areas of circulation or audience. To provide that, we already have at least partial facilities available to many of us, in the form of the Wide Area Telephone Service (WATS) with which we maintain contact with our states and districts.

It is now possible for a reporter to walk into our home office and place a call on our WATS line to talk with us or our staff members about pending legislative business. It is also possible for a reporter to send a message through our home offices to us in Washington so we can call the reporter back via our outgoing WATS line from Washington.

I would suggest an investigation of the possibility of expanding this service to increase the usefulness of the WATS line as a link between us and the news media back home. I can envision, for example, telephone news conferences linking the office of a Senator or Representative and two or more news outlets in different parts of the State or district.

While the handicaps of the hometown news media are important, I note that the title of this hearing is, "Congress and Mass Communications." This implies a primary concern with the large, national news media, and I assume, electronic media chiefly represented by television. This, too, is vitally important if Congress is to maintain its status as a co-equal branch with the Executive, and stop accepting second-billing behind the President on prime TV time.

I have recently introduced the Modern Congress Act, in which I propose improvements designed to reform the operations of Congress in a variety of ways. I call your attention to three of those proposals which I believe would achieve the ends being sought by this Committee.

One is the establishment, by legislative mandate, of a new tradition in Congress—the annual delivery by the leadership of both Houses and both parties, of a "State of the Congress" message. While we have seen informal efforts to achieve such a step in recent years, I believe making it a formally declared custom of Congress would enhance its prestige, as a message of importance on the same plane as the President's state of the Union message. A legislative mandate also would insure that the practice would continue.

Another is the establishment of an Office of Congressional Communications. While a major part of this OCC's job would be to operate a modernized internal information and communications system within Congress for the benefit of members in performing their work, it also would provide facilities, equipment and expert technical advice to help members communicate with the public, through the news media.

Third, the Modern Congress Act proposes following recent changes in Congressional rules and procedures to their logical conclusion, by fully opening up the activities of the committees and subcommittees to news media coverage. If any of us cringe at being closely scrutinized in our activities—and I hope none of us would feel we have anything to fear from such scrutiny—let me point out that if we are doing our jobs, we can only gain, since through this reform our constituents will be better able to see us at work. And I need not point out to my colleagues in either House of Congress that the committee room is the real workshop of Congress—the place where the major portion of our time is spent on pending legislation.

I believe this final point is the one we must keep in mind as we consider the subject before this Committee. We have been experiencing a period of growing suspicion and disapproval by citizens, toward government in general and elected officials in particular. While there are many reasons for this, including some for which Congress is free of blame, we have a duty as an institution to reverse this trend.

Any nation is in trouble when its citizenry feels alienated from its government and suspicious of it; but this is by far a worse disease when it afflicts a democracy. Here are some justifications for this lack of esteem for public officials by the citizen. Hopefully, most of those reasons are being answered by other committees of Congress and by the judicial branch. But one of the reasons is popular ignorance of what government is and how it functions. That condition as a basis of the public's judgment of us is not acceptable, and its results are not justified. We must act to overcome it, to the extent we are able. I believe that the measures I have proposed would go far toward fulfilling our duty. I believe that an open Congress would be a Congress understood and respected.

COMMITTEE REORGANIZATION

Mr. BROCK. Mr. President, today Congress is faced with a challenge: the challenge of organizational responsibility. Can Congress go on operating with its present committee system? This question has been raised on a number of occasions over the past few months. My feeling is that we must study reform of the committee system, and we must do it now. In fact, I have introduced legislation to facilitate a study of the committee system along with Senators MATHIAS, STEVENSON and others.

I would like to draw my fellow Senators' attention to a recent edition of the Annals, which strongly supports my views about committee reform. The January 1974 edition of the Annals, subtitled "Changing Congress: The Committee System," has been sent by me to each Senator for his review. I am hopeful that every Senator will have a chance to review this journal, and to reflect on the opportunities before us.

In this volume, I would like to draw your attention to two articles in particular. Congressman RICHARD BOLLING has written an article entitled "Committees in the House," and Norman Ornstein has drafted "Towards Restructuring the Congressional Committee System." I ask unanimous consent that these two articles be printed in the RECORD.

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

COMMITTEES IN THE HOUSE

(By RICHARD BOLLING)

(NOTE.—Richard Bolling is United States Representative from the Fifth District of Missouri. A member of the House of Representatives since 1948, he is a member of the Committee on Rules and the Joint House-Senate Economic Committee. Long an advocate of congressional reform, Bolling served as Chairman of a special Rules Committee Subcommittee, whose work led to the creation of the Committee on Standards of Official Conduct and to the first code of ethics adopted by the House of Representatives. In 1973 Speaker Carl Albert named Bolling Chairman of the House Select Committee on Committees, which is to propose changes in the committee system. Representative Bolling is the author of House Out of Order (1965) and Power in the House (2d ed., 1974), two critical studies of the House of Representatives.)

Abstract: The committee system in the House of Representatives contributes directly to the House's failure to provide vigorous national leadership. By denying the Speaker necessary tools of leadership, by using inadequate informational resources, by abdicating macroeconomic responsibilities and by employing outmoded jurisdictions, House committees clearly reveal the need for significant reorganization. Such reorganization is not impossible to achieve, however; the House of Representatives has changed in the past and, with self-discipline and hard work, can do so again. Signs of change already exist: procedural changes affecting the role of the Speaker, creation of the Office of Technology Assessment and the House Information Systems Office, consideration of fundamental budgetary reform proposals and establishment of the Select Committee on Committees, all point to a climate of reform. The select committee, after debating organizing principles of a committee system within a legislative body, can contribute significantly to this reform by its examination of committees in the House. Several schemes of committee reorganization within the mandate of the Select Committee illustrate generally the parameters of change.

The United States House of Representatives should be the most vigorous institution of the federal government. Its election every two years provides a representative form of government. Its Constitutional authority to raise revenues offers a means of control over federal activity and keeps the historic power to tax in a body responsive to the people. Its legislative responsibilities enable the House to set national policy objectives and to determine that which is legal or illegal. Its large membership enables the country's legislature to develop the issue expertise a smaller body cannot. Finally, the diversity and humanity of the House—its common touch—provide citizens with access to the federal establishment and remind us all that our national government is made

up of real people, not simply white buildings and tax returns. The House of Representatives should be the forge of democracy.[1]

Yet, today, the House is not the vigorous institution it should be. It does not occupy, as it once did, a commanding place in the American scheme of government. Hampered by decentralized authority, lacking informational resources, stymied by obsolete rules and denying the Speaker his rightful tools, the House of Representatives cannot do its job. It is still, sadly, out of order.

THE COMMITTEES

Central to the operation of the House is the committee system. The ranking Republican member of the Rules Committee and Vice-Chairman of the Select Committee on Committees, Representative Dave Martin of Nebraska, called committees "the heart and soul of the legislative process."[2] Woodrow Wilson's famous dictum that the House of Representatives sits not for serious discussion, but to sanction the conclusions of its committees, remains generally true.[3] At present the House conducts its business via twenty-one standing committees. These committees—which vary in size but average thirty-three members—enable the House to split up its work and concentrate on a variety of issues. Such division of labor and its accompanying specialization have helped the House meet modern legislative demands. They also have helped to keep the institution from becoming captive of the executive branch. In addition, committees have created entry points or gateways to the House of Representatives for those wishing to affect government. They have become vehicles for the advancement of members' interests and careers.

As does the House, itself, committees have had a long and fascinating history. In the earliest Congresses the House relied upon select committees for the consideration of legislation. At that time the House would resolve itself into the Committee of the Whole to decide upon a bill's general principles, whereupon a select committee would be established to settle details and draft the final product. By 1800, after five Congresses had met, only four standing committees existed, of these, only one was a legislative committee. This committee—Interstate and Foreign Commerce—was established in 1795 and is now the oldest standing committee in the House of Representatives.

The Ways and Means Committee was created in 1802, the Judiciary Committee in 1813 and the Agriculture Committee in 1820. The Appropriations Committee was not established until 1865, nor the modern Rules Committee until 1885. By 1900 the House had fifty-eight standing committees; by 1930 it had sixty-seven such committees. Some of these, such as the Committee on Pacific Railroads and the Committee on Woman Suffrage, have disappeared. Others, such as the Committee on Public Buildings and Grounds and the Committee on Naval Affairs, have become subcommittees of committees or have merged with other committees. In 1946, when the House last reorganized its committee system, forty-eight committees were reduced in number to nineteen. In 1958 the Committee on Science and Astronautics was created; nine years later the Committee on Standards of Official Conduct was established. This raised the number of standing committees in the House to twenty-one.

The present committee system, however, fails the House of Representatives in four ways: (1) the system cripples the Speaker by denying him operational leadership of the House; (2) the system neither receives, utilizes nor generates adequate information; (3) the committee system does not consider the economy from a macroeconomic point of view; and (4) it does not facilitate coordinated policies, nor does it coordinate emerging issues, because the jurisdictions of House committees are outdated. The failure of the modern House to provide vigorous national leadership stems directly from these four shortcomings. No corporate board of directors would permit a company to operate with outmoded organization or without central direction, adequate information or economic integrity. Yet, that is what the House of Representatives is doing. Who is to blame for the disarray? The 435 men and women who sit in the House as representatives. They are responsible for the resulting drift and decay of the House. These individuals—who, by and large, are honest, diligent and capable people—must now restore the institution in which they serve. What is needed is self-discipline and hard work.

A HOUSE IN TRANSITION

The House of Representatives has changed before; it can do so again. No immutable rules or customs exist, because the House is a dynamic institution. In times past Speakers have appointed committee chairmen; legislative committees have appropriated funds; seniority has been discarded—indeed, the system of seniority was not fully developed until after the turn of the century; a freshman member has been named Speaker,[4] and party caucuses have ruled supreme. Precedents such as these indicate that the House is capable of significant change.

For example, the Speaker, when a Democrat, now sits on his party's committee which makes committee assignments for Democratic members. This party committee is a focus of power in the House. Moreover, the Committee on Rules no longer obstructs the Speaker, who also benefits from new Democratic Caucus rules which strengthen subcommittees at the expense of full committees and their chairmen. Thus, the present Speaker, Carl Albert of Oklahoma, occupies a stronger post than his predecessor, Representative John McCormack of Massachusetts.

The Speaker

A strong Speaker is necessary if the House of Representatives is to regain its proper place in government. The only officer of the House mentioned in the Constitution, the Speaker is both coach and quarterback. Under such Speakers as Henry Clay, Thomas Reed, Nicholas Longworth and Sam Rayburn, the House of Representatives received firm leadership. Goals were set, strategy devised and tactics employed. The result was a record of achievement, a sense of purpose and public recognition for the whole House. No institution can obtain these results without such leadership.

Currently, the Speaker lacks the institutional tools of leadership. He must rely upon personal persuasiveness, as Longworth and Rayburn did. The Speaker cannot establish an agenda for the House. He cannot nominate—much less designate—its lieutenants, the committee chairmen. He cannot discipline the unfaithful, and he has little with which to reward the deserving. The Speaker is but titular head of the organization. His power is personal; thus, House leadership is dependent upon the rare fortune of finding an exceptional man.

Informational resources

In the area of informational resources, the House of Representatives operates at a disadvantage in comparison with the executive branch and the business community. The treatment of information by the House is archaic. An appropriate analogy is one of quill pens versus electronic computers. The House has overtaxed its committee staffs, misused its slender research facilities, distrusted automatic data processing systems and ignored the potential for contract research. Most important of all, the House has not realized that, in a society dependent upon technology, information must necessarily be viewed as a valued resource. Solutions to a legislative problem depend on the right kind of information; so, in fact, does the very perception of the problem.

Quite recently the House has shown signs of recognizing the importance of informational resources. It has established an office for automatic data processing and an office for contract research with the Senate. The first office, the House Information Systems, has installed an electronic voting device and is supporting the Clerk of the House with administrative services. It has also developed a bill status system and is planning a system for the preparation of committee calendars. The second office, the Office of Technology Assessment, will hopefully increase the congressional evaluation of technology's impact on society. While neither office is comparable to the informational resources of the executive branch nor equal to the House's potential, they are a start.

Macroeconomic role

The House of Representatives has also been operating at a disadvantage in the area of macroeconomics. The President and his advisors, the Office of Management and Budget and the Council of Economic Advisors are in charge. The federal budget is called the President's budget, and it is he who determines the amounts to be spent. The House does not coordinate the work of its taxing and spending committees. Its Appropriations Committee reviews less than half of the annual federal expenditures and does not report legislation on time—often because the authorizing committees fail to act in time in authorizing appropriations. Its members have no means of debating economic priorities. For a body with macroeconomic responsibilities, the situation is absurd. Unless the House of Representatives gets a handle on the federal budget, it will continue to be the economic mistress of the executive branch.

Late in 1972 the House began at last to reform the committees' consideration of the federal budget.[5] In cooperation with the Senate, the House established a Joint Study Committee on Budget Control to recommend procedures which would improve "Congressional control of budgetary outlay and receipt totals" and would assure "an overall view of each year's budgetary outlays."[6] Spurred on by the President's unprecedented impoundment of appropriated funds in 1972 and 1973, the joint study committee met and recommended additional committee structure: new House and Senate committees which would set a budgetary ceiling and attempt to sponsor a true debate over priorities. These proposed budget committees would be comprised of members from the respective taxing and appropriating committees, with additional members appointed by the majority leadership—in the case of the House, by the Speaker. Moreover, the new committees would have an enlarged professional staff with access to more data without which the House of Representatives simply cannot regain its macroeconomic role.

Unfortunately, the recommendations of the joint study committee had serious defects. For example, no provision was made for committee consideration of tax expenditures; no safeguards existed to prevent the new budget committees from predetermining the priorities debate; and, of great significance, no potentially powerful committee should be created in the House without greater participation of the Speaker.

Jurisdiction

The last area in which the committee system fails the House is jurisdiction. At present, the jurisdiction of the twenty-one standing committees is spelled out in Rule XI of the House rules. Last revised more than twenty-five years ago in the Legislative Reorganization Act of 1946, Rule XI is now unsatisfactory. House committee jurisdictions are unclear and duplicative. They are also full of omissions and antiquated or irrelevant listings.

Footnotes at end of article.

Rule XI is unclear as to which committee in the House of Representatives has jurisdiction over the control of dangerous drugs; several committees have claimed jurisdiction.[7] Clarity is also lacking in the area of water resources, in which three committees of the House are involved.[8] The rule is also duplicative. For example, it designates two committees with jurisdiction over national forests, the Committee on Agriculture and the Committee on Interior and Insular Affairs. Rule XI is particularly deficient in omitting some subject categories. In 1946 these subjects were not national issues, thus, understandably, they were not covered by the rule. Today, categories such as energy and crime need a focal point within the House of Representatives. This is possible only by explicit designation of committee jurisdiction. As Representative John Culver of Iowa stated on the House floor:

"Our first obligation is to see that there is a coherent, realistic, and contemporary setting for the consideration of all legislation and to be sure that the most commanding and imminent issues of public policy are mirrored and realized in the organizational structure of Congress." [9]

The inadequacies of Rule XI, however, have not meant that the House fails to act in areas of jurisdictional uncertainty. Acting on behalf of the Speaker, the Office of the Parliamentarian refers all bills to committee, whether or not the subject is specifically listed in the rule. When Rule XI is silent or unclear, the office is guided by precedent, logic or political advantage. Over a period of time such a process inevitably leads to confusion and inconsistency. House committees acquire jurisdiction by accretion. Different committees receive similar subject matter. Procedural uncertainty frequently results. Public policy often suffers.

The same outcome sometimes occurs when House committees compete with one another for jurisdiction over emerging national issues. Often, bills are drafted so that they will reach a certain committee. Different committees sometimes end up with similar legislation and identical jurisdiction. Take, for example, the current fascination with energy. Three committees of the House have created subcommittees on energy, while a fourth committee considers itself the appropriate site of energy legislation.[10] A coherent, sensible national energy policy is difficult to achieve under the best of circumstances; when several committees vie for control, it is next to impossible. At times, of course, overlapping jurisdiction is desirable because differing points of view which may be suppressed in one committee receive fair consideration in another. However, a diversity in communication patterns does not warrant conflicting legislation and this, too, can result from such overlap.

A further disadvantage with the present system of committee jurisdiction is imbalanced workload. Some House committees do not have much to do. Others are so busy that they must neglect urgent public business within their jurisdiction. In 1973 a member of the Committee on Ways and Means indicated that the committee had to postpone consideration of tax reform in order to take up trade legislation.[11] A critical issue was delayed because Ways and Means which has jurisdiction, under Rule XI and the precedents of the House, over taxes and the public debt, social security, national health programs, such as medicare and medicaid, revenue sharing and trade was too busy.

A final disadvantage of the present configuration of committee jurisdiction is that subject areas or issues without a committee to call their own lose focus and protection. Committees in the House afford a subject a sense of place, a home in which its constituency can centralize strategy, develop friends and rebuff foes. Issues which are orphans usually do not fare well in the House. Prestige is involved too. National issues need a legislative point of convergence which only committees can provide.

Footnotes at end of article.

THE SELECT COMMITTEE ON COMMITTEES

In January of 1973 the House acted to remedy the problem of committee jurisdictions. At the initiation of the Speaker and with the support and encouragement of the minority leader, Representative Gerald Ford of Michigan, the House approved creation of a select committee to recommend changes in Rule XI, as well as in Rule X which designates the names and numbers of standing committees.[12] The Select Committee on Committees, as the new body is called, consisted of ten members of the House, five Democrats and five Republicans. The balance between Democrats and Republicans is unusual because the makeup of congressional committees traditionally reflects the ratio of the majority and minority parties in each house. An exception was made in this case because the success of the Select Committee is dependent upon bipartisan support.

During the debate on the resolution creating the Select Committee, the question of why a select committee was required was raised. Could not the Joint Committee on Congressional Organization, the Committee on House Administration or the Rules Committee—which has legislative jurisdiction over changes in House rules—examine Rules X and XI? Any of these alternatives, it was argued, could do the job and save the time and expense of assembling a new committee and staff.

However, each of these alternatives presented serious difficulties. The Joint Committee on Congressional Operations would involve United States senators in the determination of House committees—an involvement for which they were neither qualified nor welcome. The Senate and the House are fundamentally different and need not be involved in each other's internal organization. Moreover, the joint committee is specifically prohibited from recommending changes in the rules, parliamentary procedures or precedents of either house.[13] Also, it is not a bipartisan committee, but one in which Democrats currently outnumber Republicans. The absence of bipartisanship was again compelling in considering the Committee on House Administration as an alternate to the select committee. In addition, an obvious need existed for the body conducting the study to be as free as possible of present committee structure. As one of the twenty-one standing committees of the House, the Committee on House Administration could not be neutral. It would have had an unfair advantage were it responsible for the study. A similar conflict of interest would occur were the Rules Committee to conduct the study of Rules X and XI. Moreover, partisanship could be acute, as the majority outnumbers the minority on Rules two to one. Furthermore, the committee's staff is small and would be unable to assume the necessary added responsibility. The legislative recommendations of the select committee, however, will be subject to clearance by the Rules Committee before they are debated and acted upon in the House, itself. Finally, the Select Committee on Committtees is a nonexclusive body whose members serve on ten of the other standing committees. Such diversity gives the select committee a useful perspective on various aspects of the committee system.

CRITERIA FOR CHANGE

In examining Rules X and XI the select committee must keep in mind that any operating process in the House of Representatives must be democratic. This means that any reorganization of committees must be consistent with the underlying values of our political system. Committees in the House, regardless of their number or jurisdiction, must therefore function openly and with deliberation. The legislative process must be visible to the public. Moreover, democracy does not always operate best behind closed doors, and neither do committees. The process must also be deliberative. Committees are a place to think things through. Goals should be stated, premises revealed, alternatives explored and conclusions questioned. After all, the House is a legislative body, and the unique function of a legislature is to provide a forum for the debate of public issues.

To be democratic, House committees must also function responsibly. Here, again, a constraint has been placed upon the select committee. Its recommendations must enable the committees of the House to be held accountable for their actions; this means, simply, that credit or blame can be affixed. Such responsibility is vital to the political integrity of the House, particularly now when Americans' faith in their institutions of government is unusually low.

Another criterion for the reorganization of committees is representation, which means that affected interests are given an opportunity to be heard. The House of Representatives should not operate without hearing those who wish to be heard, as some committees have at times done. Representation means that committees must listen to those upon whom committee actions have an impact. Such listening is essential to fair play.

A further requirement for the democratic operation of committees is responsiveness. The House and its committees must be responsive to national needs. The criterion is an illusive one, of course, because people's perceptions of problems and remedies vary greatly. Yet, committees should not ignore that which generally seems to be a real problem, and committee structure should not prevent the House from working its will.

Two other criteria serve as additional guidelines for the select committee in reorganizing the committee structure of the House. The first is to maintain the relative equality of all members. A committee system should not make some members of the House feel that they are backbenchers. Every member of the House is important. Each has a vote equal to the other, and each should have a committee role of some importance. While the need for leadership in the House and the quirks of personality mean that some representatives are more influential than others, House committees should be structured to give all 435 a piece of the action.

QUESTIONS ABOUT COMMITTEES

In contemplating significant changes in Rule X and XI, the Select Committee on Committees—or anyone else planning a reorganization of House committees—must first ask some basic questions about the committee system. These questions should precede any rearrangement of committee jurisdictions. Their answers will comprise a necessary framework upon which to base reorganization. They also will heavily influence the committee arrangement which occurs. Four of these basic questions are discussed below.

An appropriate first question concerns the budget. Will reorganization include committee consideration of the federal budget? If so, several questions follow: (1) should the appropriation and authorization functions continue to be separated? Is the setting of a budget ceiling by the House desirable or practical? At what level of funding, and where in the committee process, does the priorities debate occur? Does a budget ceiling make an appropriations committee superfluous? What mechanism will guarantee coordination between spending and taxing?

A second basic question concerns the scope of jurisdiction. Should the jurisdiction of committees in the House cover several different areas of public policy or be limited

to one such area? Are single interest committees, such as the Committee on Agriculture whose jurisdiction is pretty much confined to agriculture, preferable to multiple interest committees, such as the Committee on Public Works whose jurisdiction includes water resources, transportation and public buildings? Additional questions include: do single interest committees develop greater expertise than multiple interest ones; do multiple interest committees become less susceptible to capture by lobby groups; do single interest committees really function as a single unit rather than as a grouping of subcommittees? Should the interests of multiple interest committees be related or deliberately different?

Another basic question to ask before reorganizing committee jurisdictions concerns oversight—the monitoring of the executive branch. Is the oversight function best served by having a separate committee in the House perform most, or nearly all, of the oversight or should oversight be divided among the legislative committees, the Appropriations Committee and a Government Operations Committee, as is now the case? Should the party not in the White House direct oversight in the House? What mechanism will guarantee coordination of oversight activity with the House's appropriation of funds?

A fourth basic question concerns the size of committees. How many members should House committees have? Currently, the average size of the twenty-one standing committees is thirty-three members. Committee size, of course, affects a committee's jurisdiction and internal procedures. Committees of thirty-three members tend to be unwieldy if everyone attends, to discourage equal participation of members and to encourage the use of subcommittees. They also allow committees to have multiple interest jurisdictions, although the House presently has two larger committees which are single interest: the Committee on Agriculture and the Committee on Foreign Affairs. Committees smaller than thirty-three members would most likely increase the number of single interest committees in the House. Larger committees would enhance the subcommittee system and enable members to serve on several committees. Whether House committees should be exclusive assignments is itself another basic question which directly relates to the size of committees.

Having answered basic questions such as these and, thus, devising a framework upon which to base a reorganization of House committees, the next step is to restructure committee jurisdiction. This is not easy, because policy areas are interrelated. It is not usual either, because those scholars and other observers who have commented on the committee system have neglected to present alternatives.

SCHEMES OF REORGANIZATION

What follows in the tables below is thus unusual: three schemes of committee organization—preceded by the existing scheme of House committees and their jurisdiction. The new schemes vary considerably, and no preference is expressed or implied. Each of the schemes reduces the number of committees; each provides a separate committee for oversight, although these are not inevitable. However, the schemes differ in scope of committee jurisdiction. Scheme A provides multiple interest, exclusive committees of similar subject matter which would enjoy equal legislative significance. Scheme B provides a sharp reduction in the number of committees which again would be multiple interest and exclusive, but with greater diversity of subject matter than in Scheme A. Scheme C provides a mix of single interest and multiple interest committees. These committees would not necessarily be exclusive, but would be far larger in number than those in the other new schemes.

The three new committee schemes also differ in their consideration of the federal budget. Scheme A grants the present Appropriations Committee—which receives a new name—jurisdiction to set a budget ceiling, but retains the distinction between authorizing and appropriating committees. Scheme B creates a new Committee on Budget and Revenues which combines the spending and taxing functions and requires the other committees to appropriate, as well as to authorize funds. Scheme C creates a new Budget Committee and also reunites the appropriating and authorizing functions. However, the scheme does not combine the spending and taxing jurisdictions.

CONCLUSION

These schemes represent an effort to portray what different committee systems could be. As a key component of the House, committees must be reorganized if the House of Representatives is to regain its role in government. Yet, this reorganization requires a searching examination of the concepts underlying committees in a legislative body. Changing committees is an exceedingly difficult task, both intellectually and practically. It is also a risky one. For, as the experience with the provisions of the Legislative Reorganization Act of 1946 shows, the appearance of change is not necessarily the reality of reform. Today's gleaming reorganization is tomorrow's out-of-date organizational inadequacy. Hopefully, the articles in this issue of The Annals will throw some light on the road ahead, wherever it may lead.

FOOTNOTES

[1] The phrase is Neil McNeil's; see his *Forge of Democracy: The House of Representatives* (New York: David McKay Company, 1963); and Richard Bolling, *Power in the House* (New York: E. P. Dutton, 1968).

[2] U.S., Congress, House, *Congressional Record*, Vol. 119, Pt. 3, p. 2805.

[3] Woodrow Wilson, *Congressional Government* (Cleveland, Ohio: Meridian Books, 1956, originally published in 1885), p. 69.

[4] Representative Henry Clay, in 1811.

[5] On December 5, 1973 the House of Representatives passed a budget reform measure, "The Budget and Impoundment Act of 1973."

[6] See, U.S., Congress, Joint Study Committee on Budget Control, *Improving Congressional Control Over Budgetary Outlay and Receipt Totals: Interim Report* (Washington, D.C.: Government Printing Office, 7 February 1973), p. 1.

[7] The Committee on Education and Labor, the Committee on Interstate and Foreign Commerce and the Committee on Judiciary.

[8] The Comittee on Interior and Insular Affairs, the Committee on Merchant Marine and Fisheries and the Committee on Public Works.

[9] U.S., Congress, House, *Congressional Record*, Vol. 119, Pt. 3, p. 2815.

[10] The Committee on Interstate and Foreign Commerce, the Committee on Public Works and the Committee on Science and Astronautics have created subcommittees on energy. The Committee on Interior and Insular Affairs considers itself to be the logical focus of energy legislation in the House.

[11] U.S., Congress, House, Select Committee on Committees, *Committee Organization in the House, Hearings*, 93rd Cong., 1st sess., volume 1 of 3, part 1 of 2, May and June, 1973, p. 283.

[12] House Resolution 132, 93rd Cong., 1st sess., 15 January 1973.

[13] P. L. 91-510, section 402(d).

TABLE 1

The present scheme of committee jurisdiction

Committee and Jurisdiction

1. Agriculture: Agriculture, forestry and rural development.
2. Appropriations: Appropriation of funds.
3. Armed Services: Military affairs and national security.
4. Banking and Currency: Wage and price controls, banking, international banking, deposit insurance, currency and coinage, housing, urban affairs, generally, and urban mass transit.
5. District of Columbia: Washington, D.C. affairs.
6. Education and Labor: Education, fine arts, manpower and labor relations.
7. Foreign Affairs: International relations and disarmament.
8. Government Operations: Budget and accounting measures, executive branch reorganization, intergovernmental relations, the efficiency and economy of government.
9. House Administration: Administrative matters of the House and federal elections.
10. Interior and Insular: Forestry, national parks, American Indians, water supply, mining, public lands, land-use planning, environment and territorial matters.
11. Internal Security: Subversive activity.
12. Commerce: Public health, air pollution, civil aviation, interstate oil compacts, railroads, commerce, generally, communications, interstate power transmission, securities and exchanges and the weather.
13. Judiciary: The judiciary, bankruptcy, espionage, crime, civil liberties, constitutional amendments, interstate compacts, immigration and naturalization, patents, national penitentiaries, antitrust matters and federal holidays.
14. Merchant Marine and Fisheries: The merchant marine, fisheries and wildlife, environment, oceanography and the Panama Canal.
15. Post Office and Civil Service: Census, national archives, postal service and the civil service.
16. Public Works: Flood control, river and harbor improvement, highways, public buildings and grounds, regional economic development, the Capitol Building, water pollution and water power.
17. Rules: Changes in the House rules and regulation of floor debate.
18. Science and Astronautics: Space exploration, science and technology, weights and measures and astronautical research and development.
19. Standards of Official Conduct: Official conduct.
20. Veterans' Affairs: Veterans' affairs.
21. Ways and Means: Taxes and the public debt, social security and welfare, national health programs—medicare and medicaid—revenue sharing and trade between nations.

TABLE 2

Committee jurisdiction scheme A

Committee and Jurisdiction

1. Agriculture and Rural Affairs: Agriculture and rural development.
2. Armed Services: Military affairs and national security.
3. Economic Affairs: Wage and price controls, banking, deposit insurance, currency and coinage, economic affairs, generally, regional economic development, bankruptcy, securities and exchanges and small business, commerce, and labor relations.
4. Budget and Appropriations: Budget ceiling, budget and accounting measures and appropriation of funds.
5. Ethics (nonexclusive): Official conduct.
6. Foreign Affairs: International relations, disarmament, Panama Canal, international banking and trade between nations.
7. Government Operations: Executive branch reorganization, intergovernmental relations, the efficiency and economy of government, public buildings and grounds, the Capitol Building, civil service, national archives and the postal service.
8. Judiciary: The judiciary, espionage and internal security, crime, civil liberties, federal elections, Constitutional amendments, interstate compacts, immigration and naturalization, patents, copyright and trademarks, national penitentiaries, antitrust matters, territorial affairs and federal holidays.
9. Natural Resources and the Environment: Forestry, national parks, water re-

sources, mining, public lands, land-use planning, environment, fisheries and wildlife, pollution, weather, flood control and energy.

10. Human Resources: Education, fine arts, manpower, public health, national health programs, American Indians, consumer affairs, social security and welfare, veterans' benefits and the elderly.

11. Space, Science and Technology: Space exploration, science and technology, weights and measures, astronautical research and development, census, oceanography and communications.

12. Transportation and Urban Affairs: Civil aviation, highways, railroads, merchant marine, rivers and harbors, urban mass transit, Washington, D.C. affairs, housing and urban affairs, generally.

13. Ways and Means: Taxes, revenue sharing and the public debt.

14. Office of the Speaker: Changes in the House rules, regulations of floor debate and the administrative matters of the House.

TABLE 3

Committee jurisdiction scheme B

Committee and Jurisdiction

1. Budget and Revenues: Spending ceiling—other committees appropriate via special subcommittees—budget and accounting measures, taxes, revenue sharing and the public debt.

2. Economic Affairs: Wage and price controls, banking, deposit insurance, currency and coinage, economic affairs, generally, housing, urban-rural affairs, regional economic development, bankruptcy, securities and exchanges, small business, antitrust matters and labor relations.

3. Human Resources: Education, fine arts, manpower, public health, national health programs, American Indians, consumer affairs, social security and welfare, veterans' benefits and the elderly.

4. International Relations: Military affairs and national security, international relations, disarmament, Panama Canal, international banking and trade between nations.

5. Judiciary: The judiciary, espionage and internal security, crime, civil liberties, federal elections, Constitutional amendments, Washington, D.C. affairs, interstate compacts, immigration and naturalization, patents, copyright and trademarks, national penitentiaries, territorial affairs and federal holidays.

6. Natural Resources: Forestry, national parks, water resources, public lands, land-use planning, environment, fisheries and wildlife, pollution, flood control, mining, oceanography and energy.

7. National Policy Planning: Planning generally.

8. Government and Program Review: Executive branch reorganization, intergovernmental relations, public buildings and grounds, civil service and the economy and efficiency of government.

9. Rules and Agenda: Changes in the House rules, regulation of floor debate, administrative matters of the House and referral of bills.

10. Science and Space: Space exploration, science and technology, weights and measures, astronautical research and development, communications, national archives, census, postal service and weather.

11. Transportation: Civil aviation, highways, railroads, merchant marine, rivers and harbors and urban mass transit.

TABLE 4

Committee jurisdiction scheme C

Committee and Jurisdiction

1. Agriculture and Consumer Affairs: Agriculture and consumer affairs.

2. Armed Services: Military affairs and national security.

3. Budget: Spending ceiling—other committees appropriate via special subcommittees as well as authorize.

4. Commerce, Banking and Labor: Wage and price controls, banking, deposit insurance, currency and coinage, economic affairs, generally, labor relations, commerce, securities and exchanges, federal holidays, bankruptcy and small business.

5. Communications: Communications, copyright and trademarks, national archives, census and the postal serice.

6. Community Development: Rural development, housing, urban affairs, generally, land-use planning, public buildings and grounds, revenue sharing, regional economic development, Washington, D.C. affairs, American Indians and veterans' housing.

7. Education: Education and manpower.

8. Energy: Mining, power and energy.

9. Government Review: Budget and accounting measures, executive branch reorganization, intergovernmental relations, the efficiency and economy of government, civil service and review of military procurement.

10. Health: Public health, health research, veterans' hospitals and national health programs.

11. House Administration: Administrative matters of the House, Library of Congress and the Smithsonian Institution.

12. International Affairs: International relations, disarmament, Panama Canal, international banking and trade between nations.

13. Judiciary: The judiciary, espionage and internal security, crime, civil liberties, federal elections, Constitutional amendments, interstate compacts, immigration and naturalization, national penitentiaries, territorial affairs and federal holidays.

14. Natural Resources and the Environment: Forestry, national parks, water resources, public lands, land-use planning, environment, fisheries and wildlife, pollution, weather and flood control.

15. Rules and Jurisdiction: Changes in the House rules, regulation of floor debate and referral of bills.

16. Science and Technology: Space exploration, science and technology, weights and measures, astronautical research and development, oceanography, patents, copyright and trademarks.

17. Standards of Official Conduct: Official conduct.

18. Social Services: Social security, welfare and veterans' pensions.

19. Transportation: Civil aviation, highways, railroads, merchant marine, rivers and harbors and urban mass transit.

20. Ways and Means: Taxes and public debt.

Toward Restructuring the Congressional Committee System

(By Norman J. Ornstein)

(Note.—Norman J. Ornstein, special editor of this volume, received his Ph.D. from the University of Michigan. An Assistant Professor of Political Science at Catholic University in Washington, D.C., Ornstein is the author of several articles on Congress and editor of a forthcoming book, Change in Congress, Professor Ornstein, Robert L. Peabody and David W. Rohde are currently working on a book on decision making in the Senate. Formerly, he served as an American Political Science Association Congressional Fellow and taught at the Johns Hopkins University School of Advanced International Studies in Bologna, Italy.)

Abstract: While the standing committee structures of the House of Representatives and Senate have functioned well for their legislative systems, some endemic problems remain. Because individual legislators have different backgrounds, interests and goals, and because committees have varying attractiveness for members, a natural selection process builds a distinct bias into committee assignments, overrepresenting those with special interests in the subject matter of the committee. Thus, rural legislators dominate the Agriculture and Public Works Committees; port area congressmen, Merchant Marine and Fisheries. The problem is especially acute in the House, where congressmen have only one or two committee assignments, and reformers have recently strengthened the powers of committee caucuses and subcommittees. Several large scale reforms are suggested to make committees more representative of the larger legislative entity and, thus, to improve the formulation of national public policy. For the House these reforms include: (1) consolidating standing committees to a total of seven or eight; (2) limiting the tenure of committee chairmen to prevent longterm accumulations of power by small numbers of legislators; (3) rotating committee assignments to further ensure a wider range of members on each committee and to give congressmen indepth experience in a larger number of issue areas. Formulas are suggested to limit the turnover on a given committee at any given time to protect expertise. For the Senate, a consolidation of both committees and subcommittees is suggested to give senators more flexibility to cope with a heavy and ever expanding workload.

Very early in its existence Congress adopted a standing committee system. One hundred and eighty years later, after periodic changes in committee structures, the standing committee systems of the House of Representatives and the Senate are the most significant features of both legislative bodies. The one assumption universally shared by those who are currently focusing on reform is that standing committees are here to stay in the United States Congress; no other mode of operation is ever discussed.

No doubt, standing committees have functioned well for Congress' operations. They have permitted the two legislative bodies to cope with their increasingly heavy workload through a manageable division of labor, and they have facilitated the process of individual specialization which provides expertise necessary to cope with the resource- and talent-rich executive branch and with the complexity of contemporary issues and legislation.[1] These are problems of a technological society and a large legislative body; neither of these conditions is likely to disappear. Thus, standing committees will become more and more solidified. Suggestions for change in the committee systems must be put within this framework.

Standing committees fulfill important goals for the legislative system. Because of their central position in the legislature, committees are also objects of great significance for individual legislators and their careers. Committee assignments are vitally important to each member, whether he is primarily concerned with implementing public policy, attaining internal power and prestige or protecting his elective flanks. Because committees have varying attractiveness to members, they tend to attract members with different goals; thus, they tend to be quite unrepresentative of the larger body membership.

The Problem of Committee Unrepresentativeness

In the House there are twenty-one standing committees; representatives sit on either one or two. Some committees deal with major issues of national public policy, such as Armed Services and Ways and Means. Others deal with narrower policy areas—which may still be vitally important to smaller groups within the society—such as Post Office and Civil Service and Merchant Marine and Fisheries. As Fenno has detailed in his recent book *Congressmen in Committees*,[2] each of these committees offers different incentives to its members—incentives which will attract some legislators, depending on their goals and outlooks, and will not appeal to others. Ways and Means and Appropriations appeal to members who desire influence and prestige within the House;

Footnotes at end of article.

Interior and Post Office appeal to those whose districts benefit from these committees. Internal incentives for specialization, the small number of assignments and the varying character of committees lead members of Congress to gravitate towards committees in which they have a perceived special stake or interest; thus, for example, congressmen from western areas go to Interior; those from rural areas go to Agriculture; and those from port areas go to Merchant Marine and Fisheries. Members who lack such an interest will leave these committees as rapidly as they can—a good example is Shirley Chisholm's brief encounter with the Agriculture Committee—and committees become dominated by those with an original special interest.

Some committees, such as Rules and Appropriations, do appeal to a wider range of legislators, and so an unbiased committee assignment procedure could make these universally desirable committees representative of the larger body.[3] With most other committees, however, it must be emphasized that a natural selection process is at work. Since committees have unequal attractiveness to members, then, regardless of the initial assignment process, people interested in farm problems will tend to gravitate to the Agriculture Committee and those with reclamation interests will move to Interior even if they are first put on incompatible committees.

It follows, then, that the policy outputs ratified—or blocked—by a particular committee might well be significantly different from those which would have been formulated if the entire body had been acting. While the full memberships of House and Senate do act on committee recommendations—although not on measures committees fail to report—the limited time available for floor consideration and the greater specific knowledge and interest of committee members give their recommendations great impact.

Moreover, the crucial importance of committees for individual legislators makes change in the committee system, especially major change, difficult to achieve. Too much is wrapped up in members' committees to allow them to easily cede jurisdictions—much less to permit committees to be abolished—and periodic reassessments of committees are infrequent. It is quite remarkable, given the tremendous changes which have occurred in America and the world in recent years, that the last time the committee systems of House and Senate were evaluated and restructured was 1946—the year before Richard Nixon first came to the House of Representatives.

In this essay, I will discuss these problems, and possible ways of reconciling the individual and system functions of committees. How can committees be responsive to the larger legislative entity, and how can future necessary change be facilitated? With fewer committee assignments, a more hierarchical structure and fewer noncommittee-based resources for members than has the Senate, the House of Representatives suffers more acutely from committee unrepresentativeness—although Senate committees are not immune—and so the House will receive somewhat more attention. In a latter section the Senate committee system will be discussed.

The proposals for reform which will be analyzed are not minor. If enacted, they would sweepingly alter congressional structures—with no certain fashion of predicting the emerging relationships of power. It would be more difficult, if not impossible, to get Congress to restructure itself willingly in such a fashion. However, a low probability of enactment should be no deterrent to analyzing large scale reforms—indeed, it could be argued that tailoring analyses of reform to perceived probability of success helps to limit the amount of change which will occur. Furthermore, the raising and discussing of larger questions and the challenging of some of the basic assumptions underlying the contemporary committee systems in the House and the Senate can give a better understanding of the role of committee structures in the congressional process.

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PAST REFORMS

Any examination of committee structures must first be put into the context of the origin and the enactment of past reform proposals. Most recent efforts at internal reforms have focused on aspects of committee operations.[4] The seniority system arose from the 1910 revolt in the House.[5] The 1946 Legislative Reorganization Act's most sweeping provision greatly reduced the number of standing committees in both House and Senate.[6] In the Senate the most significant change of the 1950s was the Johnson rule,[7] which guaranteed each Democrat a major committee assignment. In the House the Rules Committee was the major focal point of the late 1950s and early '60s, with reformers attempting both to enlarge it[8] and to bypass it—via the twenty-one day rule. Recent reforms in the House in 1971 and 1973 have significantly altered the subcommittee system,[9] the selection of committee and subcommittee chairmen and the conduct of committee meetings.[10]

What have these reforms tried to accomplish? By examining some of them more closely one may be able to better understand how future structural changes might affect congressional behavior and legislative outputs.

POWER AND COMMITTEE CHAIRMEN IN THE HOUSE

The seniority system arose as a way of shifting power from an omnipotent Speaker of the House, whose greatest formal weapon had been his ability to appoint committee members and chairmen. The seniority custom was devised as an automatic, nonpolitical method for selecting committee chairmen and preventing a subgroup of legislative actors—in this case, a subgroup of one—from using accumulated power to dictate outcomes to the larger body membership.

The enlarging role of the federal government in American society and, to a lesser extent, the 1946 reduction in the number of committees greatly increased the importance and power of the standing committees. Much of this power went to the handful of committee chairmen. Chairmen had formal powers—control over hiring and firing of committee staff, control over formation and jurisdiction of subcommittees and appointment of subcommittee chairmen—as well as the informal influence of prestige and expertise. Most importantly, the technical operation of the seniority system in the House meant that chairmen achieved their positions automatically and retained them without being directly responsible to any larger authority. The important step, ratification of the appointment by the majority party caucus, was done by a single vote for all committee assignments and chairmanships, making it virtually impossible to challenge any particular chairman.

Working mainly through the House Democratic Caucus, contemporary reformers in 1971 and 1973 moved, through a series of changes, to rectify this latter day power imbalance in which smaller concentrations of power, rather than being eliminated, were centered in the hands of committee chairmen.[11] First, the Democrats attempted to get automatic voting by the party caucus on each individual chairmanship. They partially succeeded in 1971 at the start of the 92nd Congress; a vote was permitted on a chairman if ten members demanded it. At the beginning of the 93rd Congress in January of 1973 an automatic vote procedure was implemented. No chairman lost his position in either of these years, but, as Peabody has noted: "all were put on notice that their conduct would be subject to bi-annual examination with the threat of caucus removal at least a possibility."[12]

At the same time vast changes have been implemented in the structure of the subcommittee system, also accomplished largely via the Democratic Caucus.[13] Subcommittee chairmanships were limited to one per member in 1971, thereby spreading out these positions to younger members. In 1973 a Subcommittee Bill of Rights was implemented by the Caucus; it enlarged and specified the powers of subcommittee chairmen, enabling them to hire their own professional staffs and to handle legislation on the floor. The selection of subcommittee chairmen was formalized, as well. All of these reforms strengthened subcommittees and subcommittee chairmen at the expense of committee chairmen. Importantly, these changes were made subject to ratification by the individual committee caucus of the majority party.

There is little question that, although the specific recommendations came from, an ideologically and regionally balanced Democratic committee on reform headed by Representative Julia Butler Hansen of Washington, these changes were instigated by liberals who felt the committee system of the 1960s—especially through seniority—favored Southern conservatives. Nevertheless, an examination of them, on paper at least, shows that these 1971 and 1973 changes were sensitive to the unrestricted accumulation of power brought about through the *1910* reforms. Some power was taken from committee chairmen and spread out to subcommittee chairmen, which meant a broader distribution of power in terms of region, ideology and seniority. However, unlike the previous reforms, checks were put on committee chairmen, via the party caucus, and on subcommittee chairmen, via committee caucuses. In theory, at least, one of the major problems of the committee system in the past was ameliorated, although it will take several years before the real impact of these reforms can be assessed.[14] Nevertheless, as nearly as can be determined and as far as structural reforms can go, the House Democrats have arranged safeguards against the possibility of a substitution of one hundred fifty fiefdoms for twenty.

These safeguards can break down, especially through individual committees and their majority party caucuses. While committee chairmen have had their formal powers curbed, they and their subcommittee counterparts are now responsible to the full committee membership, especially the majority party caucus. Should a committee decide to defy the full party membership there are few direct remedies. One cannot easily restructure an entire committee; thus, a problem which remains is ensuring that an individual committee does not become biased in some fashion relative to the full body membership—the representativeness problem again.

SUGGESTIONS FOR CHANGE

How, then, can committees reflect the makeup of the entire body as a microcosm of the nation without drastically affecting their capacity for knowledgeable formulation and oversight of public policy? A series of structural modifications might be able to achieve this goal, while at the same time building in an increased flexibility for future change; possible reforms are discussed below. It should again be emphasized that such changes are not likely to be implemented soon, if ever. For one thing, their inception would involve success in several separate forums. Committee assignments are handled by individual party caucuses; proposals to implement uniform criteria, such as limita-

tion on continuous service on a committee, would have to be accepted by each of the parties, or would not work. Other proposals, such as a reduction in the number of standing committees, could be implemented through the House as a whole, but would involve large scale changes which would encounter opposition from many sources—not the least being many of the current committee chairmen and other high ranking members.

Finally, these changes operate under the assumption that the House is attempting, first and foremost, to pass and oversee good national governmental policy. Congressmen, however, have other goals as well—some personal, such as getting reelected or having personal influence within the House, and some constituency-related, such as seeing that particular interests of one's own district are well represented. To the extent that these goals predominate, major changes which might conflict with them will have little chance of success. Nevertheless, discussing significant structural reforms is a useful method of understanding how Congress, through its committees, operates.

Consolidation of committees

The first, and greatest, step in making committees representative would be to consolidate committees in the House; the final total should be perhaps seven or eight standing committees, each with approximately fifty-five members and with each representative having one assignment. Our concern here is less with the specifics of rejurisdiction or with the problems of appropriation, taxation and authorization—questions which have been discussed in detail by others—than with the broader implications of this type of innovation. Elsewhere in this volume Robert L. Peabody outlines one system,[15] which we will utilize for analytic purposes. In a modification of this type one could consolidate committees with very different incentives and, thus, broaden the natural base of each new committee. For example, a Committee on Natural Resources could include interior, public works, environmental and agricultural jurisdictions, appealing to both urban congressmen concerned about pollution and rural congressmen concerned about farm problems. A Committee on Human Resources could include the areas of education, health, welfare and labor. A Committee on Defense and Foreign Policy could encompass armed services, foreign affairs and international economic concerns. The other committees suggested by Peabody are Government Operations, Technology and Sciences, Ways and Means, Appropriations and Judiciary and Constitutional Rights.

House committees now range in size from nine to fifty-five; with this reform all committees would be composed of about fifty-five members. Thus, to some extent, the diffusion of workload which a committee system makes possible would be countered—it is extraordinarily difficult for fifty-five people to work as a unit, and the tendency would be strong for a greater division of labor. As was the case following the 1946 consolidation of committees down to nineteen, subcommittees would continue to proliferate. The recent House Democratic reforms which increased subcommittee chairmanships suggest that this proliferation would not necessarily be bad.[16] Giving out more subcommittee chairs can encourage congressmen to do their legislative work; furthermore, by giving each member a piece of the action, legislative activity and oversight can be enhanced. Once one reaches the point of overlap at which members must chair several different units, the effects of subcommittee proliferation become negative. Until that point is reached, more subcommittees may be beneficial. With fifty-five-member committees, the major work would be done at the subcommittee level; therefore, great care would be required to make subcommittees both representative and responsive. The problem of creating one hundred fifty autonomous and autocratic subcommittee chairmen is a real one which is reduced, but not eliminated, by the principle of committee caucus review.

Limitation of chairmanship tenure

Secondly, the problem of the chairman's power must be considered—both for committees and, as indicated above, subcommittees. Committee chairmen retain considerable influence within their bailiwicks; a reduction in committees would enhance the influence of the smaller number of new chairmen, in spite of the steps which have been taken to curb the powers of chairmen. An essential corollary of committee consolidation would be limitation of the tenure of committee chairmen, for example, to six years in their House careers. Such a step would decrease the influence of chairmen and would discourage any long term individual accumulation of power. Exceptional individuals could still make significant contributions through subcommittee chairmanships and other legislative activities. Chairmanship of any single subcommittee would have to be limited in the same fashion, for the same reasons; yet, to give continuing incentives to members for legislative work, the future opportunity to chair other subcommittees should exist.

In a practical sense, this proposal—or some variation—could be implemented through the majority party caucus; the proposal could exempt current chairmen and allow them to complete their careers in order to diffuse a major source of opposition. Indeed, a similar proposal was suggested this past year to the Democratic Caucus committee on reform by Florida Representative Charles Bennett; however, it was not acted upon.

Rotation of assignments

Another way of ensuring committee representativeness is to rotate, in some fashion, committee assignments. Currently, continuity on committees is encouraged, primarily by rewarding continuous committee seniority rather than overall seniority. Thus, when Representative Edith Green—Democrat, Oregon—moved last year from the Education and Labor Committee to the Appropriations Committee, she sacrificed eighteen years of seniority and a second ranking position on Education and Labor to become thirtieth ranking member of thirty-three Democrats on Appropriations. Lateral moves of this sort are not often taken.

On the other hand, the new House Democratic Steering and Policy Committee has built in a procedure which ensures a steady rotation of members, while limiting the overall turnover each two years to permit required continuity. A similar system could easily be adapted for the standing committee system. For example, continuous service on a committee could be limited to six years, after which a member would be required to leave the committee for four years before returning, if he desired. Ranking on each committee, and subcommittee chairmanships, could be decided by a combination of overall tenure and committee seniority—ratified by committee caucuses—as could committee chairmanships; if the most senior members had already served six years as a committee chairman, the next ranking member would be recommended to the majority party caucus. Finally, to ensure a continuing influx of fresh viewpoints, preference for some, perhaps half, of contested vacancies on desirable committees could be given to those who have never served on the committee, so long as the overall turnover on the committee did not exceed one-third for a given Congress.

A rotation system of this type would have several consequences. First, it would prevent any small group of legislators, whatever their ideologies, from becoming entrenched in the same formal power positions for extended periods of time. Also, by diluting internal vested interests, it would enable Congress to restructure itself more easily as policy areas and problems changed—legislators would have less stake in preserving their own congressional status quo.

Secondly, it would broaden the knowledge base in Congress by giving each legislator a wider range of experiences in several issue areas, without penalizing him for doing so. This would not drastically impair member expertise, for members could still spend several years during their legislative careers working on a single committee or dealing with a single problem. As most legislators would attest, a good grasp of the issues facing a particular committee or subcommittee can come after a short period of time; the outlines, if not the specifics, of policy proposals are usually quite similar from term to term. A legislator who has served on a committee for thirty years is little more expert than one who has served on the same committee for fifteen years—if they are matched in perseverance and intelligence. In fact, by allowing congressmen to examine issue areas from different perspectives, a rotation system could enhance expertise. Moreover, by building in mechanisms to limit the turnover on a committee at any given time to one-third or one-half, one could prevent the admittedly improbable situation of a committee composed entirely *of inexperienced* newcomers.

Finally, each committee would, at any given time, more accurately reflect the overall membership of the body—regionally, ideologically and in seniority. A regularized change of membership would give each committee a wider range of legislators; rural congressmen would be spread more broadly throughout the committee system and would no longer be so concentrated in the Agriculture and Public Works Committees, while big city congressmen would no longer be as heavily represented on the Education and Labor and Foreign Affairs Committees. Policy outputs formulated by a wider spectrum of legislators would be more likely to reflect national needs and desires.

This innovation would, however, have significant side effects as well. Larger proportions of members would have served on each commitee and would be less hesitant about speaking out on the floor about a committee's recommendations. All committees would become, in Fenno's phrase, more permeable, and floor debate would become more significant. Most likely, amendments would increase, and the efficiency of floor debate and decision making would decrease correspondingly. This type of environment exists to an extent in the Senate, which by virtue of its smaller size can react more flexibly; it might create chaos in the House. On the other hand, floor procedures could be created to streamline debate and deliberation, and vigorous and meaningful floor debate—if not efficient—might well produce better decisions.

Presumably, also, committee staffs—having the continuity on committees which legislators would lack—would increase in importance, particularly in crafting legislation. This is not a serious problem, however. Legislators would not become wholly dependent on their staffs; they are intelligent and capable individuals with control over the direction and substance of policy concerns. Elliot Richardson's successful administration of the Defense Department—Richardson being no expert in technical defense topics—is an example of the limitations or staffs in dictating or shaping outcomes.

Consolidation of committees deals with many of the same areas; perhaps, given its implementation, a built-in rotation of committee assignments would be unnecessary. A better solution might be merely rotation among subcommittees, limiting chairmanships and tenure in a similar fashion. This approach would check the erosion of special-

Footnotes at end of article.

ization and expertise caused by committee rotation; however, it would limit the interchange of ideas and viewpoints across policy areas and would make a future rejurisdiction of committees more difficult by giving members more stake in protecting their particular committee's interests.

THE SENATE

The House of Representatives and the Senate are two very different institutions with disparate modes of operation; thus, committees and the committee system as a whole might serve quite varying functions in the two bodies.[17] The most fundamental differences between the two institutions is also the most obvious—that of membership size. The one hundred members of the Senate serve on seventeen standing committees and one hundred twenty-one standing subcommittees; comparable figures for four hundred thirty-five House members are twenty-one committees and one hundred and twenty-three subcommittees. Numerically, it is obvious that senators must have either smaller committees or more committee assignments; in fact, the Senate has both. Senate standing committees average fifteen members in size; House committees, thirty. As Asher notes, in his essay, in this volume, senators average 2.6 committee and 9.7 subcommittee assignments, while House members sit on an average of 1.6 committees and 3.5 subcommittees.

It is quite clear that those size differences have a direct importance for proposals of committee structural change.[18] For example, while an expansion of subcommittees in the House might be desirable—to spread the action and encourage substantative involvement by younger legislators—such an action would be highly undesirable in the Senate. Better than half the members of the House lack subcommittee chairmanships or ranking minority memberships, but ninety-seven out of one hundred senators have at least one ranking position and many senators have several. To add new subcommittees in the Senate would spread even thinner its already overburdened members. Thus, one might at the same time call for an expansion of subcommittees in the House and a consideration and reduction in the number of subcommittees in the Senate.

Similarly, 60 percent of the Senate is represented on the three most powerful and prestigious committees—Appropriations, Finance and Foreign Relations—while only 22 percent of the House sits on its three super committees—Appropriations, Rules and Ways and Means. The problem of committee representation and meaningful assignments for legislators is a different one in the Senate than in the House. A rotation of committee assignments would be less meaningful in the Senate, for most senators already serve on a broad range of committees. In the Senate a more major problem is that of the individual workload and division of labor. Senators have too many time commitments and assignments; they are stretched too thin, substantively. A majority of Democratic senators chair multiple subcommittees, and most senators miss the bulk of their scheduled committee and subcommittee meetings and hearings.[19]

For these reasons a consolidation of both committees and subcommittees makes sense for the Senate. The overall workload will not decrease no matter what the reform, but a reduction in the number of assignments and chairmanships for each senator would enable a more efficient allocation of time and resources. Senators would have more control over scheduling; overlaps could be minimized. A consolidation plan similar to Peabody's for the House could be employed, while also limiting chairmanship tenure in the manner described. Senators would still sit on two committees and several subcommittees—they would be permitted no more than two chairmanships; thus, they could still cross several issue areas, limiting the problem of representatives.

CONCLUSION

Standing committees are not Constitutionally mandated structures; they are congressional responses to heavy workloads and unwieldy decision making. The reforms mentioned above are an attempt to make committees and their policy outputs reflect the larger legislature membership and, thus, the nations. Enacting these changes in the House or the Senate is, to say the least, unlikely—in the near future, at any rate. Nevertheless, the implications or modifications of this type should be seriously contemplated by both scholars and legislators. At the least, by discussing them we shed light on the underlying assumptions, behavior and limitations which characterize contemporary committees.

FOOTNOTES

[1] The increasing role of the federal government in American society and the growing volume and complexity of governmental decisions have created great problems for Congress in gathering and evaluating information to formulate and oversee public policies. How can 535 legislators—most of them lawyers—hope to compete with a bureaucracy which today is 3.5 million strong—with countless scientists, doctors and technical experts backed up by vast resources, including 6,000 computers? The response in Congress has been the sharpening of specialization and division of labor via the committee system. The House, in particular, has tried to develop its own member specialists, offering them incentives to maintain and enhance their expertise. Thus, the seniority system is based on continuous committee service, not House service, encouraging members to stay on their committees and not to move around, thus, presumably not diluting their knowledge.

[2] Richard F. Fenno, Jr., Congressmen in Committees (Boston, Mass.; Little, Brown, 1973).

[3] Such an unbiased system does not, however, exist now.

[4] There are two notable exceptions. Focus on the filibuster—Rule XXII—in the Senate points up the relative importance of floor considerations in the Senate. The recorded teller vote and electronic voting in the House may be the most significant structural reforms in Congress since 1946. See, for example, *Congressional Quarterly Weekly Report*, 25 September 1971, pp. 1967–1970.

[5] See, Nelson Polsby, Miriam Gallagher and Barry Rundquist, "The Growth of the Seniority System in the U.S. House of Representatives," *American Political Science Review* 62 (September 1969), pp. 787–807.

[6] See, George Goodwin, *The Little Legislatures* (Amherst, Mass.: University of Massachusetts Press, 1970), pp. 3–30; and Walter Kravitz's essay in this volume.

[7] For a good account of the implementation of the Johnson rule, see, Rowland Evans and Robert Novak, *Lyndon B. Johnson; The Exercise of Power* (New York: New American Library, 1966), pp. 74–75.

[8] See, for example, Tom Wicker, *JFK & LBJ* (New York: William Morrow, 1968), pp. 25–82.

[9] Norman J. Ornstein, "Causes and Consequences of Congressional Change: Subcommittee Reforms in the U.S. House of Representatives, 1970–73" (Paper presented at the 1973 Annual Meeting of the American Political Science Association, New Orleans, Louisiana, 4–8 September 1973).

[10] See, *Washington Post* story by Mary Russell, 5 July 1973, p. A13.

[11] Ornstein, "Congressional Change." It is quite interesting to see the increased importance of the party caucus, both in substantive and structural areas, in Congress.

[12] Robert L. Peabody, "House Leadership, Party Caucuses, and the Committee Structure." Select Committee on Committees, Working Paper on House Committee Organization and Operation (Washington, D.C.: Government Printing Office, 1973).

[13] Ornstein, "Congressional Change."

[14] There are many ifs involved here. For one thing, if the Democrats should become the minority party in the House, these changes become largely academic. In addition, one must remember that there were structural barriers to an accumulation of power in 1910—primarily, the discharge petition and Calendar Wednesday—but they were little utilized and have not had the intended impact.

[15] See Peabody's contribution to this volume.

[16] Ornstein, "Congressional Change."

[17] See, Fenno, *Congressmen in Committee*, especially chap. 5.

[18] See, Norman J. Ornstein, "Information, Resources and Legislation Decision-making: Some Comparative Perspectives on the U.S. Congress" (Ph.D. diss., University of Michigan, 1972), especially chap. 6.

[19] For some additional suggestions and thoughts on this topic, see, Norman J. Ornstein, "Streamlining the Work of the Senate," *Washington Post*, 2 August 1973, p. A24.

SHORTAGE OF RAILCARS

Mr. HUMPHREY. Mr. President, the March 13 edition of the New York Times carried a most interesting article, "Railcars Needed in Fertilizer Lag."

The Department of Agriculture claims that approximately 4,000 additional railcars are needed to move fertilizer to the farmers in time for spring planting, and that it was working with the ICC to get those cars.

The decision is to be made by Mr. Butz in the next few days, and Mr. Hamilton of the ICC felt that his agency could respond quickly depending on the urgency of the request.

Mr. President, I do hope that the message gets through to Mr. Butz that this is an urgent matter. Senator McGovern's Subcommittee on Agricultural Credit and Rural Electrification has been holding fertilizer hearings, and without exception transportation has been reported as one of the major bottlenecks.

But beyond the issue of getting additional railcars for fertilizer, we simply must not allow the transportation problem itself to become a crisis. If we have a bumper crop this year—and we should if only because of our increased acreage—we will also need more railcars at that time. I strongly urge appropriate Federal agencies to give high priority now to meet this requirement.

Mr. President, I ask unanimous consent that this article be printed in the RECORD.

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

[From the New York Times, Mar. 13, 1974]

RAIL CARS NEEDED IN FERTILIZER LAG

(By William Robbins)

WASHINGTON, March 12.—Much of the nation's hope for an adequate supply of food at reasonable prices in the coming year rides on the railroads, and a decision in the next few days on a big increase in rail cars to move fertilizer will be critical, officials of the Department of Agriculture said today.

Approximately 4,000 more rail cars than are now being used are needed to move the fertilizer to farmers in time for spring planting, the department officials said at a news briefing.

"We have got to start moving right now," said James H. Lauth, director of the Transportation and Warehouse Division of the Department's Agricultural Marketing Service. Immediate action is needed if fertilizer

for feed grains, especially corn, is to be in dealers' hands when farmers need it, between May 1 and May 15, he said.

"We are working with the Interstate Commerce Commission to try to get the cars to move the fertilizer," he said.

But what may be required, he explained, is first a decision by the Secretary of Agriculture that enough of an emergency exists to divert the cars from other activities and, then, an emergency order by the I.C.C. requiring the diversion.

MOST CRITICAL NEED

The transportation requirement was cited as the most critical element during a discussion of shortages affecting the outlook for food production at the news briefing.

Other officials taking part in the briefing were Nicholas H. Smith, director of the Department of Agriculture's Energy Office, and J. Dawson Ahalt, staff economist at the department. Also leading the briefing was William J. Kuhfuss, president of the American Farm Bureau Federation, who is chairman of the Agriculture Advisory Committee of the Federal Energy Office.

Even if all the cars required were supplied in time, the official said, there would still be fertilizer shortages. The shortage in nitrogen fertilizer was estimated at 5 per cent of demand, and phosphates were estimated to be 10 per cent short of demand.

Other materials affecting production that were discussed were diesel fuel, gasoline, propane, bailing wire, and bailing twine, as well as phosphates used in livestock feed.

Careful management of the supplies and care in allocations to get all available materials into farmers' hands at the right time will be required if the nation's goals of big increases in crop production are to be met, the officials said.

TOP FUEL PRIORITY

They expressed continued hope, however, that the goals of record output would be achieved. Noting that agriculture had been given top priority in fuel allocations, Mr. Smith acknowledged:

"We appreciate the fact that you can't run a tractor on priorities."

In regard to the rail car requirement, Mr. Lauth said, a decision by Secretary of Agriculture Earl L. Butz can be expected within the next few days.

A problem, Mr. Kuhfuss noted is that I.C.C., regulations were written for other times and other situations. The question is whether action can be achieved swiftly, he said.

But Edgar B. Hamilton Jr., press information officer at the I.C.C., expressed optimism that the agency could respond quickly to a request by the Secretary.

"A lot depends on how urgently he expresses the need," he said, adding:

"What we have got to find out is how many cars are needed at a given point at a given time. Then we can take action and I'm sure we will."

A problem, however, is that the cars needed to move fertilizer are now occupied in moving record quantities of grain.

NITROGEN NEED CITED

In discussing the shortage of fertilizer supplies, the agriculture officials said that nitrogen was the element most critically needed for production increases.

But they said, as other agriculture experts have explained recently, that production losses resulting from any reduced application of fertilizer would be smaller proportionally than the amount of the fertilizer cutback.

The reason, they said, is that as more and more fertilizer is applied, there is decline in the gains from each degree of increment.

Mr. Ahalt noted, for example, that a recent Illinois study had shown that in areas where 125 to 130 reduction in the fertilizer application caused a loss of only about 8 to 12 per cent of corn production.

The expected shortfall in fertilizer is far less than the 25-pound reduction used in the study, he pointed out,

Mr. Kuhfuss observed that the critical question would be the time it took to get the supplies to farmers. Even a delay of a few days at planting time could cause serious losses, he said.

ARAB OIL RESUMING NO PRICE CUT HELP

Mr. FANNIN. Mr. President, at any moment now we are expecting word that the Arab oil boycott will be lifted. This is both good and bad news. It is good that we will have the additional supply to help meet our needs. It is bad news in that the price for this oil is astronomical and could cause severe economic consequences for the United States and for the world.

In the concern over lines at gas stations and attempts to roll back crude oil prices arbitrarily, little public attention has been paid to the big problem facing us once the boycott is over.

The Associated Press recently carried an article which provided a discussion of some of the main problems which will be created by the world's heavy dependence on Mideast oil. Although I am not necessarily in agreement with all of the answers given in this presentation, I do believe that this article raises many significant points that the Congress, the administration, and the American people must consider.

Mr. President, I ask unanimous consent that this article be printed in the RECORD.

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

[From the Bakersfield Californian, Feb. 25, 1974]

ARAB OIL RESUMING NO PRICE CUT HELP

WASHINGTON.—Even if the Arab oil embargo is lifted soon, the economic impact of sharply higher oil prices will be felt around the world for a long time.

In the United States, the long lines at gasoline stations might diminish but the high fuel prices wouldn't. In many other nations, the prospects are much more dismal. Some face recessions, others depression. The prices may lead to starvation in some extremely poor countries.

U.S. government officials, American financial leaders, and officials of international institutions are trying to work out plans to ease the financial impact of the higher prices. In question and answer form, here are some of the issues involved:

Q. How much more money will the Arab nations and other oil-producing countries collect because of higher prices this year?

A. The best estimate is about $50 billion more. That's about five times the value of gold in Ft. Knox. The United States probably will have to pay about $15 billion more for imported oil this year.

Q. I assume the U.S. oil companies will be putting up the extra money and then charging consumers higher prices?

A. That's right. Oil companies may, under price regulations, pass on to consumers the higher costs of foreign oil. That means the American rate of inflation is going to continue high.

Q. What about other industrial nations, such as France, Japan and Germany?

A. The higher prices will pose more of a problem. Japan, for instance, is wholly dependent on foreign oil. Many of the industrial nations will be pressed to come up with extra money. Therein lies the danger.

Q. Why?

A. Because that's the possibility that some nations may try to increase their foreign earnings to raise the necessary cash to pay off the Arabs. One technique would be to devalue their currency. Then their exports to other countries would become cheaper almost immediately. And they could pick up sales. A devaluation is, in effect, a price cut.

Q. What's wrong with that? Sounds like an extension of the free enterprise system to me.

A. The danger is that it would touch off a round of competitive devaluations and wind up in a full-scale trade war, to nobody's benefit, except, possibly the Arab nations.

Q. What's another way to raise the needed cash?

A. Well, a nation might go to the other extreme and put up import barriers to keep foreign goods out. It might result in a balance of trade surplus and net earnings. But if every nation did that, the free-trade system would break down and all kinds of dire economic consequences might result.

Q. What's the answer then?

A. The unfortunate thing is that there is no easy one. Now, the industrial nations are concerned with what the Arabs might do and how the capital they are accumulating will flow back to them. There could be a partial solution in the way the money flow back.

Q. What do you mean by that?

A. It depends on what the Arab-producing states do with the money, most of it, as I said, in dollars. The Arabs certainly wouldn't hold dollars for long, but would probably deposit them initially in banks either in Beirut or Switzerland or perhaps other financial centers. Then they would consider whether to invest the money—perhaps buy land in France, stock in the United States and so forth.

Q. But that doesn't assure an equitable flow of money to all countries?

A. That's right, and it might mean serious financial problems for some.

Q. How about the United States?

A. The dollars are inevitably expected to flow back here. The nation could have a big balance of payments surplus eventually. The financial impact of the higher prices here won't be that great—except on prices.

Q. Ah, but what if the Arabs decide to use their big supplies of money in a different way? Suppose they wanted to launch an attack on the dollar as another form of political blackmail?

A. It's possible. But few people within the government expect the Arabs to use their money to cause such worldwide financial disruption.

Q. Is there anything the United States and international institutions can do?

A. Treasury Secretary George P. Schultz has proposed that other nations set up a new international investment institution. This would be the vehicle through which the Arab and other producing nation investment money would flow. Presumably, there would be some kind of coordination of investments. The International Monetary Fund would probably extend loans to countries which needed the money to pay higher oil bills.

Q. How will the Arabs receive these suggestions?

A. No one knows. There appears to be no Arab unity on the question.

Q. You said something about starvation and depression in some countries. How would that happen?

A. There are 30 or 40 nations, India the most notable, which are already in dire straits. India is facing financial difficulty already because it has to pay higher food and fertilizer bills for its huge population. It will be impossible for these nations to come up with the extra $10 billion needed for higher oil prices.

Q. Is there an answer?

A. Well, yes, but it depends on what the Arabs will do with their money. A number of proposals to help the developing nations have

been made. But it will require multination help.

Q. What could the Arabs do?

A. They could, for instance, lend their money at very low interest rates to the poor nations. Or they could extend foreign aid directly, such as the United States did to Europe after World War II. They could sell their oil to the developing nations at low prices and to the industrial nations at high prices. All of these ideas have been proposed.

Q. Will the United States help?

A. That's debatable now. Congress has turned down, for the time being, a request to provide the U.S. share to a World Bank agency that makes easy-term loans to the poorest of the poor nations. Some congressmen are wary about voting funds for aid if the money is simply going to wind up in Arab hands.

THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, last December the international community celebrated the 25th anniversary of the proclamation of the Declaration of Human Rights. This remarkable document notes that without the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family, there can never be freedom, peace and justice. In short, it states that peace and progress in the human rights field are closely linked. In many ways, it resembles our own Declaration of Independence.

Since that proclamation, a series of treaties have been adopted by the international community in an effort to give the force of international law to these noble ideals. One such treaty is the Genocide Treaty. Drafted in the post-World War II era, it seeks to outlaw any attempt to systematically eliminate a racial, religious, national or ethnic group.

Ironically, it was the United States which was the prime mover behind the drafting of this treaty. Yet today, a full generation later, the U.S. Senate has not given its advice and consent to this humanitarian treaty. This inaction has been a source of diplomatic embarrassment for our diplomatic corps, puzzling our allies and delighting our enemies.

Mr. President, over 75 nations have ratified this treaty including all of our major Western allies. We owe it to ourselves to ratify this treaty now and, thereby, rededicate ourselves to the basic principles of human rights for which our forefathers fought.

NORTHEAST REGIONAL RAIL REORGANIZATION

Mr. JAVITS. Mr. President, the newly created Rail Services Planning Office of the Interstate Commerce Commission has begun hearings, pursuant to the Regional Rail Reorganization Act of 1973, to restructure and revitalize the freight and passenger rail service system in the Northeast and Midwest. The hearing's primary purpose is to receive comment on the Secretary of Transportation's rail service report, which contains the DOT recommendations for achieving a profitable system.

That report recommends massive abandonment of branch lines and local service. In New York, it classifies 1,875 miles, or 34 percent of all rail track, as potentially excess. This should be compared to the report of the New York Department of Transportation which concluded that 500 miles of trackage was unprofitable.

The difference is in methodology. But the transportation needs of the people of the Northeast cannot be determined by statistical analysis alone. They must be developed from a host of factors—factors that the DOT report did not consider.

Among those factors are the energy and environmental advantages of railroad transportation, the increasing need for passenger service, the economic effect on individual communities and railroad employees, and the importance of competition.

The U.S. Railway Association must prepare a preliminary system plan based on the DOT report and the results of the ICC hearings. I believe that sufficient testimony will be produced at the hearings to merit retention of many of the lines and rights-way recommended as excess. I hope that all affected parties will contribute to this process so that the Planning Office will have a complete and accurate information base for its comprehensive report.

In my testimony before the Commission, I stressed the importance of the factors mentioned above and urged the Planning Office to consider each of them in depth before making its recommendations. I ask unanimous consent that my testimony be printed in the RECORD at the conclusion of my remarks.

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

TESTIMONY OF SENATOR JACOB K. JAVITS BEFORE THE RAIL SERVICES PLANNING OFFICE OF THE INTERSTATE COMMERCE COMMISSION

Mr. Examiner, I commend the Interstate Commerce Commission's Rail Services Planning Office on the speed and efficiency with which it has set up these important hearings. I am also pleased to see that Buffalo, New York has been added to the list of cities in which hearings are to be held, since there are many interested parties in Erie County unable easily to attend the hearings in Albany or New York City.

I have two procedural comments to make before getting to the substance of the two volume report entitled *Rail Service in the Midwest and Northeast Region* prepared by the Secretary of Transportation. First, it has been extremely difficult for interested citizens to obtain copies of the Report. My Senate office received a single copy, and was, consequently, unable to meet requests from others for the Report. Interested persons will be unable to comment intelligently if the Report is not more widely disseminated.

I therefore urge the Commission to make every effort to disseminate the information contained in the Report to all interested parties, e.g. citizens, shippers, localities, etc. I also ask that the hearing record remain open as long as is necessary to enable interested parties to submit written comments, after they have had an opportunity to review the Report.

My second procedural comment relates to the format of the Report. Color coding the rail lines that are "not necessary to serve points recommended for service" leads the reader to believe that all other (non-color coded) lines are safe. This is not the case. Consequently, I ask that further hearings be held in any area where rail lines which are not recommended for abandonment in the Report become slated for discontinuance.

Turning to the Report itself, although I believe the Department of Transportation used a uniform approach and applied it objectively to all parts of the existing system, I feel the results do not adequately take into account potentially disastrous economic impact upon individual counties and towns.

The Report asserts that 95% of the existing local freight service in New York State can be provided over 66% of existing trackage. I hope this is a realistic prediction and I emphasize that it remains to be proven in terms of present and potential *needs*, rather than historical data alone.

But it must be remembered that eliminating trackage is *not* in and of itself the ultimate goal. Rather, we must aim toward expanding railroad use which is clearly the most energy-efficient way to move both people and freight. In this connection, I take strong issue with the Report's recommendations drastically to cut service in certain geographic areas, particularly New York State. In the Amsterdam and Poughkeepsie zones, for example, traffic on tracks slated for abandonment is far too great. Such massive reduction in rail service to areas that depend on the railroads for present needs and future development would, in my view, be unwise and, possibly, fatal. It is put forward in the Report at precisely the time that upstate New York papers such as the Syracuse *Post Standard* and the Buffalo *Courier Express* are urging expanded, comprehensive improvement of rail service throughout New York State.

The transportation needs of these areas—and other areas where drastic reduction is planned—must be investigated with particular care. Traffic in any given area should not be cut more than 10% unless it is absolutely clear that alternate, energy-wise and economical service is available.

In addition, I believe that an intensive analysis should be conducted of the needs of shippers whose livelihoods depend upon rail transport. Shippers, and the communities they serve, should be given every opportunity to present evidence of actual growth since the date of issuance of the Secretary's Report, and of long-range development planning.

Every effort should be made to preserve trackage and feeder lines in areas which can demonstrate potential for freight traffic growth or rail passenger service. Study and recommendations should also be made concerning alternative service afforded to those shippers who will eventually lose direct rail service because of abandonment. My inclination is that piggyback rail service can be provided to many; in-depth study is, however, required.

Two other subjects of critical importance merit more thorough and comprehensive analysis than has been given to date. These are energy-conservation and environmental impact. Congress has specifically required that the new rail system be designed to utilize those modes which require the smallest amount of "scarce energy resources" and which do not adversely impact upon our environment.

The precise energy usage and negative environmental impact of the different modes of transport should be carefully compared. All efforts must be made to maximize energy-conservation and to minimize ecological disruption. Because the energy entailed in rail use is relatively low, every effort should be made to preserve rail lines that show the potential for economic service. Our transportation system must not only serve present needs but must be able to meet prospective needs of the rural areas and of increasingly congested cities and suburbs.

With regard to the interests rail service system, I believe there may be a need for the establishment of two new corporations, as suggested in the *Secretary's Report*. It is essential that the major mainline routes in the system be served competitively. In areas where routes are serviced by bankrupt carriers, the temptation is great to suggest elimination of all but one of the routes, or to leave alternative routes to the newly es-

tablished corporation. These temptations should be resisted. Competition on the major routes must be preserved; this should be a primary goal of the emergent system. If solvent railroads do not enter the market, an additional railway corporation should be established to provide the necessary service on a competitive basis.

My final comment relates to rail passenger service which, while not the focus of the Secretary's Report, should be carefully evaluated before abandonments are recommended. The need for increased rail passenger service has, in this period of energy crisis, become readily apparent. Inter-city rail and commuter line passenger service—work and recreation-related—are increasing and will continue to increase (as Amtrak has demonstrated). The Report does not adequately take passenger service into account. It recommends, for example, elimination of part of the Penn Central's Harlem Division north of Mount Kisco, New York. This must not be permitted. It is at odds with one of the greatest current needs of our suburban population.

In conclusion, much closer attention must be paid to the present and potential use of rail networks to provide passenger service. Greater care and sensitivity should be shown before rail lines and trackage are finally placed on the chopping block.

POSTAL SERVICE

Mr. McGEE. Mr. President, the Committee on Post Office and Civil Service, which has recently filed its report—Senate Report No. 93–727—on its investigation of the Postal Service, observed therein that present U.S. postage rates were not entirely out of line when compared with those in other industrialized nations. In most of those nations the postal monopoly is broader, encompassing telephone and telegraph service as well.

If you think postal service is bad in the United States, look abroad, advises the current edition of U.S. News & World Report, whose international staff has compiled a country-by-country check which led the magazine to conclude that—

By contrast with some systems abroad, the U.S. Postal Service would get a "satisfactory" rating.

The Committee on Post Office and Civil Service has not gone so far as to proclaim the USPS brand of service as satisfactory. What we did say is that the committee has found no reason to conclude that there is anything inherent in the structure of the U.S. Postal Service as established by Public Law 91–375 which foretells its doom or ordains that it cannot work. Rather, we found in the gradual changes and constructive adjustments reason to hope for further improvement and stabilization in the future. One requirement will be that Congress be willing to resolve both short and long-term difficulties stemming from what may have been unrealistic hopes for quick solutions to break-even postal financing.

For the perspective it offers, Mr. President, I ask unanimous consent that U.S. News & World Reports' article from its March 18 edition be printed in the RECORD.

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

LABOR: IF YOU THINK POSTAL SERVICE IS BAD IN UNITED STATES, LOOK ABROAD

(Plagued by tardy mail deliveries here at home? Postal problems in other parts of the world include backed-up letters, stolen stamps, labor woes.)

Americans are far from being the only people with complaints about tardy mail deliveries and lackadaisical clerks at post-office windows.

Postal systems in other parts of the world also leave much to be desired, judging from a survey by members of the International Staff of "U.S. News & World Report."

A country-by-country check turned up examples of letters that had arrived three months late, of parcels that had been sabotaged by irate employes and of mail that wound up in the gutter. Lack of modern equipment, inefficiency of workers, low pay, strikes and labor shortages all got their share of the blame.

The picture is not uniformly dark, however. In some nations, householders and business firms still get overnight delivery of letters. And in Sweden, the post office even makes a profit.

But the complaints about poor mail service are rising, particularly in Europe. Businessmen in the U.S. are searching for ways to insure safe, speedy delivery of important letters and documents to European offices.

One recent development: a privately operated courier service that will pick up mail or packages at various locations in this country or in Europe and make transatlantic deliveries the next day.

PRIVATE SERVICE

Inside some European countries, too, private mail systems provide special deliveries within a city or a region, to counteract slow service.

Problem areas for mail delivery around the world show up in the following cases noted by staff members of this magazine:

In London, some business firms had no mail deliveries for days on end recently. A shortage of postmen caused 14-hour days for those on the job, so the union in early March imposed a ban on all overtime work.

Italians report delays of two or three months for delivery of letters, several days for telegrams. Important invitations in Rome are sent through a private mail service that guarantees distribution in that city within 36 hours.

Mail clerks in South Vietnam often sell the same stamp several times a day—failing to stick it to the letter after the customer leaves the postal windows. A clerk who can do that seven times a day can double his monthly income, because postal salaries are so low.

Members of the Canadian Parliament report that their files are bulging with constituent complaints on the mails. The gripes tell of the three days required to receive intracity mail in Toronto, of week-long delays in delivery of letters between Montreal and Toronto and of Christmas cards that were still arriving in February.

The political views of postal workers tend to slow the mails in Argentina. An employee in the Buenos Aires post office admitted recently that workers deliberately sabotaged the processing of mail from Chile because the left-leaning postal union is politically unsympathetic to Chile's military junta.

Brazilian postal employes in Rio de Janiero have been known to throw up their hands at the flood of Christmas mail and to dump sacks of letters into Guanabara Bay.

THE EXCUSES

Various reasons are cited for these worldwide post-office problems.

British experts blame a lack of workers for current delays in the mails. The country is 9,000 postmen under strength, and London alone is short 3,500 postal employes. That means some mailmen work double shifts, putting in as many as 14 hours a day, six days a week.

Increased mechanization of the postal processes is seen as the long-term hope for the service in Britain. The union of postal workers says that it has ended its policy of fighting modernization moves.

Britain's state-controlled postal system showed a loss of 144 million dollars last year. The service charges slightly less than 8 cents to carry a letter for delivery anywhere in the United Kingdom. That makes it the least-expensive mail service of all of the Common Market countries.

Next-day delivery of mail in Britain was achieved in 92 per cent of the cases in 1972, the records show. But when the score dropped to 89 per cent at the end of 1973, business firms complained.

TWO-MONTH-OLD MAIL

Delays are sometimes measured in months, not days, in Italy. The Government Minister in charge of the postal service has been quoted as admitting that even he receives letters that are two months old.

Magazines or other printed matter may take as long as six months to reach their destination.

The Italian Government has talked of seeking nearly 2 billion dollars to automate the postal service over a period of years. So far, however, the plan exists mainly on paper.

An antiquated distribution system and a high percentage of absenteeism—as much as 40 per cent—cause Italy's delivery problems. The union of postal employes says the fault lies in bad management, an inefficient operating system and a lack of workers. Postal management places much of the blame on a poor output from employes.

In the present disarray, mail has been found in ditches after a long strike. In most cases, the mail eventually turns up—although it may be a year late.

WORKER DISGRUNTLEMENT

In Canada, postal employees themselves describe their morale as "unbelievably low." They cite poor working conditions and growing fears for job security in the face of technological innovations—all of which results in apathy, carelessness and, among a militant minority, sabotage of the mail. Turnover is running as high as 40 per cent a year in certain jobs. Workers "fed up with it all" are going on pension early.

Officials concede that there are many problems, including inadequate plants, a need for modern machinery and a work force that is "less dedicated" than in earlier years.

Despite complaints, most residents seem to think that the Canadian mail service is better than the system in many other countries.

Canada's post office tries to give next-day delivery to any letter mailed before 11 a.m.—in a country that stretches 4,700 miles coast to coast. Officials claim that, on the average, only about 1 per cent of that mail is delayed beyond a day.

POOR PAY

That war-ravaged South Vietnam has a postal service at all is remarkable—but there is no guarantee that a letter will ever reach or leave the country. Wages are too low to attract the younger workers. A mail sorter earns about $20 a month in U.S. terms, and a clerk get less than $35.

Not only do employees in the post office steal to make up for low wages, but youths extract letters from mail boxes with the help of a stick and gum.

At a hotel, a tourist may turn letters in to the desk clerk for mailing, but the letters may never get to the post office because a bellboy may remove the stamps to sell them. The letters go into the nearest gutter.

Strikes have been a basic problem facing

the French mail system. Between May, 1972, and January, 1973, five strikes affected most of the country's 25,000 mail sorters. Workers were seeking more money and less work.

Another problem for the French is the rapidly increasing number of letters. Mail volume has doubled in the past 15 years and continues to rise.

SWISS EFFICIENCY

In Switzerland, daily deliveries have been reduced, and complaints are voiced about lagging mail services, but the postal system still compares favorably with that of most other European countries.

Parcels mailed one morning in Switzerland usually are delivered there the following day. "Express letters" mailed in Zurich before noon, for example, arrive at an office in Geneva in the late afternoon or evening of the same day.

West Germany's post office continues to provide one-day service on letters in more than 90 per cent of the cases. Delivery of a parcel within the country customarily takes two or three days.

As in most countries, it is illegal for Japanese postal employes to strike, but that does not stop them from staging semiannual shutdowns over money demands. In the spring, they seek a pay raise; in December, it is pressure for a larger year-end bonus. Last year, Japan's post offices were struck for three days in the spring and three more in early December. By mid-December, an estimated 23 million pieces of mail had piled up, but the union proudly pointed to the workers' achievement in clearing away that backlog before the year's end—along with 223 million New Year's cards.

Japan's two postal unions and their members support the idea of mechanization of post-office operations. Automatic sorting machines now are working in 44 offices.

Even so, officials admit that the system is barely holding its own against increasing volume. Manpower and facilities are inadequate to cope with mail volume that is increasing 4 or 5 per cent a year. The 1973 total exceeded 13 billion pieces of mail, about 120 per capita.

Thus, almost every country has its peculiar postal problems. By contrast with some systems abroad, the U.S. Postal Service would get a "satisfactory" rating.

ALCOHOL'S POTENTIAL FOR EASING THE FUEL SHORTAGE

Mr. DOLE. Mr. President, I would like to call attention to an article appearing in the Kansas City Times of February 18, 1974. It deals with the potential use of ethyl grain alcohol as an automobile fuel additive. In light of the acute oil shortage, I have on several previous occasions supported research into the feasibility of the use of grain alcohol as a gasoline extender. Investigations to date seem to indicate that such use would not only be a promising way in which to stretch existing fuel supplies but would also help reduce exhaust pollution.

Such a program has long been of interest to Midwestern grain producers and dealers, who would provide the necessary resources for production of the additive. Far-Mar-Co, based in Hutchinson, Kans., is already developing a process for separating grain into its component parts, which would greatly facilitate such production. And Midwest Solvents, Inc., in Atchison, is the largest American producer of grain alcohol.

The current shortage and rising costs of gasoline have been of concern to all our Nation's citizens and, therefore, the possible utilization of grain alcohol to ease that shortage and perhaps reduce costs should, I feel, be brought to the public attention. The following article is particularly informative, and I ask that it be printed in the RECORD.

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

GASOLINE GOES ALCOHOLIC

(By Phillip S. Brimble)

First came "tiger in your tank." Next, with gasoline prices soaring and supplies shrinkng, it may be "vodka in your Volkswagen."

Because it burns well in conventional engines, ethyl alcohol or ethanol is being considered as a possible gasoline extender to stretch out dwindling gasoline supplies.

Gasoline is made from oil, a nonrenewable resource, whereas ethanol, made from grains such as corn, wheat and milo, is a renewable source of energy, thus theoretically providing unlimited supplies.

But whether the day will come when cars consume more alcohol than their drivers depends on economics.

Currently the most active program to study the potential of "gasahol," as a mixture of 10 per cent ethanol and 90 per cent gasoline is called, is going on at the University of Nebraska, Lincoln.

There preliminary tests with five vehicles driven a total of 250,000 miles burning gasohol indicated there was no unusual engine wear, no starting difficulties and no loss in either mileage or performance.

"We didn't find any major problems," said Dr. William A. Scheller, head of the project. "For that matter, we didn't find any minor problems either."

Dr. Scheller, a chemical engineer at the university, believes a 2-million-mile test using 35 state cars and trucks will provide conclusive proof that ethanol can be burned in conventional engines without requiring modification and without affecting engine life or performance.

He hopes to begin the fleet testing May 1.

Like other suggestions for alternative energy sources being revived by the current energy crisis, burning alcohol in cars has a history. It has been a suggestion that tended to surface rapidly in times of low farm prices, and drift out of attention when grain prices increased.

Before World War II ethanol was used as a motor fuel in several European countries.

In the period from 1935 to 1938 service stations in northeast Kansas and in Missouri, Nebraska and Illinois sold an alcohol-gasoline blend called Agrol, but the firm went out of business because gasoline was still cheaper.

"In those days you could buy 10 gallons of gasoline and a pack of cigarettes and still get change on your dollar," said Keith Kilander, director of research and development for the Midwest Solvents Company, Atchison, Kan., the nation's largest distiller of grain alcohol.

It was Midwest that bought out the Agrol firm. But Midwest's interests have been limited to the beverage industry.

And that isn't likely to change, J. M. Carrigan, a vice-president of the firm, said.

Just the same Nebraska gasohol investigators have been going to Midwest Solvents for technical advice and direction.

The level of activity in Nebraska is convincing evidence that the perfume of gasohol profits may be an enticing one.

The Nebraska Legislature has passed a bill for a 3 cents reduction in state gasoline tax for gasoline sold in the state containing 10 per cent grain alcohol.

The legislature has also established an agricultural alcohol fuel tax fund to investigate the possible use of grains in making car fuels. Funds come from retaining one-eighth of a cent gallon of the refundable part of the state nonhighway gasoline tax.

In essence, the farmers of Nebraska are footing the tax fund to find ways to make more money with their crops.

The legislature also has set up a committee to administer these funds. Called the Nebraska Agricultural Products Industrial Utilization Committee, it is composed of four farmers, two businessmen, and an oil company executive.

Dr. Scheller pointed out in a telephone interview that the grain crops of the Midwest could provide a significant source of renewable energy if gasohol proves commercially feasible.

However now his study group is concerned primarily with the needs of Nebraska.

"Every state will have to consider its own situation," he said. "In Nebraska we can grow enough grain for food and alcohol and still not use up all our idle acres.

"But nationwide, if you look at gasoline consumption, about 100 billion gallons last year, you realize that we'd need 10 billion gallons of ethanol, and that would amount to about 4 billion bushels of grain."

Dr. Wayne Henry, director of research for the Far-Mar-Co, a farm co-operative based in Hutchinson, Kan., has estimated that conversion to alcohol of the nation's entire wheat harvest last year would have yielded 6 billion gallons of ethanol.

Dr. Scheller has a ready answer to critics who contend converting grains to alcohol to run cars would be immoral in a world with food shortages.

"That would be inaccurate," Dr. Scheller said. "There is a protein shortage in the world, and we use only the starches of grain to make alcohol. The protein remains as a byproduct."

Unfortunately, he added, the taste of distiller's grains is too bitter for human consumption, so it is sold as cattle feed.

If ways can be found to salvage for human consumption the protein part of wheat the cost of distilling could be offset and this would make gasohol close to becoming competitive with ordinary gasoline, Dr. Scheller said.

Indications that such a time is near come from Far-Mar-Co officials, who have developed a process to separate the grain into its component parts before processing. This could reduce the by-product production and manufacturing costs of alcohol distillation.

Other separation methods have permitted only 45 per cent extraction of wheat kernel components. The new process enables separation and segregation without damage of almost all the kernel components, according to Far-Mar-Co.

This means that the protein part of the kernel could be isolated for human food, while the starchy part could be separated for distilling.

Current distilling techniques enable the extraction of about 2.5 gallons of ethanol from a bushel of wheat or milo and 2.6 gallons from a bushel of corn.

Three main factors affect the possible success of gasohol:

The price of gasoline.

The price of grain.

The value of by-products from the alcohol manufacturing process.

As a hedge against food prices increasing because industrial users bid against food processors for grain, an official of the Nebraska Deparment of Agriculture suggested a utilization bank of grain reserves for indus-

trial use. That way industrial users could bid a year in advance for these set-aside grains.

The chemical formula of ethanol is CH3-CH2-OH, making it more chemically akin to gasoline than methanol, which has a formula of CH3OH.

Methanol or wood alcohol also has been considered as a possible gasoline extender. It is cheaper to make than ethanol, but it has less energy potential.

For example, a gallon of methanol has about 57,000 B.T.U.s (for British Thermal Units, a measure of energy potential), compared to 84,000 B.T.U.s in a similar amount of ethanol, according to Dr. Scheller.

While car engines can run on ethanol without requiring any modifications, methanol-burning motors must first be reset, he added.

"In addition, the ethanol industry is well established and large," he said.

"Since methanol is made primarily from trees, I don't think we will be seeing it materialize as a serious competitor with ethanol as a gasoline extender. Think of how slow trees grow, and how many would be needed, then you'll understand my meaning."

Other suggested sources of methanol have included garbage, valueless vegetation, and the output of sewage treatment plants.

While proponents of coal say it appears to be the most attractive candidate for methanol production, this has not stopped others from coming up with less attractive candidates, such as processing animal wastes.

A scientist at Kansas State University has estimated that enough methane, a gas, could be produced from all the feed lots in Kansas to supply 13 per cent of the state's electricity for a year. But to run cars on methane would require completely redesigning the engine and would mean cars now on the street would need expensive modifications.

"None of that is any good for the short run," Dr. Scheller said. "Gasohol is with us now, and needs none of these engine alterations. We are very encouraged."

SHORELINE EROSION

Mr. STEVENSON. Mr. President, 1 year ago, shoreline erosion was causing unprecedented damage throughout the United States. Although the Army Corps of Engineers' Shoreline Inventory Report had documented the extent of the damage being done, the Federal Government had little legal authority and insufficient technical knowledge with which to come to grips with the critical erosion occurring along the Great Lakes, gulf coast, and ocean shorelines.

At that time, I introduced four bills designed to give the Federal Government some of the knowledge and legal authority it needed to act against shoreline erosion. The enactment of the Water Resources Development Act invites us to reflect on the progress those and other legislative measures have made in the past 12 months.

In the past year Congress has enacted six measures, and several administrative agencies have been moved to respond to the relentless shoreline erosion.

Four of the measures enacted by the Congress can provide immediate relief:

Section 27 of the Water Resources Development Act gives the Army Corps of Engineers authority to deal with shoreline erosion problems on an emergency basis to protect public works, churches, hospitals, schools and other nonprofit public services.

Section 55 of the Water Resources Development Act empowers the Corps to provide technical and engineering assistance to non-federal public interests seeking to prevent damage from shoreline and streambank erosion.

The Flood Disaster Protection Act of 1973 expands the Federal Flood Insurance program to include erosion. Thus, "erosion" insurance is now available in communities which are participating in the flood insurance program.

The Shoreline Erosion Control Demonstration Act of 1974 establishes a five-year program in which no fewer than sixteen demonstration projects will be established on the nation's shorelines. These projects will be distributed throughout the nation and will reflect a variety of geographical and climactic conditions.

Two more pieces of legislation enacted by Congress in the past year respond to the need for a greater understanding of the physical forces which produce erosion:

The Water Resources Development Act directs the Corps to study the feasibility of constructing a hydraulic model of the Great Lakes system, and creating an associated technical center for intensive study of these matters.

The Shoreline Erosion Control Demonstration Act of 1974, noting the need to develop, demonstrate and disseminate information about low-cost means to prevent and control shoreline erosion, creates a Shoreline Erosion Advisory Panel to direct the research into both engineered and vegetative means of stemming erosion.

Still pending in the Senate Public Works Committee is S. 1267 which would include erosion in the list of disasters for which Federal relief is available. I am hopeful the committee will include it in the comprehensive revision of the disaster assistance legislation which it will soon report to the Senate.

In addition, the efforts to spur further investigation into shoreline erosion phenomena have caused the Army Corps of Engineers to focus more directly on the problem. I have received assurances from the corps that it will include the objectives of S. 1265 in certain ongoing studies it is conducting. I introduced S. 1265 last March to direct the corps and the National Oceanic and Atmospheric Administration to conduct a study of the causes and means of prevention of shoreline erosion in the Great Lakes with particular regard to the effect of manmade structures.

Other Federal agencies have become more concerned with shoreline erosion—the National Oceanic and Atmospheric Administration, in its implementation of the Coastal Zone Management Act, the Department of the Interior, in its concern for our national seashores, and Federal delegates to the International Joint Commission, in their duties regarding lake level regulations. Shoreline erosion has also become a concern of several interstate commissions as well as officials of State and local governments throughout the country. This spreading concern is perhaps the best indication of the impact that has been made in the past year by those who have tried to call the Nation's attention to the difficult problems of coastal zone management.

I am pleased with this beginning, and look forward to a year in which we can develop and build upon the sound foundation laid in the past 12 months.

WATERGATE

Mr. GOLDWATER. Mr. President, I believe all of us are deeply concerned these days about the Watergate situation and related matters. But I wonder how many of us have gone to the trouble of examining the root causes of this situation so that we might avoid a recurrence of this tragic affair?

In a recent speech to the National Association of Independent Insurers, my son, Representative BARRY M. GOLDWATER, JR., of California, went into this matter and found that the causes have preceded Watergate by many years and could be defined as "a widespread decay in traditional American ethics and values."

Congressman GOLDWATER declared:

Watergate is symbolic because it involved people in high places. But the Watergate mentality permeates all phases of American life.

The Congressman spoke about specific instances involving theft, and irresponsibility in other areas of American life.

Mr. President, at this time I ask unanimous consent that Congressman GOLDWATER's speech to the insurers' 13th annual personnel workshop at the New Quarter Inn, Newport Beach, Calif., be printed in the RECORD.

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

SPEECH BY REPRESENTATIVE BARRY M. GOLDWATER, JR.

Chairman Perkins, Chairman Evans, President Lemmon, distinguished Members of The National Association of Independent Insurers. When I accepted your very gracious invitation to speak, I indicated to my longtime friend, Darrell Coover, that I would like to discuss the subject of values, ethics, and Federal growth.

I realize that a principal theme of this year's workshop is the impact of the energy crisis upon your industry. I believe that an integral part of the current energy situation involves ethics, values, and federal growth.

Of course, there are some who may scoff at a member of Congress these days who attempts to give a discourse on ethics and values. The problem is that many elected officials are held in great contempt these days. Many of you no doubt read the recent Harris poll which gave Congress a very low grade. The poll came as no shock to me.

In their constant carping at the President, some very partisan members of Congress have conveniently tried to focus attention away from their own shortcomings.

As the Scottish poet Robert Burns declared, "O, Would Some Power the Giftie Gie Us, To See Ourselves As Others See Us."

There is a tendency to blame the Congress and the President for all of the trials and tribulations of modern America. A day doesn't pass that well organized pressure groups don't take advantage of the mass media to criticize the President and the Congress. Ralph Nader is on the front page because he is on the attack. Common Cause is on the front page because it's on the attack.

One group which gets a great deal of attention because of its attacks is the Committee for a More Effective Congress. The title of this group sums up the attack of the other groups. In truth, they only attack members of Congress with whom they have philosophical differences. They praise those elected officials who agree and vote in accordance with their wishes. They condemn those who disagree with them.

It's somewhat like a Congressman I know that returned to his home district and was told by his campaign manager. "Congressman, did you know that Tom Sullivan is going to run against you?"

"I'm not surprised," Said the Congressman, "Tom Sullivan is an ingrate and a scoundrel. He is lucky to be out of jail."

The campaign manager continued, "Jim Jones is also going to run against you."

"He is the same type—a reprobate, a thoroughly evil character," said the Congressman.

The campaign manager smiled, and said, "I am just kidding you, Congressman. I just saw both of them, and they said to give you their best regards."

"Now look what you have done," said the Congressman, "you made me say some ugly things about two of the most fine, loyal and upright men in my district."

I am not here to make a defense of Congress, or of the President. The criticism leveled at these two institutions are only symbolic of a very deep seated frustration on the part of most Americans. Without fear of generalization or an oversimplification, I surmise that people are dissatisfied over what is happening to our sense of values in America.

All of us are concerned about Watergate, but it is high time we all examine the root causes of Watergate. These causes preceded Watergate by many years. They are defined as a widespread decay in traditional American ethics and values.

Watergate is symbolic because it involved people in high places. But the Watergate mentality permeates all phases of American life.

What about the Midwest meat packer who grosses $15 million a month, but can't show a profit because of an employee theft ring?

What about unscrupulous labor unions who buy elections while at the same time shafting the American consumer with demands for unreasonable wage increases?

What about the case of the bank which recently went bankrupt because its principal stockholders were making questionable loans to themselves?

What about the stockholders who could not care less what the corporation does as long as they receive their dividends?

What about irresponsible strikes that close down emergency services such as hospitals?

What about a nationwide T.V. program that tries to convince us that the Rosenbergs were nice people, and not traitors?

What about sensation seeking reporters who deal in stolen documents, in order to obtain a good story?

The list is endless. It is truly a "Watergate" mentality, and tragically, countless numbers who should know better are not above reproach. On the contrary, many so-called leaders refer to this as "doing your own thing."

The old bard of Baltimore, H.L. Mencken, once scornfully said, "conscience is that inner voice that warns us somebody may be looking." Now, it appears that being caught "red-handed" is no deterrent.

Most of us have watched a session or two of the Senate Watergate hearings. How many times was a witness asked whether he had considered the ethical implications of this sordid affair?

Wouldn't it be a tragedy if the only thing gained from Watergate is a few convictions and some ruined reputations?

There should be one result and one lesson from Watergate, that is that every American has a solemn duty to re-dedicate himself to the values upon which this great Nation was founded.

These values stress faith in God, fidelity, respect, and love of fellow man. They only need to be resurrected.

As G.K. Chesterton once said, "the christian ideal has not been tried and found wanting, it has been found difficult and left untried."

Many sociologists and psychologists tell us that the reason attitudes toward traditional values are changing is because society itself is changing. This is a very convenient excuse. However, it is no excuse for public acceptance of personal liberation which often carries a toleration of permissiveness and low ethical standards.

I am not suggesting that a large percentage of Americans have a warped sense of values. More and more people are becoming conscious of the threat to American institutions and our value system. Happily, they are trying to do something about it.

For instance, I am heartened over initiatives taken by your industry—initiatives that are on the right track. During the energy crisis, many of your companies have pledged the refund of premiums to policy holders if some of the energy conservation measures result in windfall profits. Your companies are spending large sums of research money in an attempt to get lower rates for policy holders as a result of a reduction in the use of automobiles due to the energy crisis.

This is good ethic. It is doing the right thing, and you are to be commended. It is also good business, and good business and good ethic go hand in hand.

Contemporary historians rarely agree on just what historical event in recent years triggered the attack on our value system.

I do not profess to be a historian. But, one thing is for certain, the pioneer spirit in America which placed an emphasis on the work ethic and a rigid adherence to the Judaic-Christian value system is under great attack.

Far too many people have taken the attitude in the last 30 or 40 years that there is really no need to work hard—that there is no need to assume civic responsibility. After all, they say, let the Federal Government assume these responsibilities.

This is not to say that the Federal Government is directly responsible for a decrease in values and ethics.

But, what has happened is government paternalism has created an attitude of irresponsibility. It has also created an insensitive bureaucracy that often enforces the law, not on the basis of justice, but on the basis that the end justifies the means.

An example of this occurs when enforcement agencies such as the Equal Employment Opportunity Commission, and the Occupational Health and Safety Administration or OSHA, as it is called, go beyond the letter and the intent of the law to intimidate and harass businessmen.

There are other agencies in this category, of course. However, I single out these two because they are symptomatic of the horrors of too much government. They are convenient sounding boards for those who wish to place the free enterprise system under strict government regulation.

Under the guise of such well meaning endeavors as health, safety, minority employment, and equal rights, the agencies have a virtual life and death control over American business. As everyone of you in this room knows, on many occasions, ethics is not necessarily one of their considerations.

The most devastating impact of E.E.O.C. and OSHA has been on small employers. At a time of high inflation, low profits, and dollar instability, the small employer is hard-pressed to even keep his business going, much less have it dictated to by some anti-business bureaucrat from EEOC, OSHA or other agencies.

The small employer is intimidated and forced to comply with questionable edicts because he doesn't have the money to go to court. He must pay legal expenses out of his own pocket. EEOC and OSHA handle such expenses through the American taxpayers. The irony is that the businessman, through his taxes, pays the salaries of the very people who would put him out of business. This is unfair. It is less than ethical. Unfortunately, such agencies rarely cease to exist, once they are created. If anything characterizes the Federal Government, it is the unique ability to grow and grow and perpetuate itself.

Of course, the government will never admit it is wrong. The energy crisis is a good example. Many government officials, particularly Congressmen, have a tendency to blame the oil companies for our current energy shortage. They never point out, for example, that the reason we have severe home heating fuel shortages is because the government held down the price of natural gas at the wellhead 12 years ago.

As each of you is aware, the same is true regarding the great debate over no-fault automobile insurance. The proponents of Federal no-fault proclaim it as a consumer bonanza. But they don't point out that under such a plan, a consumer could be forfeiting a constitutionally protected legal recourse.

Proponents of no-fault also often mislead people into thinking they would be getting something for nothing. This also becomes a question of ethics.

With the growth of government, and its ever increasing intrusion into every aspect of our lives, there is a growing tendency on the part of many Americans to become frustrated, disillusioned, and skeptical. We have seen this happen in countries, such as Sweden, where cradle to grave government has led to permissiveness, alienation, and loss of values.

I happen to think that people are becoming less satisfied, and certainly less happy, with the concept that government can do it all.

Often, what is merchandized by the proponents of big government as "liberating" turns out to be depressing and destructive to the individual.

There should be no question that when people adopt the attitude that government can do it all, then they are ripe for total manipulation of their lives and destinies.

The Federal Government cannot restore or replace our moral moorings. Only you and I, acting as free men, can restore the principles upon which our institutions are based.

As I mentioned before, I am not a historian. But, I am familiar with Gibbon's "Rise and Fall of Ancient Rome."

The destruction of values and ethics—not the rampaging hordes—sealed the fate of ancient Rome. The grave, dignified Roman character, symbolic of the republic, was destroyed amid the surface affluence, sophistication and sensation-seeking of the imperial period. A somewhat similar process seems to be at work in contemporary America. It must be resisted.

I happen to think the American ethic is alive—not necessarily in good health—but alive. But, a rebirth will require a nationwide effort at the highest levels of national leadership. It will require a rebirth of the golden rule.

As a beginning, I firmly believe that families should be encouraged by our great communications outlets to stress ethics and values. Secondly, I feel that those churches which now stress such terms as "relevance, commitment, and involvement", in their ministry, should place more emphasis on "ethics, values, and piety".

I believe that every outlet of education, whether it be kindergarten or graduate school, must place ethics and values as priority items in the school curriculum. I am speaking of moral values, of course. But, I am also referring to intellectual values.

Having a sense of values and applying a value judgment is central to a liberal education.

Ethics is still stressed at some schools, and these schools are to be commended. They

are not square. They realize that all of us have a great investment in our youth, and a young person imbued with a sense of values is likely to make a good citizen.

Of course, ethics is still taught in journalism schools and law schools, but as one law student recently said, "The ethics courses in higher education relate to avoiding libel in the case of journalism schools, and taking legal advantage of libel in law schools."

I am hopeful that discussions of ethics and values will increase in our daily communications. I want to see our national leaders create an atmosphere in which ethics and values play a prominent role.

Ethics and values were never intended to operate in a vacuum or in a philosopher's manual. They must be the very structure upon which a nation and its citizens function. Without them, there is no structure. Without them, collapse is imminent, and we can go on expecting more scandals such as Watergate, in the future.

IMPLICATIONS OF THE HOUSE VOTE ON IDA LOANS

Mr. McGOVERN. Mr. President, the decision of the House of Representatives not to appropriate $1.5 billion for the World Bank's International Development Association, as I have said on previous occasions, can have a long-term negative effect on the world economy and a damaging effect on the posture of the United States in the world.

A thoughtful editorial in the March 1974 Catholic Rural Life, by Msgr. John George Weber, executive director of the National Catholic Rural Life Conference, assesses the impact of that decision with reason and compassion. I 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:

"SOFT" LOANS

(By Msgr. John Geo. Weber)

The U.S. House of Representatives in its first days of this session killed the Administration's proposal for an appropriation of $1.5 billion to replenish the loan funds of the International Development Association. IDA was established as an affiliate of the International Bank of United Nations in 1960. Its purpose is to make loans to less-developed countries on terms that are more flexible than bank loans. Hence, "soft" loans.

The House vote is a disgrace to our country, the richest nation on God's earth. Rightly and wisely the United States had turned to using multilateral agencies such as IDA in giving aid to poorer nations rather than establishing bilateral programs. This avoided the imperialist label and placed the aid beyond suspicion of political pressures and economic dominance. Receiving nations have more confidence and trust in aid coming through international organizations.

Many informed U.S. citizens are rightly indignant about our bilateral foreign aid programs, especially the military aid. These programs have drawn us into costly involvements; costly both in life and finances which clearly are not to the best interests of mankind. Therefore, many have turned away completely from foreign aid of any kind. Maybe the House vote on the IDA appropriations was reflecting this mood of the American people. The oil squeeze was also mentioned as a reason for rejecting the aid appropriations.

Whatever the case may be, it was a mistake. Aid for genuine development through the International Development Association and other international agencies is one of the surest ways of avoiding military involvement and recognizing the independence of foreign nations and fulfilling our moral obligation of aiding the poor. If we are looking for genuine respect and recognition on the international level, aid through international agencies is a much better formula. IDA has a good record on the use of its funds and assistance to the least privileged of the world's people as far as we can determine.

The $1.5 billion proposed for IDA is a rather insignificant amount compared with a $300 billion federal budget and a trillion-dollar-plus economy. The $1.5 billion is the U.S. share of a total $4.5 billion from the richer countries. It would be spread out over four years. Even giving ⅓ of the total ($1.5 of $4.5), the U.S. is still contributing a smaller proportion of its national income for foreign aid than most of the other rich countries.

"The struggle against destitution, though urgent and necessary, is not enough. It is a question, rather, of building a world where every man, no matter what his race, religion or nationality, can live a fully human life . . . where the poor man Lazarus can sit down at the same table with the rich man." These are the words of Pope Paul in his encyclical, Development of Peoples. The "soft" loans through the IDA is an invitation to Lazarus to come and sit at our table. We have just refused to issue that invitation.

ENERGY CRISIS

Mr. MATHIAS. Mr. President, on December 27, 1973, my colleague, Senator BEALL, and I held hearings in Baltimore to examine the impact that the energy crisis was having in the State of Maryland. One of our witnesses on that day was the late Andrew M. Lewis, Jr., formerly president of the Maryland-District of Columbia AFL–CIO; we found his testimony of enduring interest and increasing timeliness.

His premature death shortly after the hearing may have stilled his voice, but has not diminished the value of his advice. I would like to bring his comments to the attention of our colleagues and, therefore, ask unanimous consent to have his remarks printed in the RECORD.

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

MR. ANDREW M. LEWIS, JR.

The Metropolitan Baltimore Council AFL-CIO Unions wants to go on record to show quite clearly that in the present energy emergency as in every emergency facing this nation . . . the working men and women of the Metropolitan Baltimore area are prepared to sacrifice as much as everyone else for as long as everyone else provided the sacrifice is equal for all segments of society.

Curtailment of this nation's consumption of energy necessarily involves a change in the life-style for many workers in the Metropolitan Area. For many this means a sacrifice of comfort or convenience, but for many of the workers in the Metropolitan Area there is a clear threat of special hardships . . . loss of jobs and income.

Already, we are receiving reports from Unions all over the country in all sorts of trades, industries and services of shortened work weeks, cuts in pay checks and buying power at a time when the cost of living continues to climb relentlessly and the administration displays complete enability to cope with the nation's economic problems.

Labor does not believe that, in the name of crisis, America should abandon some national goals or suborn others. For example, the wavering if all environmental safeguards would, unquestionably, ease the present emergency, but the health of the American people is too high a price to pay. Closing schools for a month would also reduce energy consumption at the expense of the education of thousands of children and we can't afford that either.

Labor believes that Congress should take specific actions that will minimize economic disruption and dislocation, assure fairness and equity in the administration of energy conservation programs and make certain that some Americans are not permitted to profit while others are forced to sacrifice. To minimize economic dislocation and hardships, we urge your committee to. . . .

1. Provide specific aids, including extended and improved unemployment compensation, for workers and communities adversely effected by the emergency.

2. Spell out, in clear language, procedures for the review of complaints at all levels from workers and their representatives about adverse employment effects.

3. Guarantee workers and consumers adequate representation on any national, state or local boards established to administer fuel controlment programs.

4. Where job loss is indicated, require industries to prove there are no feasible alternatives that would reduce energy consumption without the dislocation of workers.

5. Keep the authority for relaxation of environmental standards to the minimum necessary to meet this particular emergency. Exemptions and variances should be considered on a case by case basis and only for specified periods of time.

6. Require state and local governments to maintain safeguards for environmental protection and workers' safety in taking measures to increase energy production.

7. Permit sufficient flexibility to allow states and localities to take into consideration local economic concerns in developing local programs.

Let me emphasize that the men and women of the American Labor movement are prepared to do their fair share in *meeting* the present emergency, but we insist on equality of sacrifice. Senator we look to the Congress to insure equity for the American people.

THE CONFERENCE ON ENVIRONMENTAL ISSUES

Mr. McGOVERN. Mr. President, recently I placed the proceedings of two seminars from the Conference on Environmental Issues in the RECORD. As a follow-up to this, I would like to add a second segment. Mr. President, I ask unanimous consent to have these proceedings printed in the RECORD.

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

PROCEEDINGS OF THE CONFERENCE ON ENVIRONMENTAL ISSUES, SIOUX FALLS, S. DAK., JANUARY 12, 1974

LUNCHEON

Master of Ceremonies: Hon. Larry Piersol, Majority Leader, South Dakota House of Representatives.

Invocation and Benediction: Father Leonard Kayser.

Address: Senator George McGovern.

INVOCATION

(The prayer of the Oglala Sioux, Black Elk, at Harney Peak in the Black Hills in 1912, somehow seems very appropriate to this occasion. Let us pray:)

Grandfather, Great Spirit, once more behold me on earth, and lean to hear my feeble voice. You lived first, and you are older

than all need, older than all need, older than all prayer. All things belong to you—the two-legged, the four-legged, the wings of the air and all green things that live. You have set the powers of the four quarters of the earth to cross each other. The good road and the road of difficulties you have made me cross; and where they cross, the place is holy. Day in, day out, forevermore, you are the life of things.

Therefore, I am sending you a voice, Great Spirit, by Grandfather, forgetting nothing you have made, the stars of the universe and the grasses of the earth.

Again, and maybe for the last time on earth, I recall the great vision you sent me. It may be that some little root of the sacred tree still lives. Nourish it, then, that it may leaf and bloom and fill with singing birds. Hear me, not for myself but for my people; I am old. Hear me, that they may once more go back into the sacred hoop and find the good road and the shielding tree.

And now, because I believe that people should eat together only after they have prayed together, let us all together pray as our Lord Jesus taught us: Our Father . . .

BALANCING VALUES: ENVIRONMENT, ENERGY, GROWTH

(Address by Senator GEORGE MCGOVERN)

Our part of the country has been largely spared from the environmental crisis atmosphere that has prevailed in much of America in recent years. No one here has died from noxious air. We have had no oil spills. Some of our lakes and waterways are on the road to decay. But, for the most part, they remain hospitable to both marine and human life. And while our landscape has been changed, it does not bear the irreparable, hopeless scars that have rendered Appalachia barren for all time.

To some extent that is by chance. The country's thickest concentrations of people and industry are elsewhere, near international shipping or more abundant supplies of raw material and other resources.

But it is also by choice. For while words like "ecosystem" and "environmentalism" may have entered our vocabulary only recently, the thrust of those movements has been ingrained in this State for many, many years. Our farmers have been in the forefront of every conservation effort. Soil and water conservation districts have long been keystones of rural life. And whatever the direct source of our livelihood, all of us have known that our progress and the quality of our lives are inextricably bound to the land, to its wise use, and to its protection.

Yet the national crisis does touch us. Rather, it pushes us. And push is coming to shove. As we seek to develop and diversify our economy, we must seek as well to avoid the pitfalls that have been exposed elsewhere. And at the same time, we are learning painfully that our development—or even maintaining the status quo—depends upon resources that are becoming scarce and upon methods that can be harmful.

Many of us are now asking how much environmental quality can be sacrificed to soften the impact of the energy crisis. That there will be setbacks, at least in the short term, is clear enough. We have already seen adjustments in the clean air standards for automobiles because Detroit's designs seem to need more fuel to pollute less. And on energy sources, whether it is a pipeline in Alaska or oil drilling off the coasts, the emphasis has shifted away from what is safest or cleanest, and toward what is fastest.

But I would like to suggest here today that the long-term trend may be just the reverse. Just perhaps, the energy crisis will inspire changes in our attitudes and patterns of consumption that will get this nation behind environmental concerns as we have never been before. We may one day look back upon this period as the time when we all learned that the conservation of energy and the attainment of environmental quality are complementary goals, both demanding that our resources be used with care and restraint. And any temporary setback in the passage or implementation of environmental protection laws could easily be offset, if this crisis brings us to see the need to change our profligate ways.

Those ways have roots deep in our national experience. During our first two centuries, we have had an opportunity to explore—and exploit—the immense resources of a virgin land of continental size. Further, the industrial revolution brought the technology which allowed the development of these resources on a scale and with an intensity never before imagined.

So the frontier in American experience was not just the advancing edge of western expansion. It was also the beginning of an industrial society and technology which mined, moved and cleared the land, used the water and raw materials, and truly made us the world's "people of plenty." Especially in this century, we produced consumer goods in great profusion and variety and at relatively low cost. So great was the abundance of this new age that it was necessary to create modern advertising—to make people want what they might not need, and to make consumption virtually an end in itself. And rarely if ever did we perceive a need to set priorities, or to strike a balance of values between what we were using from our environment and what we were doing to it.

Nowhere is this remarkable growth more clearly reflected than in our consumption of energy—over 400 BTUs per capita each year. Only in Canada has the level of energy consumption even approached what it is in the United States. Perhaps more than any other factor, it has been the availability of that cheap, plentiful energy that has made our incredible progress possible.

So appliances, such as home air conditioners, dishwashers, clothes dryers and freezers, which were almost luxuries as recently as the 1950s, are now used in nearly half the homes in this country.

In industry, men have been displaced by energy-consuming machines on a mammoth scale. Our main streets are lighted brightly with neon signs competing for our attention. Last year the Houston Astrodome, just one huge indoor sports arena, used enough electricity to supply more than 8,000 homes.

Then there is the automobile. In 1970 there were more than 82 million passenger cars on the road. In that one year alone, almost $88.5 billion was spent on the purchase, operation and maintenance of automobiles. Making and maintaining the automobile now accounts for 13 percent of the gross national product and for one out of every six jobs. And an entire urban culture has been built around it.

All of these trends and their consequences inspired the national environmental movement which first became highly visible toward the end of the 1960s. We had not heeded the expert warnings before. We had not noticed the danger.

But we did notice it when we began choking on fouled air. We noticed it when so many communities across the country were left with water supplies that neither palate nor health could stand. And we noticed it when lakes, great and small, began dying long before their time because they could not sustain a sound balance of life.

The national government responded. Congress moved with relative speed to enact such measures as the National Environmental Protection Act, the Clean Air Act, and the Water Quality Act, all establishing broad powers to control pollution at its source—whether it was the automobile, the paper mill, a power plant, or an activity of the government itself.

Yet for all of that activity, I suspect few Americans saw this as a cause which would require significant changes in the way we live. We cracked down on the biggest and most visible polluters. But this did not mean that a majority of the American people—or even a majority of the Congress for that matter—were ready to accept the kind of enforcement measures, or make the kinds of public investments, that would mean more modest habits of consumption or more conservative lifestyles.

That gap became apparent last summer when the Environmental Protection Agency announced its first urban transportation control plans. They were taken to be quite radical, and they were resisted and denounced. Viewed against our freewheeling habits, they were radical. Yet when viewed against the standards we had set down before, they were as rational as they could be.

There are other cases. For example, from the standpoints of land conservation, reduced fuel consumption, and clean air, we should be promoting railroad and mass transit systems wherever they can be used to move both goods and people. But here in South Dakota, and many other places, what freight trains there are must often be held down to around ten miles an hour because the trackbeds are so bad. I have heard of one case where the track collapsed under a car that was actually standing still. And in the major cities, efficient rail and mass transit systems are still the exception rather than the rule. We have spent lavishly to prop up this or that foreign ruler over the years. But when it came to our own transportation systems, we have impounded, postponed, and refused.

Of course, for some purposes and in some parts of the country there is no substitute for the automobile. But there are substitutes within that category. Yet the environmental movement hardly caused a ripple in the preference of the big car manufacturers for producing and promoting big cars. How many of us have rejected for ourselves the notion that owning one of these gas-guzzling behemoths is the ultimate test of success?

Now we are faced with an energy crisis. And it forces us to look realistically at the kind of reform those earlier environmental laws suggested.

I have no doubt that the crisis has been aggravated by international developments and by some sharp manipulations on the part of the major oil firms. We will learn more on that in the weeks ahead. But I also have no doubt that the crisis is real. And I think it will convince all Americans that we have to look more carefully than ever before at the ways we develop our resources, at the way we use them, and at the broader purposes of both steps. A new calculus now defines the wisdom of so many of our actions, both public and private. For we now know not only that our resources are limited, but that those limits have been sighted and they are not all that far away.

This does not mean economic development must or can end. We can set aside the extreme school which calls for a no-growth, scrap-the-system economy. It is both unrealistic and irresponsible. Who would presume to tell a hungry child he cannot eat because the land is better left underdeveloped and untilled? Who really believes we can now reverse the clock on the human aspirations this country has inspired?

No, it will not come to that. But neither can it be business and consumption as usual. The relevant question is not whether to grow or not grow, but how to construct growth so we can conserve precious resources and so

we can assure that what we do use will do the maximum to serve humanity's needs.

Let me cite an example to bring this closer to home. We had a seminar on coal and energy development this morning. We know that there are vast deposits of low sulphur coal in Montana, Wyoming and the Dakotas. We also know that this plentiful fuel is among the most troublesome from an environmental point of view. Where is the balance?

I come out of the discussion with some tentative conclusions. I think we have no choice but to develop those resources to meet relatively short-term and medium-term needs. That means, first, that we must intensify our attention to the most environmentally sound methods of mining that coal, and then of requiring that the land be restored to its original state when the work is done. It means, second, that we must accelerate research on steps to use coal more cleanly—including such processes as MHD, gasification, and liquefication. It means, third, in my view, that we are better protected if the mining and using is done by companies which are native to the area, and staffed by people of the area, than we are if the industry's giants come in to take what they can and then move on. I think our experience with Basin Electric underscores this observation. For that is a utility which has been consistently ahead of the environmental standards, and constantly attentive to long-term environmental concerns.

That is for the medium term. But over the longer run, and considering the inevitable environmental costs, I hope we will view coal development as a transitional step on the way to energy sources totally separate from these finite fossil fuel reserves. We should attach the highest possible priority to research on solar, hydrogen and geothermal energy sources. As you all know well, I think we need these things far more than we need new ways to refine the Russian dust finer, when we can already destroy that country ten times over. And these goals of hope and human progress are how we must now occupy our best scientists and engineers.

If we do, and I have introduced legislation toward that end, I believe we can one day vastly reduce and perhaps end our reliance on fossile fuels. And remember this—whether it is sooner or later, that transition is inevitably going to come someday. I can see no reason why it cannot be made to happen sooner, well before we exhaust the earth's limited natural reserves.

These, then, are the kinds of concerns we must try to balance today. In all likelihood we cannot reach unanimous conclusions or final solutions. As I said this morning, this conference was deliberately designed to bring together people who have different perspectives on the issues at hand.

What we can do is at least channel our thinking along realistic and positive lines. We can recognize that while the new environmental questions may not on balance warrant a change in long-standing plans, they at least have a right to be asked. Indeed, it is essential that they be asked. For it is essential to our survival as a modern, progressive society that we now develop that new habit—to incorporate the concerns of conservation and the environment into each decision that we make, whether as individuals, as a State, or as a nation.

1973 has been a hard year for America. Yet we still see hard times ahead. And we all know that it will not work anymore to just look the other way; that only gives trouble a chance to hit us from behind.

Yet with all of this, I look toward South Dakota's future and America's future with undiminished faith.

We have progressed in part because our land is blessed with natural abundance. But more than that, we have been moved by resources of mind and of spirit, and by a free system which draws out the best of those values. As we apply them now, I believe—no, I am certain—that those human resources will carry us through these difficult days, over these challenges, and on to a new time of greatness.

That is my conviction. I know it is yours. Let us get on with our task.

BENEDICTION

Thank you, God of generosity, Creator of all things, for all things that grow on the earth. Many of us tend to forget, seeing food packaged, arranged, weighed and priced in the super-markets, all the labor, skill, energy, and knowledge that goes into bringing these many gifts of yours to our table.

We often tend to forget, in our technical society, the utter dependence all of us have on wind and weather, on sun and rain, without which little or nothing would grow.

Help us to bring rural America together, and to fulfill our responsibilities in glorifying your earth, that it may fulfill your wish that the land should feed and shelter all people for all time.

We make this prayer through Jesus Christ, your Son, our Lord, who lives and reigns with you Father, and the Holy Spirit, one God, forever and ever. Amen.

SEMINAR III: IRRIGATION AND CHANNELIZATION PROPOSALS

Moderator: Joe Farnham, Director of Admissions, So. Dak. St. Univ.

PANELISTS

Preston Funkhouser, Oahe Project Manager, Bureau of Reclamation, Huron, S.D.

Larry Fine, Professor, Plant Science Dept., So. Dak. St. Univ.

F. F. Kerr, Extension Water Resources Specialist, So. Dak. St. Univ.

Nels Granholm, Electron Microscope Laboratory, So. Dak. St. Univ.

PARTICIPANTS

George Piper, President, United Family Farmers, Carpenter, S.D.

Ken Holum, Former Asst. Secretary, Dept. of Interior, Washington, D.C.

James Lewis, Manager, Oahe Conservancy Sub-District, Huron, S.D.

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REMARKS BY PRESTON L. FUNKHOUSER, JR., PROJECT MANAGER, MISSOURI-OAHE PROJECTS, HURON, S. DAK., BUREAU OF RECLAMATION

The people of South Dakota have been searching for ways to combat the effects of drought since settlement of the State in the late 1800's and particularly since the 1930's.

Significant improvements in combating the widespread effects of drought have been made through conservation practices, managment strategies, cultural practices, and use of drought resistant crop varieties. The most effective method of creating production stability, eliminating the effects of drought, and insuring a more nearly optimum use of moisture is through the application of water to crops by irrigation. Irrigation developed by individuals in eastern South Dakota has increased from less than two thousand to 58,000 acres during the 20-year period 1950–1970, and its effects reach every section of the local economy.

When people talk about irrigation in South Dakota, the Oahe Unit usually comes to most peoples minds first. Although there have been numerous individual irrigation developments and there are plans for many smaller projects, talk has centered on Oahe for the past 25 years. Possibly one reason is that it was the first large project proposed in this area and its development has always been considered as a benefit to replace production from the land lost to the chain of lakes formed by the four mainstem dams on the Missouri River in South Dakota. Many South Dakotans felt they were giving up more than they would gain when the mainstem reservoirs were first proposed and that without irrigation development the downstream and adjoining states would reap most of the benefits from flood control, navigation and power. Oahe Unit construction is long overdue in providing replacement benefits to South Dakota for inundation of 509,000 acres of land by the four mainstem reservoirs.

This brings me to the question "What is the role of the Bureau of Reclamation?" A sign recently erected in the Project area asks that the Bureau *leave South* Dakota's natural resources alone! Yet we are here by invitation of the people of South Dakota. Our mission is to assist the people in developing land and water resources. We do not force a project on the people; we only identify the resources and the possibilities of development. The people than make the decision whether or not to support implementation and development of the resources.

We believe our plans for the Oahe Unit are sound and well documented. Hundreds of man-years have been expended and there are enough volumes of reports and supporting data available to equip a small library.

We have utilized the services of many specialists of the Bureau, other Federal and State agencies and institutions in developing the Oahe Unit plan. These specialists include soil scientists, hydrologists, biologists, engineers, recreation planners, economists, environmentalists, geologists, agriculturists, and many others.

Many questions have been raised about the environmental impacts of the Oahe Unit after the Draft Environmental Statement was available for review in late 1972. The Final Environmental Statement has been approved and was released late in December of last year.

I hope those of you who are interested have had a chance to read the statement which we believe answers the environmental concerns many of you have raised regarding the project. Unfortunately, because of physical limitations and other printing priorities, we were unable to make as many copies available of this document as we would have liked, but we are having more copies printed at present. Administrative action will not be taken until 30 days after copies are sent to those who provided susbtantive comments on the Draft Statement.

Certainly, release of the Environmental Statement is significant to all of us. For those who have seen a quarter century of planning go into the project, it means we're finally on the threshold of development. For those interested people who commented on the original draft it means a better statement. And for all of us concerned with the environment it is an assurance for environmental protection and enhancement during and after construction.

I would like to cover a few aspects of the Oahe Unit that have generated the most interest and concern even though they are covered in the Environmental Statement. These are: amount of land needed for the project, return flows from both the Garrison Diversion Unit and Oahe Unit that will accrue to the James River and plans for handling the return flows in the James River.

Taking these concerns as listed, let's look at the land needed for the Oahe Unit, which has received some attention recently. Even though land acquired for the project to date has been by amicable means, none of us should kid ourselves that there will be complete agreement by all land owners, because some people aren't going to want to move or have a canal cross their property regardless of how well they are treated and reimbursed. However, our goal is fair treatment for all, in line with the best interests of the project as expressed by the people involved.

The initial stage development will provide a water supply for 190,000 acres of irrigable land which will be operated in connection with many thousand acres of dryland, and water will be available for use in area towns. Eighteen areas will be developed for wildlife, water-based recreation facilities will be developed at the three regulating reservoirs and at one existing lake, and project facilities will also provide some flood protection.

Project facilities will require the acquisition of about 70,000 acres; of this total about one-third will be needed for canals, laterals, and drains, and two-thirds for the three regulating reservoirs. About 6,000 acres of this land are presently not agriculturally productive, consisting of ponds, sloughs and streambeds, and land used for roads and other nonagricultural purposes; slightly over 7,000 acres could be utilized as grazing land or hayland after development of the project.

Nearly 40,000 acres of additional land will be developed for the planned 18 fish and wildlife habitat areas. Of this total, about 6,000 acres are not agriculturally productive at present. After development of the project there will be about 12,000 acres of water and marsh area associated with the wildlife areas, and almost 28,000 acres of upland habitat managed for wildlife. The rights-of-way along the project canals and drains will also provide habitat and corridors for wildlife.

Turning now to return flows from the Project area that will accrue to the James River, which has by far generated the most comment about Oahe Unit.

Return flows from an irrigation project consist of operational wastes from the water distribution system; deep percolation from cropland, which is the water that percolates below the crop root zone; and surface runoff from the irrigated fields. Surface runoff resulting from irrigation has been minimized in recent years by use of sprinkler methods of water application and recirculating surface runoff in connection with gravity application of water.

Perhaps at the outset, it should be mentioned that return flows to the James River from the authorized initial stage of the Garrison Diversion Unit in North Dakota will be very minimal, amounting to about 5 percent of the average annual flow of the James River at Columbia, South Dakota. Future stage development of Garrison Unit could add more water to the James River but any additional development would require congressional authorization and, of course, an Environmental Statement. All of the return flows from the Oahe Unit will enter the James River; these flows will enter the river at various points within the Project area.

The channel capacity of the James River through most of the Project area is very limited and bottom land flooding occurs quite frequently in the spring; in fact, the frequency is once in every 2 years. Downstream from the confluence of Turtle Creek with the James River near Redfield, the channel capacity is about seven times greater and flooding is much less frequent.

During early studies of the Oahe Unit, which culminated in the feasibility report on the Initial Stage and subsequent authorization by Congress, a major consideration along the James River flood plain was to alleviate, to the greatest extent possible, the economic loss caused by flooding and as a minimum permit no further aggravation of flooding from development of Oahe Unit.

Thus, the plan proposed for the Unit, which was authorized by Congress in 1968, included channel modification on the James River which prevents Unit return flows from increasing flood conditions in the James River Valley and also provides some incidental flood protection to these lands through the Lake Plain area.

Subsequent to the feasibility report, concern was expressed for wildlife habitat that could be damaged by the plan, so preservation of woody oxbow habitat was incorporated as a part of the present return flow plan.

Recent review of environmental impacts of the Oahe Unit has resulted in the Bureau considering other alternatives. A definite decision on the method for handling return flows is not needed for about 5 years from the initiation of construction on Oahe Unit. Therefore, the Bureau has initiated more detailed studies of alternatives before a definite course of action for handling return flows through the Project area is determined.

To date, we have been gathering basic data for the study, aerial photographs were taken of the river valley early last spring prior to the start of vegetative growth and again in September of last year. We have initiated a land use study of the James River flood plain through the Project area and we are securing additional information on hydraulic characteristics of the James River through the Project area.

When we have obtained the detailed basic data, we then plan to form an advisory committee representing various groups that have an interest in the James River Valley and the Oahe Unit to help establish a work plan and assist in the conduct of the study of alternatives for handling return flows in the James River. Upon completion of the study, we will of course prepare a Supplemental Environmental Statement on the alternative studies. We are hopeful that by working together, utilizing the talents and expertise of varied interests, that a plan can be devised that will provide flood protection through the Project area and that will not be detrimental to the environment. I realize this is a big undertaking but by working together, I am sure it can be accomplished.

OAHE IRRIGATION SOIL AND WATER

(Statement of Dr. L. O. Fine, Plant Science Department, South Dakota State University)

SOIL SUITABILITY

The classification of soils in the Oahe first stage project has been completed by the Bureau of Reclamation. I wish to comment on the classification only to say that soils presently under irrigation on the Redfield Irrigation and Development Farm, now known as the James Valley Research and Development Center, have been under irrigation for approximately 25 years. Some of the soils on this farm are classified as Aberdeen by our Standard Soil Survey techniques but would be Class IV and thus, not irrigable by the Bureau standards.

However, the areas of Arbedeen on the Redfield Farm have performed fairly satisfactorily most of the years since the inception of irrigation there in 1948. The performance does depend upon the kind of crop being grown and the frequence of irrigation, however. The soils on the farm known in the Standard Soil Survey as Beotia, Great Bend, and otherwise and classified as 1, 2 or 3 in the Bureau system have performed very well throughout the 25 year period with which I am acquainted.

Salinity

The salinity in lower depths of these soils is a matter of concern to both the farmer at the present time and the farmer of the future, whether he be a dry land or irrigated operator. This is so because there is in most soils of central and western South Dakota (and a lot of them in eastern South Dakota) a zone of salt accumulation in some part of the soil profile.

The surface soils, however, have insignificant amounts of salt in most cases and therefore, are suited to agriculture or to the growth of grasses. The sub-surface salinity becomes extremely important for irrigated agriculture and under certain circumstances also for non-irrigated agriculture, and it is the sub-surface salinity which is quite variable throughout most of South Dakota. A soil is regarded as moderately saline for agricultural uses when the electrical conductivity of a water extract is 4 millimhos per cm or greater.

Six soil series common in the lake plain area of glacial Lake Dakota (mostly Spink and Brown counties) the Great Bend, Beotia, Harmony, Zell, Aberdeen and Tetonka series, have surface salinities ranging *from 0.4 mil*limhos per cm (or 0.025 percent salt) up to 0.6 in most cases. A few soils, even some of those classified as irrigable, have as much as 2.4 millimhos per em of electrical conductivity (or approximately 0.150 percent salt) somewhere within the top 21 inches. However, when one considers the maximum salinity found in the top 40 inches of soil the salinity range is from 0.4 millimhos per cm (.025 percent) up to 13.5 millimhos per cm, or roughly 30 times as much.

The salinity of the soil parent material, that is material between 3 and 5 feet in depth, is often more consistent and more important than that in the soil profile itself. Typical soils from the Great Plains area having 0.2% or more of salt range from 11% of the samples of Tetonka to 58% of the samples of Aberdeen soils which have been sampled in the past. Thus, salinity of surface and sub-soil materials is a variable phenomenon in moist sub-humid or moderately dry climates of this part of the world and salinity in sub-surface parent materials is even more prevalent than in the part of the soil profile which is exploited by plant roots and is used in agriculture. However, the management of that salinity is a technological task of agriculture, and consciously or unconsciously, we are managing that salt in dry land agriculture as well as in irrigated agriculture. In some cases, parenthetically, we are not managing it too well in dry land agriculture, as witness the 83,000 acres more or less of salted out seep lands in North Dakota which have developed in the last 10 years.

The textures of the surface soils of the areas classified as irrigable or potentially irrigable are medium and moderately fine, the medium textures being silt loams and loams and the moderately fine being silty clay loams, clay loams and silty clays. These textures are considered medium to moderately slow as far as water intake rates are concerned but are excellent from the standpoint of water holding capacity and, when maintained in good physical structure, have very good water release characteristics as far as releasing water to growing plants is concerned.

Exchangeable sodium

Another aspect of the suitability of the soil is the exchangeable sodium or the alkali status of the soil. It should be made clear here that we are not speaking of salt level but rather of a specific salt constituent, namely sodium. The difficulty with sodium in soils is that it becomes attached to the clay particles and under certain circumstances can cause dispersion of the clay so that the physical characteristics become that of adobe or gumbo or unmanageable clay.

The surface soils (plowed layer) on practically all of the soils of the project area are satisfactory with respect to this characteristic of exchangeable sodium. The B2 horizon (the zone normally from about 10 to 20 inches below the soil surface) has been analyzed and in some cases has been found to contain high or moderately high exchangeable sodium, amounting to as much as 6.7 milliequivalents per 100 grams of soil in the "sodic" or alkali horizons of a few soil types. This is in some cases as much as 47% of the total exchangeable ions in the clay.

It appears, however, that for most areas of the irrigable classes of land the exchangeable sodium situation does not present a problem. Quoting a "Report of Special Investigations of the Oahe Unit" by the U.S. Salinity Laboratory, Riverside, California,

issued in 1954, one of the conclusions is: "These soils are moderately saline and only a few of them contain more exchangeable sodium than gypsum. It is concluded that the areas represented by these samples do not present serious salinity or alkali problems".

I do not wish to give the impression that there are or will be no sodium problems in the Oahe irrigation area. There is, however, adequate information available on the identification, mapping, and within reason, treatment of these soils so that the problems they present can be minimized and in certain cases the land can be ameliorated and produce as well as nonsodic areas.

WATER QUALITY

Surface waters

Secondarily, I wish to spend a few moments on the quality of waters which will be emanating from irrigated lands, both surface water and internal drainage water coming from the soil. One of the first subjects to arise in discussions of water degradation is the nitrate nitrogen level. Considerable nitrogen exists in the world about us. The atmosphere, our soils, and our waters, both in the earth and on the surface of the earth naturally carry various amounts of nitrogen, some of it in nitrate form.

Recent research developed at S.D.S.U. by Dr. E. M. White has shown that runoff waters from native prairie contain from 0.1 or 0.2 parts per million up to as much as 1.68 parts per million nitrogen as nitrate, depending upon the nature of storm, the time of the year in which the rainfall occurs, and the kind of vegetation over which the rain water runs before it reaches a draw or a tributary or a lake. The natural rainfall itself, without touching either soil or vegetation, carries around 0.1 of a part per million of nitrate nitrogen, and is enriched from 1 to 16 fold by contact with the soil or vegetation or both when it falls on the earth as rainfall or snow and then runs off. When rain strikes cultivated soils such as in a cornfield or soybean field, the runoff water is generally very slightly higher or sometimes lower than runoff water from native prairie.

The values which Dr. White has found in runoff waters from our Garden City experimental station in 1969, 1970 and 1971 carried as little as 0.1 parts per million of nitrate nitrogen when they ran off alfalfa land and as high as 1.1 parts per million when the runoff occurred from oats land. Soils used for corn and other row crops, however, are generally slightly higher in nitrates in the surface soils, mostly because we cultivate the soil to a greater extent.

Thus, I do not see irrigation agriculture as causing a great increase in nitrate nitrogen concentration in our surface waters in South Dakota. I would like to quote two national authorities on this point. First, former EPA administrator Ruckelshouse; "Generally proper land management, including suitable fertilizer and pesticide application techniques, will provide the best means of controlling pollution from crop land"; then, Mr. Orrin Long of the EPA of Kansas City as follows: "Our ability to control erosion essentially measures our ability to control pollution from crop land. There are of course other problems relative to accumulated wastes and irrigation return flows".

Some rainfall and return flow tests on irrigated fields in South Dakota in 1968 in the vicinity of Bath, South Dakota showed that the supply of water carried .44 parts per million nitrate nitrogen, the return flows 1.14. Near Pierre the same year the supply water had 0.31 and the return flows 0.80 parts per million. Thus, there is about the same enrichment of surface waters by flowage of irrigation water over the land surface as there is by the flowage of rainfall over the land surface, according to the data quoted earlier from Dr. White's research work.

The element phosphorus is perhaps a more important nutrient than nitrogen as respects the eutrofication and pollution of surface waters. The ions containing phosphorus in the soil are adsorbed quite tightly on soil surfaces and thus the soil normally acts as a filter, so waters passing through the soil will not carry appreciable amounts of phosphorus. However, to the extent that erosion occurs and phosphorus is attached to soil particles which erode, phosphorus will be moved into surface waters, to drains, to lakes, etc.

Drainage waters

The water quality coming from the drains which will need to be installed along with the irrigation supply works is a question deserving considerable attention. In the course of our experimental work related to the amelioration of clay pan soils in the lake plain we have had an experimental area under study for the past 4 years in central Spink County. A part of this study has been the installation of a tile drain through the fields and the collection and examination of the waters which have been delivered by that tile system. The maximum and minimum salinity in the 3 years that the drain has been operating since installation in 1970 are as follows: the maximum conductivity in 1971 was 3.6, in 1972 was 3.5, and 1973, 2.7 millimhos per cm. The minimum conductivities were 0.5 in 1971, 0.7 in 1972, and 0.55 in 1973. These would be approximately 300–420 parts per million.

The point I wish to make is that the maximum salinity at the period of lowest flow has diminished with time. I interpret this to mean that channels are developing in the soil through which the drainage water moves and the salinity removal per year may actually decline in the first 5 or 10 years of the project. I also wish to point out that the maximum salinity of this drainage water is only slightly higher than the salt content of the James River itself in low period. (EC on July 7, 1973 was 2.03, October 5, 2.52 mmhos/cm) A significant part of this information is the change in salinity as volume of flow changes. The accompanying table of data show that the flowage in cubic feet per day from the tile line changed from 1160 in the early part of May to 64 in mid-June.

Spink County tile drainage—Conductivity and flowage, May and June 1973

	Flowage cu. ft./day	*EC* mmhos/cm.
May 2 to May 4	1,160	0.56
May 4 to May 9	1,130	1.07
May 24 to May 31	246	2.01
June 7 to June 12	64	2.73

Accompanying that decrease in flowage was an increase in electrical conductivity or salinity of the water from 0.56 millimhos per cm in early May to 2.73 in mid-June. Thus, the total salt removed from the drained area diminishes with flowage but the concentration increases to a considerable degree but not in direct proportion to the diminution of flowage. My impression is that this means that the salt impact on receiving streams will not be negligible, but rather minor at the periods of low flow and the water quality coming through soil drains in periods of high flowage after the first 5 years or so will be about the same as normal flows and much better than the James River is at the low flow periods. (July 7, 2.03 mmhos/cm)

Another aspect of this flowage-conductivity relationship is the way in which nitrate nitrogen varies with salinity. As the salinity of the water increases from approximately 0.25 millimhos per cm to about 2.0, the nitrate nitrogen content increases from approximately 0.5 parts per million to roughly 2 or 2½ parts per million. There is some deviation from this, of course, as not all samples fall in agreement, but this is the general trend of nitrate and salinity in many ground waters.

In this connection I would like to point out that a group of samples from Lake Byron which were analyzed at the State Water Quality Laboratory in the summer of 1973 had hydrolyzable phosphate contents of 0.8 to as high as 3.25 parts per million. This means that in solution and in the live and dead cell bodies of algae and other organisms in suspension in the lake water there was as much as 3.25 ppm of phosphate. When one compares this with phosphate contents of the Missouri River of about 0.03 parts per million, one has a glimpse of the extreme enrichment that has taken place in Lake Byron, quite typical of our prairie lakes. The drainage waters which come through soil are essentially devoid of phosphorus and thus this enrichment problem in Lake Byron should very much diminish, as the water to be pumped into Lake Byron is partially return flow drainage water and partially Missouri River water diverted into the James.

It has been my observation in experience of pumping out of the James River in the last few years for our experiment on clay pan soil amelioration that the river water is so turbid and transmits so little light that practically no bottom-attached vegetation exists in the channel proper. There is a little along the sides in a few cases. This high turbidity is a factor which would be alleviated by the increased flowage and the augmentation occurring as a result of drainage waters and surface return flows from irrigated lands. This augmentation will be water largely very low in phosphorus as far as the drains are concerned except for phosphorus which may be picked up from the soil and plant materials existing in channels between the pipe drains and the river itself. The suspended solid load in the James River varies with the time of year but seems to increase very remarkably during middle and late summer. Measurements in 1971 indicated a range from 6 to 23 parts per million of suspended solids. My estimate is that this would be considerably diminished by the dilution from the drain waters and augmentation by additional surface flows.

IRRIGATION—COSTS AND RETURNS

(By F. F. Kerr, extension water resources specialist, South Dakota State University)

I would like to direct my remarks during this brief presentation period to some results we have compiled during the past several years on irrigation costs and returns.

The basis for cost and return analysis comes largely from irrigation demonstration farm results.

When a demonstration farm is set up the agreement calls for the farmer to assume all costs except for a little instrumentation that we provide him on a loan basis. He also agrees to make his facility available to us for tours etc., keeps accurate records on forms that we provide and to follow our recommendation where he believes them to be applicable. The extension service agrees to provide technical services and recommendations on agronomic, economic and engineering considerations relating to the operation.

The services that extension carries out for the demonstration farm operators are really no different than those provided anyone else except that they are more intensive and somewhat formalized by the agreement. Extension, in turn obtains reliable, on-the-farm data that can be used elsewhere.

The three main things on which extension wished to accumulate "on-the-farm" data were crops and crop varieties, water management and cost and return figures.

We started intensive work on this in 1967. The first three years we concentrated on crop varieties, water management and engineering design and layout. The cooperator was in Brown County. In 1970 we closed out the Brown County agreement and entered a new agreement with a cooperator in Chas. Mix County.

On the Chart I, I have extracted certain cost figures that reflect what it has cost the cooperators each year to deliver the necessary water to the land served. These figures would compare to the $10.40 charge to be made in the Oahe unit.

In the case of the Brown County farm the delivery costs were almost the same as the Oahe charge. In this project the water source was close at hand and lifts were under 50 feet. On the Charles Mix farm water was drawn from Lake Francis Case, transported nearly 1½ miles and lifted 320 feet. Therefore delivery costs were much higher.

The other column on Chart I shows the return to land, labor and management for each of the years 1970–1973. Chart II shows how this figure is arrived at.

The term "return to land, labor and management" may need explaining. It is one of four expressions of net profit that may be used—(1) return to management (2) return to land and management, (3) return to labor and management and (4) return to land, labor, and management. We leave it to the cooperator as to how he wishes net profit to be expressed. If he wants to show return to management only, the family labor is entered as a cost at whatever rate per hour he feels he could earn if he were not farming. Also if he were not farming he would not have money invested in land and could put this money out on interest at some rate, perhaps 6½ percent, so if the land were worth two hundred dollars an acre he is foregoing a $13.00 income from every acre that he owns by virtue of his owning it and this $13.00 is also entered as a cost. He then has a return to management only.

Chart II shows a summary of the 1973 costs and return for the Charles Mix farm.

The relationship of gross income to costs is good in view of the $2.05 corn price even with the higher costs of 1973 inputs. Should the price go down and/or expenses go up this very favorable relationship will become less favorable. There does however appear to be room for some cost-price adjustment and still leave an acceptable profit. Also putting the feed through livestock will help a great deal when cost-price relationships are tight.

A small group of farmers at Ft. Thompson have formed a 2585 acre irrigation district and are requesting funding for their project through the South Dakota Water Resources Management Act. The state Department of Natural Resources Development requested extension to run some farm budgets in this area using data assembled from demonstration farms. We did this and carried the analysis a step further in that we computed induced or "spin off" benefits that accrue from such a project. The computation was based on some recent research done for small irrigation project developments.

Chart III shows an interesting relationship between direct gain to irrigators and total gain to the economy as crop prices increase. The gain to the total economy increases at a more rapid rate than the gain to irrigators.

REALISTIC YIELDS UNDER IRRIGATION

Corn has shown a dramatic increase in yields per acre under irrigation during the last several years. In 1967 an exhaustive personal interview survey among irrigators was held. The survey revealed, at that time that the average yields in eastern South Dakota, south of a line through the southern Beadle County boundary was 109 Bu./acre and north of the line the average yield was 89.5.

Today the difference still exists but the range of difference has decreased by about 50%. This is due mostly to more adaptable varieties and improved water management. The average yields are now about 125 in the north and about 135 in the south. This being due to better varieties and even more to better water management. Top yields range far above the averages as can be noted on Chart IV.

Alfalfa yields have increasd somewhat in the same period but less dramatically. Present alfalfa yields are about 5T per acre with the top being about 6.

Corn silage yield have not increased much largely because irrigators do little variety selection for silage use. Instead they usually cut their poorest field for silage. Yields are running about 20T per acre. Thirty tons/acre is believed to be a realistic goal with good variety selection and other management inputs.

Potatoes have received some attention from extension and research in the last couple of years to attempt to determine how they would respond to irrigation in the Clark County area. Irrigation yields have been 290 cwt. per acre as compared to 135 cwt/A under dryland.

Dry edible bean irrigated and dryland yields were compared in 1973 at several locations in north eastern South Dakota. Average yield differences were 2104 lbs/acre irrigated and 1491 lb/acre dryland.

Sunflowers were irrigated and yields were compared to dryland at Redfield in 1973. There was no significant difference.

Soybeans have not generally been irrigated in South Dakota because their response has not been economically competitive with other crops. More research on variety selection and the response of each to irrigation will be conducted at Redfield.

CHART I.—DEMONSTRATION FARM SUMMARY

Year	Brown County farm: Delivery cost per acre	Brown County farm: Return to land labor and management	Chas. Mix Co. farm: Delivery cost per acre	Chas. Mix Co. farm: Return to land labor and management
1967	(1)	(1)		
1968	(1)	(1)		
1969	(1)	(1)		
1970	$10.33	$35.99	$35.05	$16.94
1971			35.68	40.99
1972			19.58	82.27
1973			42.86	141.25

[1] Crop varieties, water management, and engineering.

CHART II.—*Chas. Mix demonstration farm, 1973*

COSTS	*Per acre*
Pumping costs (fuel, oil, grease, and repairs)	$35.06
Crop production costs (planting, harvesting, drying)	24.66
Fertilizer	30.59
Agricultural chemicals	5.35
Fixed and other costs (depreciation, interest, insurance)	28.48
Total costs	124.14
INCOME	
Corn—14,950 bushels at $2.05 (115A at 130 Bu/A)	30,647.50
Silage—100 tons × $12.00 per ton (5A at 20T/A)	1,200.00
	31,847.50
Gross income/A	265.39
Less production and fixed costs	124.14
Net return to land, labor, and management	141.25

CHART IV.—YIELDS IN SOUTH DAKOTA IRRIGATED CORN CONTEST, BASED ON YIELD FROM A RANDOM 10 PERCENT OF A 25-ACRE FIELD

[Yields corrected to 15½ percent moisture]

Contestant	Yield	Percent of normal goal [1]
1972:		
Varilek (Chas. Mix)	199.79	133.19
Turner (Walworth)	149.53	124.60
Ludens (Turner)	173.40	123.85
Nielson (Spink)	151.22	120.97
Nystrom (Hughes)	157.08	120.83
1973:		
Wipf (Spink)	179.54	143.63
Ludens (Turner)	197.45	141.12
Hunter (Turner)	176.93	126.37
Basse (Union)	188.80	125.86
Scofield (Moody)	131.46	101.12

[1] Based on growing-degree-days for that county.

STATEMENT OF NELS H. GRANHOLM

Senator McGovern, people of South Dakota, and other distinguished visitors . . . I am pleased to have this opportunity to act on behalf of the people of this State. I hope my comments today will serve to help South Dakotans more fully understand many of the issues involved in projects such as the Oahe Unit. And I recognize as do all of you that we are indeed fortunate to have the kind of government which will allow us to speak freely in an open forum such as this one to discuss significant federal-state policy issues. I would like to thank Senator McGovern for calling this Conference.

Federal water resource projects such as the Oahe Unit irrigation project do not just "crop up" (pardon the pun) overnight. They represent the results of years, sometimes decades, of planning. It may be that South Dakotans in the 1890's discussed the idea of transporting Missouri River water to the James River Valley for irrigation purposes. However, the Oahe Unit, Initial Stage was not authorized by the United States Congress (82 Stat. 624) until August 3, 1968, nearly 5½ years ago. In these last 5½ years significant policy decisions which relate directly to the whole concept of federal water resource development projects have been made. In my talk today, I would like to review some of these decisions and policy. Interestingly, many of these policy changes reflect our long-in-coming awareness of environmental values. The energy crisis whether real, contrived, or both serves to illustrate how our rather short-sighted exploitation of the world's natural resources, in this instance petroleum, can lead to serious problems having profound global repercussions.

1. Returning to federal water resource projects like the Oahe Unit, we find that the single, most important criterion in determining whether or not the project achieves Congressional authorization is the benefit-cost evaluation.

"Through a variety of methods, the Bureau attaches dollar values to the future benefits and costs it predicts for its projects. These values are then adjusted or "discounted" to recognize the fact that a dollar of expense today is worth more than a dollar of income sometime in the distant future. If a project's total discounted benefits exceed total discounted costs, then the Bureau labels the project economically feasible. Each project must pass this economic feasibility test before it is submitted to Congress. And once it is submitted cloaked in figures that say it will provide more benefits than costs, it is almost invariably approved." [1]

A. Let us briefly examine the August, 1971 (most current) BR benefit-cost evaluation of the Oahe Unit.[2] Project benefits from the following purposes are listed in annual equivalent benefits using a 3¼% interest rate for a 100-year period:

Benefits (annual) Irrigation:	*Annual equivalent*
Direct	$11,923,100
Total	20,314,000
Municipal and industrial water	461,300
Fish and wildlife enhancement	$549,400
Flood control	46,400
Recreation	108,300
Area redevelopment	280,200
Uncompensated adverse effects	$481,900
Net benefits: Direct	13,268,700
Total	21,277,700

Footnotes at end of article.

B. "Total project costs, with the annual equivalent costs for the initial stage as computed for a 100-year period of analysis and using a 3¼% interest rate are shown in the following tabulation[2]":

Item	Total costs[1]			
	Project and assigned costs	Interest during construction	Total	Total annual equivalent
Project costs	$246,950,000	$10,751,000	$257,701,000	$8,041,400
Assigned costs from Pick-Sloan Missouri Basin program:				
Main-stem storage	19,357,000	1,934,000	21,291,000	571,800
Power	23,292,000	1,428,000	24,720,000	697,200
Total assigned costs	42,649,000	3,362,000	46,011,000	1,269,000
Total project and assigned costs	289,599,000	14,113,000	303,712,000	9,310,400
Less preauthorization costs	4,989,000	892,000	5,881,000	199,200
Subtotal				9,111,200
Plus replacement of recreational facilities				16,900
Plus OM&R				1,320,100
Total net cost				10,448,200

[1] Does not include costs of future capacity provisions for Oahe Pumping Plant, $3,800,000, and costs for highway betterment, $2,000,000.

C. *Benefit-Cost Ratios.* In order to calculate direct benefits only, one divides the direct benefits (expressed in annual equivalents) by the total project costs (also expressed in annual equivalents), i.e., $13,368,700/$10,448,200 which equals 1.28, rounded to 1.3. Similarly for total project benefits, the B/C ratio is $21,277,700/$10,448,200 or 2.04 rounded to 2.0.

One might look at these two benefit-cost ratio figures of 1.3 (direct) and 2.0 (total) and conclude, on this basis alone, that the Oahe Unit demonstrates economic and thus overall respectability; it does appear that for every dollar of cost, we are getting a return of $1.30 in direct benefits and $2.00 in total benefits. But things are not quite that simple. In order for us to evaluate the Bureau's B/C analysis procedure, we need to: (1) examine precisely how the Bureau of Reclamation attaches dollar values to future benefits and costs, (2) comprehensively outline and evaluate total project and secondary costs such as long term environmental costs resulting from BE sponsored projects, i.e., wetlands drainage, loss of 110,000 acres of grazing and agricultural land, energy expenditures, water quality degration due to irrigation and municipal-industrial uses, nonrenewable resource commitments, and others, and (3) consider total project merit or desirability in light of new federal studies, new guidelines for water resource projects like Oahe, and laws, e.g., The President's National Water Commission's Reports, The Federal Water Pollution Control Act Amendments of 1972 (P.L. 92–500).

2. Let us look very briefly at some rather significant federal, state, and private policy statements, guidelines, and laws which reflect directly on the overall feasibility and merit of the Oahe Unit. These include: (1) Federal Water Resources Council's newly promulgated (10 Sept. 1973) "Principles and Standards",[3] (2) Draft and Final Reports of the President's National Water Commission,[4 5] (3) House Report No. 93–530,[6] (4) Missouri River Basin Commission's PROSPECTUS FOR A LEVEL B STUDY of the James River Basin North Dakota-South Dakota,[7] (5) Review by the Environmental Protection Agency of the Oahe Unit Draft Environmental Impact Statement,[8] (6) Federal Bureau of Sport Fisheries and Wildlife, Department of Interior—testimony of Mr. Robert Panzner at the Oahe Unit Draft Environmental Impact Statement,[9] (7) position statements on relevant environmental issues by the Wildlife Society, a national professional conservation organization,[10] (8) Federal Water Pollution Control Act Amendments of 1972 [11] and others.

3. Federal Water Resources Council's (WRC) newly promulgated (10 Sept. 1973) Principles and Standards.[3]

These new guidelines will largely reform both planning and evaluation procedures of large federally-funded water resource projects like Oahe. The WRC, an interagency body comprising the department heads of major water resource development agencies, was established as a result of the Water Resources Planning Act of 1965. The two major changes of these new guidelines which took effect 25 September involve (1) the discount rate and (2) project planning objectives. Also, some previously authorized projects will be reformulated and resubmitted to Congress for reauthorization.

A. The Discount Rate: The B/C ratio of large, multipurpose federal water projects requiring heavy capital investment is extremely sensitive to increases in the discount rate. For example "a survey made some time ago by the Water Resources Congress, a promotional group, showed that, for about one-third of some 245 authorized Corps of Engineers projects on which no work had been started, the B/C ratio would drop below 'unity' ($1 in benefits for every dollar in costs) if the discount rate were raised from 5⅝% to 7%, the latter being only slightly higher than the initial rate under the new Principles and Standards [12]"

The discount rate based solely on "the opportunity cost of capital" would be about 10%. Under the new Principles and Standards the discount rate starts at 6⅞, then rises or falls by 0.5 of 1% depending on the money market, i.e. the average cost of Federal borrowing as determined by the Secretary of the Treasury.[13]

The Oahe Unit was originally authorized (3 August 1968) using a 3⅛% discount rate [14]. Later the economics were recalculated in the Definite Plan Report of 1971 [3] using a 3¼% discount rate.

B. Project Planning Objectives: "The overall purpose of water and land resource planning is to promote the quality of life, by reflecting society's preferences for attainment of the objectives defined below: (1) to enhance national economic development by increasing the value of the nation's output of goods and services and improving national economic efficiency, and (2) to enhance the quality of the environment by the management, conservation, preservation, creation, restoration, or improvement of the quality of certain natural and cultural resources and ecological systems.[15]

For each water resource project, a system of public information accounts will be used to carefully delineate and display the beneficial and adverse effects on the national economic development and environmental quality objectives and on regional development and social well-being. These accounts "will be prepared in such a manner that the different levels of achievement to each objective and effects on regional development and social well being can be readily discerned and compared, indicating the tradeoffs between alternative plans [16]". In short, the new Principals and Standards provide for comprehensive accountability regarding environmental as well as economic values in federal water project planning. They will do much to identify the real costs of such projects.

C. Reevaluation, Reformulation, and Reauthorization of Selected Federal Water Resource Projects: "Under certain key provisions of the Principles and Standards, large-scale, capital-intensive water projects will often be harder to justify in the future than they have been in the past. Furthermore, besides affecting future projects that have not yet been formulated and sent to Congress, the new guidelines will be applied 'selectively' to the $15 billion backlog of projects previously authorized but not yet built. Any authorized project that is reevaluated and susbtantially reformulated will be submitted to Congress for reauthorization [17]".

4. Draft and Final Reports of the President's National Water Commission (NWC).

Public Law 90–515 approved 26 September 1968 established President Johnson's NWC and charged the Commission to make "conclusions and recommendations on the policies when it believes the Nation should adopt at this point in its history for the efficient, equitable, and environmentally responsible management of its water resources [18]". Members of the Commission include the chairman, Mr. Charles F. Luce (former administrator of the Bonneville Power Administration, former Undersecretary of the Interior, and present board chairman of Consolidated Edison), Mr. Howell Appling Jr. (Founder and President, Independent Distributors, Inc., a wholesale farm equipment distribution firm in Portland, Oregon), Mr. James R. Ellis (attorney), Mr. Roger C. Ernst (Consultant, Arizona Public Service Co. and President, Central Arizona Water Conservation District), Mr. Ray K. Linsley (Professor of Hydraulic Engineering, Stanford University), Mr. James E. Murphy (attorney), and Mr. Josiah Wheat (attorney). The Draft or Proposed Report of the NWC was released late in 1972; the Final Report was presented to the President on 14 June 1973.

The following conclusions and recommendations regarding the overall merit and desirability of large, capital-intensive, federally-funded water projects like Oahe are taken from the Draft and Final NWC Reports: [4, 5]

A. "When federal water developments are

Footnotes at end of article.

used to encourage economic growth in certain regions, offsetting declines or reductions in the pace of growth may result in other regions . . .

B. "Federal reclamation projects have been undertaken . . . to provide commodities that could have been produced at lower cost to the nation by other means . . .

C. In addition to frequently failing a cost effectiveness test, the federal water resources development projects have been heavily subsidized by the federal government; that is by all the taxpayers of the nation. The water users on some modern federal reclamation projects, for example, repay no more than 10% of the construction costs attributable to irrigation, the remaining cost being borne by the federal government in two ways: by not requiring the water users to reimburse the Treasury for the interest on the capital advanced for project construction, and by permitting power revenues and sometimes other non-irrigation revenues to be credited toward irrigation reimbursement . . .

D. "There is no way to determine the exact impact of the reclamation program on crop surpluses; however, nearly 37% of the acreage served by Bureau of Reclamation project facilities produced crops eligible for federal price support programs in 1969 . . .

E. "It has been estimated that in the period 1944–1964 something between $83 and $179 million in annual payments to farmers under federal farm price support programs can be directly attributed to increased production from reclamation lands . . .

F. "There is adequate productive capacity in the nation's agriculture to meet food and fiber demands under various alternative futures at least until the year 2000. There consequently is no need within the next 30 years for federally subsidized water resource development programs to increase the agricultural land base of the country . . .

G. "The federal reclamation program has never succeeded in producing family farms owned, operated, and occupied by farm families . . .

H. "The commission concludes that subsidization of new irrigation projects is not justified on either social or economic grounds . . .

I. "Subsidization of new irrigation projects should be discontinued. Direct beneficiaries of federal irrigation developments should pay in full the costs of new projects allocated to irrigation . . .

5. U.S. House of Representatives Report No. 93–530 entitled Stream Channelization: What Federally Financed Draglines and Bulldozers do to Our Nation's Streams.

The House Committee on Government Operations' Subcommittee, Conservation and Natural Resources Subcommittee chaired by Henry S. Reuss of Wisconsin "held extensive hearings on May 3 and 4, June 3, 4, 9, 10, and 14, 1971, and March 20 and 22, 1973 concerning the Federal Government's stream channelization programs, to determine whether Federal agencies are responsibly, economically, and efficiently complying with applicable law, including the Fish and Wildlife Coordination Act (16 U.S. Code 661, *et seq.*), the Federal Water Pollution Control Act (33 U.S. Code, 1972 Supp. II, 1151, *et. seq.*), and the National Environmental Policy Act of 1969 (42 U.S. Code 4321, *et seq.*), and whether these agencies are adequately assessing the adverse environmental effects of channlization [19]". The conclusions reached by the Committee on Government Operations' Conservation and Natural Resources Subcommittee [20] generally indicate that much improvement is needed in the operations of the Bureau of Reclamation, Army Corps of Engineers, the Soil Conservation Service, and the Tennessee Valley Authority (TVA) regarding planning and construction of water resource projects. Some of these conclusions are:

A. "Some channelization accomplishes good and useful purposes and should be continued. However, other channelization projects either directly or indirectly have adversely affected the environment—ruining fish and wildlife habitat, destroying hardwood forests, damaging scenic and esthetic natural values, lowering water tables, increasing erosion upstream, and sedimentation and flooding downstream, impairing water quality, encouraging construction on flood plains and thereby increasing both damages from large floods and demands for more flood protection works, enabling nearby land owners to construct lateral ditches to drain even more wetlands, etc.[21]"

B. "The fears raised by many concerned citizens about the adverse effects of channelization are not imagined or exaggerated. They reflect the real and extensive environmental damage which results from many channelization projects. Unless the Federal Agencies (BR, Corps, SCS, and TVA) act promptly to deal with the problem—by adopting alternatives to channelization, abandoning the channelization features of a project, or substantially minimizing the adverse effects of channelization—those water resource programs will continue to face major citizen opposition and the benefits of these projects to the nation will be impaired." [22]

C. Of the principle Federal agencies engaged in sponsoring channelization, i.e., the Corps, SCS, and to a lesser extent BR and TVA have: (1) "not given adequate consideration to the adverse environmental effects of channelization projects which they have supported . . . (2) "failed to afford adequate opportunity for full public participation in the development of channelization projects . . . (3) failed to publish basic guidelines, instructions, memoranda, and other documents which are regulatory in nature or set forth general policy . . . in the Federal Register despite the requirements of the Administrative Procedure Act." [20]

D. "The Bureau of Outdoor Recreation (BOR) has broad statutory authority and duties to review SCS projects in order to conserve and enhance public outdoor recreational opportunities. It has, however, failed to carry out its statutory obligation [20]".

E. Finally, "it is clear that much improvement is needed in the operations of the Federal agencies discussed in this report (Corps, SCS, BR, and TVA). Adoption of the Committee's recommendations [23] will aid in achieving such improvement." [20]

6. Missouri River Basin Commission (MRBC).

The MRBC, a Presidential State-Federal River Basin Commission in accordance with the Water Resources Planning Act of 1965, serves as the principal agency for the coordination of Federal, State, interstate, local, and non-governmental plans for the development of water and related land resources in the Missouri River Basin.[24]

A careful analysis of the MRBC's "PROSPECTUS FOR A LEVEL B STUDY OF The James River Basin North Dakota-South Dakota" i.e. a $2,000,000 cooperative undertaking between local, state, and federal agencies to thoroughly investigate and document the Basin's multiple resources as defined by the multi-objectives of national economic efficiency, environmental enhancement, regional development, and social well-being submitted to the Federal Water Resources Council for funding, is very instructive. Such an analysis clearly demonstrates that the Commission recognizes serious problems inherent in present unilateral development programs of the James River Basin. The following quotations:

"It is obvious to those familiar with the problems of the James River Basin that a coordinated planning effort is essential at this time.

On the eve of constructing major irreversible works within the Basin (Oahe Unit, Pipestem Dam and Reservoir, and one fourth of the Garrison Diversion), interrelated problems and needs from both natural and man-made conditions are unresolved [25]" and

"The introduction of large blocks of irrigation in the Garrison and Oahe Units by importation from the Missouri River will influence water quality in the James River. Return flows from irrigation could be detrimental at times in terms of contributing to dissolved solids and salts, but beneficial effects could also derive from the availability of the imported water for the augmentation of low flows and the regulation and dilution of current high dissolved mineral concentrations. Additional investigations are needed to determine water quality enhancement requirements as municipal, industrial, and agricultural water uses change within the Basin".[26]

serve to show the serious and genuine intent of the Commission in requesting financial support from the Water Resources Council to conduct the Level B study.

7. Environmental Protection Agency (EPA)

Under Section 309 of the Clean Air Act, EPA must "review and comment in writing on the environmental impact" of any legislation, action or regulation proposed by any federal agency if it affects matters related to EPA's jurisdiction. If EPA determines that any proposed activity is unsatisfactory from the standpoint of public health or welfare or environmental quality, that determination must be published and the matter referred to the President's Council on Environmental Quality. EPA has reviewed the Oahe Unit draft Environmental Impact Statement and stated, "Because the project involves changing the existing land uses and hydrologic/water quality features on 190,000 acres of South Dakota over a short period of time, environmental degradation could be extensive. . . . We feel that four areas of impacts have not been adequately covered in the statement, namely: *water quality, flooding potential, wildlife,* and *economics.* . . . "EPA has assigned a Category 3 to the review of this project. With a Category 3, EPA takes issue with the proposed action unless major changes or additions are made which will adequately protect the environment. EPA feels that the proposed action, as described in the draft statement, needs major revisions from an environmental viewpoint".[8]

8. Federal Bureau of Sport Fisheries and Wildlife (BSFW)

The BSFW has gone on record opposing James River channelization and the original plan for Byron Reservoir development of the Oahe Unit [9 27]. Mr. Robert Panzner of the Aberdeen BSFW office testified that "recent studies of several streams in other parts of the country indicate that channelization results in the loss, both by weight and number, of 90% of the game fish. These studies also note that there is no significant increase in fish populations 40 years after channelization. . . . Other wildlife species expected to suffer major losses are wood ducks, great blue herons, black-crowned night herons, fox squirrels, beaver, mink, and racoons. All other mammals and birds using this reach of the James River will be adversely affected.[11] Mr. Panzner also discussed negative impacts on fisheries resources (bigmouth and smallmouth buffalo) within Lake Sharpe resulting from "removal of zooplankton-bearing surface water from the immediate vicinity of Oahe Dam".[9]

9. Position Statements on Water Resources by Conservation Organizations such as the National Audubon Society, National Wildlife Federation, National Resources Defense Council, Izaak Walton League, Wildlife Management Institute, and many others as exemplified by the Wildlife Society.

"The Wildlife Society is a professionally oriented association with members in more

Footnotes at end of article.

than 60 countries. The Society is dedicated to the sound management and preservation of wildlife resources of the world . . . membership is composed of administrators, educators, information and law enforcement specialists, managers, and research scientists".[28]

The Wildlife Society thus contains professionals with expertise in the fields of wildlife biology and wildlife management. In October 1973, The Wildlife Society Council approved the following position statement on WETLANDS AND STREAM ALTERATION:

"Wetlands and streams are distinct biotic communities that support a unique and diverse flora and fauna. They function as stabilizing forces of the physical environment by sustaining high water tables to balance precipitation deficits, by retaining excess surface water to diminish flooding, and by serving as settling basins for silt and chemicals to reduce pollution in downstream waters.

In the past several decades, however, thousands of wetlands have been drained or filled for land reclamation, and thousands of miles of streams have been channelized—or otherwise altered—for flood control, irrigation, power generation, and navigation. These practices, which are continuing at a rapid pace, have not only irreparably damaged these water areas but have also adversely affected the associated aquatic and riparian (river bank) biota. Environmentally disruptive programs of wetlands and stream alteration have been, and are being, subsidized by public funds. Furthermore, intraprogram measures designed to mitigate resource losses resulting from these injudicious practices have been inadequate.

Therefore, it is the policy of The Wildlife Society to:

1. Oppose alteration programs that cause permanent damage to the physical and biological resources of wetlands and streams.

2. Support programs and practices designed to enhance the retention of surface water at its origin on the watershed, to conserve natural reservoirs of underground water, and to maintain high standards of water quality.

3. Encourage the enactment of legislation that promotes the wise management of wetlands and streams, and their biota." [29]

10. Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500).

In this comprehensive water law, the goal of "no discharge of pollutants into the navigable waters by 1985" remains an outstanding and remarkable objective. Our whole means of dealing with water pollution is transformed from the old concept of assimilative capacity (i.e., what concentration of pollutants can the water dilute or assimilate) to the concept of no discharge. Regarding irrigation return flows, the language of Sections 101 and 102 although poetic lacks specifics. Clearly, however, the discharge of highly saline and otherwise toxic return irrigation flows into navigable waters is in direct contradistinction to the meaning and intent of the Water Act. And, certain Sections of the Water Act do address themselves to irrigation and other agricultural activities.[30]

11. Allocations and Repayment of Oahe Unit for Fiscal Year 1974.[31]

	Amount
Allocations:	
Irrigation	$296,866,000
Power	
M and I water	14,426,000
Recreation	4,861,000
Fish and wildlife	15,858,000
Flood control	1,398,000
Future capacity	4,430,000
Highway improvement	2,360,000
Other	
Total	338,199,000

Footnotes at end of article.

	Amount
Repayment:	
Amt repaid by irrigators	$33,440,000
Amt repaid by power	263,426,000
Amt repaid by M & I water	14,426,000
Amt repaid by recreation	466,000
Amt repaid by fish and wildlife	1,012,000
Future capacity	4,430,000
Nonreimbursable[1]	20,999,000
Total	338,199,000

[1] Includes nonreimbursable fish and wildlife, $14,864,000; flood control, $1,398,000; $2,395,000; and construction of highways to higher standards under Public Law 87-874, $2,360,000

Interestingly, the total allocation of $338,199,000 represents a 64% cost overrun relative to the total cost at project authorization of $205,790,000.[32] Such large, capital-intensive federally-financed projects tend to have rather spectacular cost overruns; the cost overrun of the Army Corps of Engineers Oahe Dam project was 359%.[33]

12. How Some Project Benefits are Calculated

A. Fish and Wildlife Benefits: "Fish and wildlife enhancement benefits were computed on the basis of determination by the Bureau of Sport Fisheries and Wildlife that benefits would be equal to the least costly, justifiable single purpose alternative which would produce the same or substantially similar effect".[34] Does this procedure reflect the true fish and wildlife enhancement benefit? It seems a bit inconsistent that for purposes of the benefit/cost evaluation, we use fish and wildlife enhancement benefits when in fact, most professional wildlife specialists including members of The BSFW [29] and Wildlife Society [28 29] agree that projects like Oahe result in net losses to ecological and wildlife values.

B. Recreation Benefits: "Recreation benefits were estimated by the National Park Service on the basis of anticipated use of Blunt, Cresbard, and Byron Reservoirs, as well as the reservoir formed by the recently completed James diversion dam. The benefits are exclusive of annual operation and maintenance costs of the recreation facilities which would be a non-Federal responsibility".[35]

The National Park Service evaluated "the recreation potential of the Oahe Unit in keeping with . . . Senate Document 97 . . . and applicable sections of part 751, Reservoir Project Lands, appendix B, Departmental manual".[36] Such guidelines allow the NPS to affix values of "annual visitor days" to each project reservoir. For example, the NPS states "that about an average of 23,000 visitor days will be derived annually from this (Cresbard) impoundment when the initial installation of basic recreation facilities has been completed".[37]

One wonders how the predicted NPS recreation potential of the Oahe Unit would compare to a current reevaluation using new guidelines? One wonders if double counting (calculating each activity per person as one annual visitor day, i.e. one person who spends time hiking, boating, fishing, and having lunch could be counted as 4 annual visitor days) was used in NPS's evaluation?

C. Municipal and Industrial Water Benefits (M and I): "M and I water benefits were computed on the basis of the cost of the cheapest single-purpose alternative likely to be developed in the absence of the Federal project, using a local financing rate of 4% ."[38] One can raise questions regarding this "alternative cost principle" which BR uses. For example, the phrase "likely to be developed" is subjective. Upon thorough economic examination one might find that BR tends to systematically overstate M and I benefits.[39]

13. Negative Economical Benefits (Environmental Costs), Direct and Secondary

"Currently, the Bureau does not take into account the deleterious impacts of irrigation or municipal and industrial (M and I) wastes. These negative benefits should be recognized and quantified in dollar terms when they are attributable to Reclamation projects. It is intolerable for the Bureau of Reclamation to claim the benefits from irrigation, while failing to recognize the actual water quality costs resulting from that irrigation. Similarly the Bureau should stop recognizing indirect irrigation benefits and M and I benefits unless it also recognizes the negative benefits from M and I growth and from the processing and irrigation of commodities grown on Bureau-irrigated lands [40]".

Regarding Oahe, direct negative benefits or environmental costs include substantial James River degradation regardless of channelization or "green-belt" alternative, "net decrease of approximately 9,400 acres of semipermanent wetlands [27]", overall ecological degradation, consumption and pollution of fuels and energy, and others. Water quality impacts may also be very serious. These negative benefits are not discussed or calculated in the Oahe Unit benefit/cost evaluation. In the case, Sierra Club v. Froehlke "which involved the adequacy of the Corps environmental impact statement on the Wallisville Dam project . . . the court found of 'particular significance' the reference in the Corps cost-benefit analysis to 'selected environmental related benefits without also considering and evaluating environmentally-related costs [41]".

14. Energy Considerations

"American agricultural technology is extremely dependent upon an abundance of cheap energy. So long as a continued supply of cheap energy is forthcoming, it may be able to proceed as it has in the past; but should it have to face an energy crisis in the near future, or even a substantial rise in the price of energy, agriculture may have to undergo a drastic reorganization [42]". It is becoming increasingly more apparent that we should strive for maximum efficiency of energy utilization in agriculture as well as other areas. How efficient is American agriculture?

Delwiche, 1968 (taken from Perelman, 1973.[42]) estimates that food production consumes about one to two times as much energy as it yields, and this estimate may be conservative. "In contrast, for each unit of energy the wet rice farmer (Traditional Chinese wet rice agricultural) expends, he can get more than 50 in return (from the sun's energy); for each unit of fossil fuel energy we expend in food production, we get about one unit in return [42]".

The Bureau of Reclamation stated in the Draft Environmental Impact Statement (DEIS) that the annual reduction of saleable Missouri River Basin hydroelectric energy due to the Oahe unit would be 272 million kilowatt-hours (kwh). In the Final Environmental Impact Statement (FEIS), the Bureau states that the Oahe Unit will result in "a decline in generation of 143 million kwh per year and an annual consumption of 99.2 kwh to pump project water . . . about 50% of the Oahe Unit irrigable lands will be sprinkler irrigated. This would require an additional 43 million kwh of electrical energy to operate on farm sprinkler facilities [44]". This total amounts to 295.2 million kwh of electrical energy expended per year. In addition, electrical energy "could be retrieved if a higher use materialized. Other power sources, possibly thermal, may have to be developed to supply existing customers. This increased thermal generation may consume fuel from resources which are irretrievable [41]".

It seems inconsistent in the face of our present energy shortage and knowledge about our agricultural energy efficiency to commit large units of energy to alter the farming practices of the productive Lake Plain dryland farming scheme. In short, the Lake Plain area produces respectable yields of small grains. One wonders about the amount of energy that must be expended to convert this productive small grain opera-

tion into an alfalfa, corn, irrigated pasture, livestock production scheme. One also wonders how much potential energy in terms of future crop production will be lost on the 110,000 acres of agricultural and grazing land used for canal rights-of-way, poundments, etc. It is also interesting to consider how much energy will be expended in terms of petroleum products to create the Oahe Unit, to dig the canals, build pumping stations, create the large reservoirs, etc. Also, one wonders how much energy will be expended for routine operation, maintenance, and replacement of the Oahe Unit. The very hard and legitimate question is "will the increased productivity of the irrigated lands justify the total energy expenditure?" Can we now say with confidence that the Oahe Unit is the most efficient way to increase our agricultural productivity in South Dakota? In the event of a real energy "crunch" in the future, will we regret our energy commitment to the Oahe Unit?

15. Future Public Works Projects.

In the future, the kinds of public works projects Congress will authorize may be quite different from the Oahe Unit. They will probably be less complex, less capital-intensive, and possess less engineering features. In order for states and regions to compete favorably for available funds, projects will probably become smaller in scope, less intricate, better planned, and hopefully, more efficient. The National Water Commission Draft and Final Reports[4,5] indicate that multi-purpose water resource projects like Oahe may not be the most desirable or efficient way to stimulate the economy or achieve other avowed project purposes.

It is interesting to consider the structure and function of future public works programs. How would the funds allocated for the Oahe Unit ($338,199,000[21]) be spent in future years?

16. Additional Seminars, Symposia, Meetings, Conferences, etc. on the Oahe Unit.

The items selected in this summary for discussion today represent only a fraction of the concepts, ideas, and information that should be openly discussed in public by proponents, opponents, and others. For example, we have not discussed: (1) numerous social impacts of the Oahe Unit including rather drastic living changes forced upon South Dakotas by the project, (2) complexities, subtleties, and intricacies of the Bureau's benefit-cost evaluation and various "hidden repayment subsidies,"[45] (3) the concept of mitigation of wildlife values, (4) economics of dryland versus irrigation farming in the Lake Plain area, (5) environmental impacts such as channelization of natural drainage creeks, ecological losses inherent in mitigation, etc., and (6) many others.

We need additional meetings to present all the issues openly and fairly. I would like to ask Mr. Preston Funkhouser, Officers of the Oahe Conservancy Sub-District, West Brown and Spink County Irrigation Districts, Senator McGovern, Governor Kneip, Secretaries Lockner, Butler, Popowski, other members of our Congressional delegation and other responsible public officials to help cosponsor along with various environmental groups a series of informational, panel discussion-type meetings on all facets of the Oahe Unit. After South Dakotans learn about the Oahe Unit, they will then be in a much better position to evaluate the project.

17. Conclusions.

A. The request for a moratorium on land acquisition and construction of the Oahe Unit by United Family Farmers, South Dakota Environmental Coalition, and others is a valid request.

B. The Oahe Unite should undergo a re-evaluation, a reformulation, and should be resubmited to Congress for reauthorization. The new discount rate of 6⅞% and new project planning objectives of the Federal Water Resources Council's Principles and Standards[3] should be used during project reevaluation and reformulation.

C. The people of South Dakota should learn as much as they can about the Oahe Unit and other public works projects. It is our responsibility as good citizens to become more responsive to our government.

Thank you very much.

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[17] See footnote 12.

[18] See footnote 5, p. iii.

[19] See footnote 6, p. 1–2.

[20] Ibid. p. 12–5.

[21] Ibid. p. 12.

[22] Ibid. p. 11.

[23] Ibid. p. 16–7.

[24] Mr. John W. Neuberger, Chairman, Missouri River Basin Commission, Suite 403, 10050 Regency Circle, Omaha, Nebraska 68114.

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NATIONAL STRATEGIC POLICY

Mr. GOLDWATER. Mr. President, we hear a great deal of discussion these days about our national strategic policy at a time when the administration keeps talking about "détente" with the Soviet Union and defense officials keep pointing out the enormous military advances being made by the Russians.

I believe the need for rethinking U.S. strategic concepts is now recognized and that some changes can be expected before too long. In this connection, Mr. President, I should like to point out that the board of directors of the Air Force Association recently adopted a unanimous statement relating to this policy situation. I ask that it be printed in the RECORD.

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

AN AFA STATEMENT ON NATIONAL STRATEGIC POLICY

The need for rethinking US strategic concepts, stemming from radical changes in world power equations that have taken place in the past year, is now recognized. As a result, a basic and welcome change in the strategic plans and policies of the United States is beginning to take shape.

The risky and rigid strategic concept of assured destruction is giving way to a more flexible, more realistic deterrent doctrine incorporating counterforce—the ability to destroy an attacker's essential military tar-

gets, both soft and hard—making it possible to respond in kind to less than all-out nuclear aggression.

The Air Force Association endorses this shift in national strategy, with its greatly expanded emphasis on purely military targets rather than on military-related industrial and transportation targets and population centers. We commend Secretary of Defense Schlesinger for his sure grasp of the advantages of a strategy incorporating counterforce capabilities, and for articulating these advantages so convincingly. We welcome the initiatives taken in the Administration's FY '75 budget that support such a strategy.

It remains now for the Administration, the Congress, and the American people to bring into being, and to maintain, the military and political apparatus required to make a counterforce-oriented strategy possible, workable, and believable.

Recent advances in Soviet military technology, together with the disarray among US allies arising from the Middle East confrontation, permit no other reasonable choice to the United States.

Counterforce too often is wrongly equated with a destabilizing first-strike posture. Counterforce likewise is seen by critics as ensuring continuance of an arms race. The first of these claims is not true. The second ignores even worse alternatives.

What is true is that counterforce weapons in the hands of the Soviet Union, without tangible evidence of an offsetting US capability, would create intolerable pressures on our national leadership. The US eventually would be reduced to a high-risk dependence on bluffing, and the nation's ability to maneuver diplomatically would be paralyzed. Doubts concerning US capabilities and intentions would proliferate, not only in the Kremlin but among our allies.

The world balance of power would shift, first into a period of precarious stability, and ultimately into a situation of one-way deterrence, with the Soviet Union in the driver's seat.

Whatever risks may be associated with an arms race, the greatest risk of all would be for the United States to finish second best.

A credible counterforce capability thus becomes essential to a credible US deterrent posture. In a counterforce strategy, the segments of the US Triad become even more interdependent one upon the other, with land-based ICBMs remaining the principal counterforce weapon. Therefore, it becomes a matter of urgent priority to exploit more fully the inherent counterforce capabilities of our ICBMs. These are limited in number by the SALT I agreements, and hence can only be upgraded qualitatively—in accuracy, yield, and numbers of warheads, plus hardening of launch sites.

Failure to maintain at leaast essential equivalence, overall as well as in key counterforce capabilities, would be dangerous, provocative, and irresponsible.

Compounding these factors is the declining US investment in military-oriented scientific research over the last decade, especially when set against a steadily increasing Soviet level of effort. There is real danger of major technological surprise in the years ahead. US defense research is down some twenty-five percent since 1964, while the Soviet effort has increased manyfold over the same period.

The signs are ominous. US scientists and associated experts know of the existence of dozens of advanced Soviet research projects whose nature and purpose defy assessment. Among these projects may well be the seeds of a technological breakthrough to rival or exceed the combination of the nuclear warhead and the ICBM.

The Air Force Association, therefore, urges the Administration and the Congress to take the following essential actions and to assure their continuance in the interest of stability in the world:

An increase in basic military R&D sufficient to make up for lost ground in order to maintain a position of technological superiority;

Development of technological options, beyond the present family of strategic weapons, so that Soviet numerical superiority of strategic weapon systems accorded by SALT I is not reinforced by qualitative superiority as well;

Upgrading of our ICBM force to achieve full counterforce capabilities;

Expeditious development and deployment of the B–1 strategic bomber as essential insurance against potentially decisive technological surprise;

Full funding of current force modernization programs to maintain the US ability to credibly deter conventional war;

Expansion of the US strategic airlift capability; and

Maintaining the manpower of the armed forces, both the Reserve components and the active-duty forces under the total-force policy, at levels in consonance with their mission of deterring nuclear as well as conventional war.

CAREER FEDERAL SERVICE

Mr. McGEE. Mr. President, Washington Post columnist Mike Causey, in his Tuesday column, devoted a great deal of attention to the situation facing top-rung career executives in the Federal Service. Government retirement experts, he reported, already say they are being quietly contacted by key supergrade employees who want their annuities computed now. And he related a report about one high level employee who plans to retire because he has discovered he will lose only a small amount of take-home pay—$34 a week. Causey quotes one official as saying:

When you calculate that a guy would no longer be paying 7 percent of his salary into the retirement fund, would be on a much lower tax base, and the fact that his pension won't increase much if he keeps on working, a lot of people are going to wake up one morning and say "what am I working for when I'd be better off financially to retire and take cost-of-living raises."

Few, I would say, would be better off, but the difference might be, in many cases, so close as to be insignificant since most people concerned would have the capability of earning substantial amounts in private employment. And this is true even though very few would be eligible for the maximum pension of 80 percent of their high 3-year average salary. It takes considerable service to reach that level.

Some will say, and have said, "good riddance." But, Mr. President, I would suggest that Members with that state of mind think again. The U.S. Postal Service, when it first was created, took aim at reducing its work force and its costs, instituting an early retirement program which resulted in the loss of many thousands of knowledgeable and experienced employees, including about a fourth of its supervisory force. The results were traumatic, I can assure you.

Mr. President, I ask unanimous consent that the column I have referred to, from Tuesday's Washington Post, be printed in the RECORD.

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

AGENCIES LOOK FOR HIGH-LEVEL EXODUS

(By Mike Causey)

Federal agencies have been told to carefully monitor retirement patterns over the next few months. The object of the exercise is to find out how many—if any—top-paid executives will quit because their salaries remain frozen at $36,000.

During the recent pay *raise* debate, backers of the President's executive salary proposals warned that hundreds of key officials could be expected to retire unless their five-year pay freeze was ended. Most members of Congress (who make $42,500) and private citizens (who average around $11,000 a year) appeared unmoved by the argument.

But government retirement experts already report they have been quietly contacted by key supergrade (GS 16, 17 and 18) employees who want their annuities computed now. They suspect that many will retire earlier than expected, because there is little hope they soon can get pay raises that would help build their retirement income.

Over the weekend the Los Angeles Times reported on a high-level aide at the National Institutes of Health who will retire in May because, he says, the difference between his salary and pension will be only $34 a week.

Government pensions—after long service—are based on 80 per cent of the average highest three years salary. As pay moves steadily upward, and the employee accumulates more service time, the potential pension also increases. But with pay frozen—as it is now for more than 10,000 Grade 15 through 18 workers—pension building is almost at a standstill.

When you calculate that a guy would no longer be paying 7 per cent of his salary into the retirement fund, would be on a much lower tax base (paying no federal tax for at least a year after retirement), and the fact that his pension won't increase much if he keeps on working," an official said, "a lot of people are going to wake up one morning and say "what am I working for when I'd be better off financially to retire and take cost-of-living raises.' "

Despite the reasoning of freeze-inspired retirements, there are many who remain unconvinced that the government will have an executive exodus. One is Rep. Bill Scherle (R-Iowa). The conservative Scherle recently wrote the President asking for "a list of those federal employees whom we were told would resign in droves if their salaries were not immediately increased."

Scherle says there are plenty of people in his district who will be willing to fill the supergrade gap at $36,000. "I am confident that as the present disgruntled employees leave, most could be rapidly replaced by qualified, dedicated constituents of mine."

Scherle's address, if you want to contact him, is Room 512, Cannon House Office Building.

THE U.S. CONTRIBUTION TO THE INTERNATIONAL DEVELOPMENT ASSOCIATION

Mr. BROOKE. Mr. President, I have joined with many of my colleagues in the Senate in expressing dismay at the recent action of the House of Representatives in denying funds to replenish the U.S. contribution to the International Development Association. I am convinced that this myopic action, if allowed to stand, would ill-serve our national interests as well as the humanitarian ideals which we cherish.

Recently, Roy Wilkins, executive director of the National Association for the Advancement of Colored People, wrote eloquently of the negative implications of the House action. In his column he wrote:

If our vote denies bread to the black people of Africa, whatever excuses we give to the world, in our heart of hearts we shall don sack cloth and ashes and we shall weep for the brothers we could have helped, but did not.

I believe the Congress should reflect very seriously on the implications of this statement before it goes down the path to which the House action is pointing. In the end such a journey will only lead to more suffering and despair for the poor of the world without in any way serving the interests of the American people. It is a journey we should not take.

Mr. President, I ask unanimous consent that the Roy Wilkins column concerning the International Development Association be printed in the RECORD.

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

THE ROY WILKINS COLUMN

(By Roy Wilkins)

The people who have suffered during the African drought will be starving to death in 1974 because the House of Representatives of the United States of America, the richest nation on earth, failed to enact a bill which would enable the poor African nations to borrow from the World Bank and thus stave off starvation.

Representatives in the House were reacting, it is said, to the strong American feeling that this nation ought not to vote money for any foreigners, especially if they are black. But the vote of January 23 was more than resentment against voting another money bill. It was more than resentment against the actions of the President who has cut off funds for poor Americans, while still asking that American money go to the poor in foreign lands.

American private citizens have leaped to the aid of any people, anywhere, after disaster has struck. We have poured out our dollars and our goods wherever there has been want. It matters not whether the stricken people suffered from a tidal wave, an earthquake, a volcano, a flood, a drought a tornado or whatever, American hearts went out to them. American pocketbooks were opened. In fact, disaster relief has been so generous and so loosely administered inside our own country that there has been a shaking of heads over some phases of the relief of our own people.

Apparently this has not extended (at least through our elected representatives in the Congress) to the black people of Africa. We have given them, it is true, a million here and a million there to relieve a multi-million-dollar need, but nothing comparable to the millions and hundreds of millions—even the billions—we have made available to nations not predominantly black.

The U.S.A. has been Europe-oriented, not Africa-oriented. We send our dollars to Europe. Lately we have included Japan and soon will include China. We simply do not see our destiny, as yet, in Africa. Color helps our white people in their mistaken righteousness, but it is not the whole answer.

However, it is difficult to convince a hungry black population, as well as millions of American blacks, that skin color is merely incidental. The question now is, "To starve or not to starve?"

The United States ranks 14th among the 16 donor countries. Its per capita income is today 34–40 times that of the people in the poor nations of Africa and Asia. If we go by per capita income, our contribution is only one-tenth of what it was 25 years ago. This is not a proud spot for the richest nation the world has even seen.

Nor is it an occasion for boasting that the sharing agreement was negotiated at a meeting to all interested parties in Nairobi, Kenya. The House of Representatives seems to be saying that it does not live up to agreements negotiated in Africa. The share of the United States was 1.5 billion dollars spread over four years instead of three. It was the smallest share ever for the U.S.

Mr. McNamara, president of the World Bank, has called the refusal of the House "an unmitigated disaster for hundreds of millions of people in the poorest nations of the world."

The U.S., so fat and rich, must not starve millions of human beings. If our vote denies bread to the black people of Africa, whatever excuses we give to the world, in our heart of hearts we shall don sack cloth and ashes and we shall weep for the brothers we could have helped, but did not.

WORLD FOOD SHORTAGE

Mr. HUMPHREY. Mr. President, the New York Times included two compelling articles in its March 11 edition which I recommend highly.

The first, "Consumers in the U.S. Face Competition for Nation's Food," highlights the problem which the American consumer now faces. American products are selling at peak prices on the world market which everyone applauds. Domestic food prices have also gone through the ceiling, but no satisfactory explanation is forthcoming.

As I have pointed out many times, this administration has abdicated on its responsibility to develop a sensible policy on maintaining adequate food reserves. I am afraid the Department of Agriculture would be prepared to sell its last bushel of wheat on the world market, regardless of the domestic needs.

This is a case of playing Russian roulette with American consumers and hoping the farmers will again bail us out with a bumper crop.

Mr. President, the second article, "Critical New Food Shortages Predicted for India," provides the other side of our shortsighted "sell all you can to whomever will buy regardless of the consequences" policy.

India has made splendid progress in increasing its wheat and rice production in recent years. However, recent droughts and the refugee problem growing out of Bangladesh's fight for independence have wiped out its stored reserves. Fertilizer shortages now make the picture even bleaker.

We need not expect to feed the world, but we are no longer in a position even to be of much help in case of an emergency. India is of course only one on the list of countries facing a serious food shortage. We, too, would be in a critical situation if we had a crop failure in this country.

Mr. President, I intend to continue issuing these warnings until this administration finally takes the decisive action that is clearly required. We need firm leadership now or the food situation could well become a disaster.

Mr. President, I ask unanimous consent that these two articles be printed in the RECORD.

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

CONSUMERS IN UNITED STATES FACE COMPETITION FOR NATION'S FOOD

(By Douglas E. Kneeland)

When Americans push shopping carts through their supermarkets, not many of them are aware that they are now competing for much of the food they buy with people in Japan, Western Europe, the Soviet Union, China and most of the rest of the world. But they are.

Agricultural and economics experts agreed in interviews over the last three weeks that a major reason for some of the sharp increases in food prices in recent years had been the sudden and vast expansion of agricultural exports from the United States.

In the fiscal year ending June 30, 1972, the total value of American agricultural exports was $8-billion. For the year ending this June 30, the Government is estimating total agricultural sales abroad of $20-billion, 2½ times as much.

"We had a hellish big increase in quantity but a lot of it was in price," said Kennard O. Stephens, deputy assistant sales manager in the Department of Agriculture's foreign agriculture service. "Maybe 50 per cent of this was price."

END NOT IN SIGHT

That is what happens when a lot of people are bidding for the existing products on an international market.

Discussions across the country with representatives of the food industry, officials of the Department of Agriculture, exporters, consulting agricultural economists and farmers themselves provided a consensus that the end of the expansion in foreign agricultural trade is not in sight.

Most Americans are familiar with the Soviet purchases of 350 million bushels of wheat in the late summer of 1972. That marked the beginning of the end of the huge surpluses that had occurred for decades in the United States. But most of those interviewed during the last few weeks agreed that the Soviet grain deal was only the tip of the iceberg.

RISING EXPECTATIONS

The law of supply and demand is at work, they emphasize, but it is no longer limited to the domestic level. It is the demand of a hungry world, whose ever-increasing population has rising expectations and somewhat more affluence, for food supplies that are having trouble keeping up.

For most of their lifetimes, Americans have been accustomed to relatively cheap basic foodstuffs made possible by an agriculture that regularly produced vast surpluses. The government, in turn, has spent billions to buy and store the leftovers and to pay farmers to hold acreages out of production.

Now, the upsurge in American exports has produced a whole new set of influences on the domestic market.

For instance, Japan has an insatiable appetite for soybeans, of which the United States is the world's biggest exporter. The demand may keep the price at a level that, in a side effect, adds considerably to the expense of feeding soybean products to poultry in this country and eventually to the cost of chickens to consumers. Likewise, a developing desire for more meat abroad may lead to a drastic increase in exports of American corn and other feed grains, pushing up their prices in making the cost of beef and pork much higher in the United States.

ANCHOVIES AND SALESMANSHIP

The change was spurred by a number of things, such as the easing of restrictions on trade with Communist countries, disappointing grain crops in many parts of the world, a poor catch of anchovies (used for protein in feed) off Peru two years ago, rising world demand for wheat and meat, rice crop failures in Asia and aggressive salesmanship over the last few years by many American growers' associations and export companies.

But it has come about so fast, rapidly draining off the traditional surpluses in this country, that it has caught many by surprise.

Little public notice was paid to the shifting situation until the American Bakers Association recently began badgering the Department of Agriculture to slow the record exports of wheat. The bakers sought the imposition of some sort of licensing controls, in effect, an embargo on new sales, lest the United States run out of wheat by the June 30 end of the crop year.

The bakers have insisted that the country could run so low on wheat that prices would soar and a family-size loaf of bread might cost $1.

The department, which has welcomed and encouraged an upward trend in sales, has resisted any type of embargo. The United States ended the last calendar year $9.3-billion ahead in agricultural exports over imports and $1.7-billion in the black in total balance of payments.

Secretary of Agriculture Earl L. Butz and his assistants are convinced that the credibility of the United States as a world trading partner was severely damaged in the summer of 1973 by a temporary embargo on soybean exports.

They insist that despite the bakers' predictions, the country will have a carryover of about 150 million bushels of wheat on July 1.

PUBLIC UNPREPARED

Most of those questioned were convinced that the bakers—like much of the American public—had become so used to prices dictated by surpluses that they were unprepared when wheat broke the historic $3-a-bushel barrier and rose to as much as $6 a bushel.

But the philosophy of Dr. Butz and many in the grain industry is that if Americans are to trade in a free world market they must pay the going price for products, even those that are raised in great surplus at home. In the case of wheat, the United States consumes only about a third of its annual crop. There are some obvious political risks in telling the people at home in a time of rising prices that they must bid against the rest of the world for their own grain.

Ray Davis, president of the National Association of Wheat Growers, does not believe the country is going to run out of wheat, but he enthusiastically embraces the new philosophy that American consumers are going to have to pay the world price if they want their share.

Cargill, Inc., in Minneapolis, is generally acknowledged as one of the largest, if not the leading, processor and handler of United States farm products. Men like Walter B. Saunders, vice president for the company's marketing and transportation group, and Melvin H. Middents, vice president for the commodity marketing division, are dealing with the new world situation with relish. It's their business and it's booming.

IN 38 COUNTRIES

Cargill, which has annual sales in the billions, buys and sells grains (it accounts for more than 22 per cent of United States wheat exports). It also processes soybeans and other products, produces feeds and raises poultry, leases a fleet of 1,500 hopper cars, owns barges, towboats and ships, makes chemical products and operates salt mines and fishing fleets. It has more than 300 plants and offices in 38 countries.

But Mr. Saunders and Mr. Middents, dressed in conservative gray suits and rep ties, make it all sound simpler than that.

"Our economic function, really two functions," Mr. Saunders said in company headquarters in a secluded brick chalet at Lake Minnetonka, "is to get grain from surplus areas to deficit areas. That can be from Kansas City to Buffalo or to the U.S.S.R. The other is to take grain when it is in surplus and then distribute it when it is no longer surplus. That's the grain business."

Mr. Saunders, slender, with dark wavy hair and horn-rimmed glasses, paused to smile across the table at Mr. Middents, a broad-faced friendly man.

"We store grain for other people," he went on. "Since World War II our biggest customer has been Uncle Sam, but we don't do much of that any more."

Both agreed that the world grain stocks were tight, but insisted that the United States would not run out of wheat.

"It's really been a shock to us," Mr. Saunders said. "Mel and I have been with Cargill a number of years and nobody paid any attention to our business. Now we've been on radio and television and people complain to us at cocktail parties. 'You're the guys who sold all that wheat to the Russians.' "

"That Russian grain deal is the most misunderstood thing," said Mr. Middents, "but it was just the timing more than anything. Nobody predicted the dramatic turnaround."

"We thought it would happen," Mr. Saunders interjected, "but we thought it would be gradual. Nobody expected the explosive nature of it."

"One of the things, as with energy," Mr. Middents said, "I think we'll still have reasonably priced food. But we can't take either energy or food for granted as something we'll have extremely cheaply."

CRITICAL NEW FOOD SHORTAGES PREDICTED FOR INDIA

(By Bernard Weinraub)

NEW DELHI, March 10.—A private report by international economists has concluded that India faces an economic crisis marked by critical food shortages in the next few years.

The carefully worded report by the World Bank, circulated in Washington and New Delhi, says that India must import at least 10 million tons of grain in the next five years, that she will need $12-billion in aid over that period—far more than the Government had predicted—and that assistance from oil-producing countries is crucial to meet India's requirements.

The report, a confidential working paper prepared by World Bank economists, was distributed to the members of the 13-nation Indian Aid Consortium, the central agency that seeks to meet India's development needs.

MOST MEMBERS FROM WEST

The members are Austria, Belgium, Britain, Canada, Denmark, France, West Germany, Italy, Japan, the Netherlands, Norway, Sweden and the United States, as well as the World Bank itself, formally named the International Bank for Reconstruction and Development.

A copy of the full report, issued for the consortium meeting in Paris April 9–11, was made available to The New York Times by sources outside the World Bank.

Parts of the document were discussed in an Indian newspaper, The Statesman.

Although the document avoids the word "crisis," its conclusions are inescapable. "First and most serious is the food situation," the report says. "Food stocks in the public distribution system are negligible, current availabilities have been severely reduced, prices are sharply rising and active discontent is spreading."

SETBACK ON FOOD

The report estimates that India will have to import two million tons of grains in each of the next five years, a serious setback to a nation that sought self-sufficiency in food production less than three years ago.

It also speaks gravely of the impact of the oil crisis.

"India is among the developing countries most severely affected by the recent changes in the world energy situation," the report says.

"India's need is so great, and the potential consequences of not satisfying it so serious, that it is imperative that all concerned make every effort to solve the massive problem that lies ahead.

At another point, the report says of the rise in oil prices, "The increase is so large and so sudden that unless the assurance of obtaining the additional financing required is soon forthcoming, the Government will have to make immediate and radical downward adjustments in petroleum and other imports, which can only have a disruptive and negative effect on growth.

IMPACT ON FOOD

"Moreover, any reduction in fertilizer availability through lack of imports would impair the country's ability to meet its food requirements in the coming year, and perhaps beyond." It adds: "If the monsoon were to fail in 1974, there could be a famine of grave proportion."

India, the second most populous nation after China, consumed 24.5 millions tons of petroleum and related products last year. Of this, 17 million tons were imported. This year India is expected to spend 50 to 80 per cent of what she earns through exports on oil wells, compared to 20 per cent last year.

The report says that Eastern and Western nations must step up their aid to India, and that a new source of assistance must be tapped, the oil-producing nations.

OIL WEALTH MUST HELP

The document notes a conclusion by Indian planners that the nation would need $5-billion in foreign aid in the next five years, but it says that a more realistic figure now is $12.1-billion.

The economists say, in effect, that even if the nations of the consortium, as well as those in the Eastern bloc, step up assistance, Indian would still be $3-billion short.

"This gap must be filled," they advise, "by calling on other sources, of which the resources of the oil-producing countries, whether obtained directly or indirectly, constitute an important potential element."

The report notes a sharp rise in the cost of imported goods and adds: "Unfortunately, while India's import prices are rising rapidly, its exports are not similarly favored. Tea and jute products, two of India's most important exports, have benefited little from the sharper increase in world prices of primary products."

The World Bank analysts detailed India's growing relationship with the Soviet Union and other Eastern bloc nations, a relationship that many Indian economists prefer because these nations have accepted payments in rupees rather than one of the world's dominant currencies, such as the dollar or pound.

EASTERN AID DUBIOUS

Significantly, except for the fiscal year now ending, India sent more goods to the Eastern bloc than she received over the four years—a situation the economists call a "negative net aid transfer." This year there was a reversal because of food shipments from the Soviet Union.

"While India has benefited from its trade relationship in Eastern Europe," the analysts said, "the implications of the negative net aid transfer cannot be ignored. A negative net transfer is the opposite of what should

prevail in a relationship between a developing country and countries committed to assist its development."

Perhaps the key reason for the "negative net aid transfer" is that Indians have spurred exports to the Soviet Union but what the New Delhi Government needs—newsprint, fertilizer, minerals—are sold elsewhere for convertible currency.

CEASE-FIRE IN VIETNAM

Mr. MATHIAS. Mr. President, recently the Maryland Senate and House of Delegates passed resolutions commemorating the first anniversary of the cease-fire in Vietnam and particularly remembering the 1,200 American servicemen, including 31 from Maryland, who remain missing in action in Southeast Asia. I know my colleagues join me in the guarantee that our Government will continue to make every effort to obtain a full accounting of these men whose families have lived for so long with uncertainty and despair.

I ask unanimous consent that Maryland Senate Resolution No. 20 be printed in the RECORD.

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

SENATE RESOLUTION NO. 20: CEASE-FIRE IN VIETNAM

For the purpose of commemorating the first anniversary of the cease-fire in Viet Nam, January 27, 1973, and remembering, with sympathy, the prisoners of war or listed as missing in action, paying tribute to these men through the Maryland Freedom Tree on the State House Grounds as a living memorial and by an annual resolution.

Whereas, It is important that Americans remember and pay tribute to their fellow countrymen who have fought and died in the long war in Southeast Asia with the hope that all men may someday live in peace; and

Whereas, More than 1200 Americans who were captured or listed as missing in action in Southeast Asia have not yet been returned or even accounted for; and

Whereas, Of 42 men with families in Maryland who were listed as prisoners or missing in action at the time of the cease-fire only 11 have returned, leaving 31 unaccounted for; and

Whereas, No information has been provided about these men; including 50 men previously listed as prisoners; the remains of 60 men said to have died in captivity and not yet returned to their families; and the 1,200 men listed as missing in action about whom there is still no information; and

Whereas, These 1,200 missing Americans account for more than two-thirds of those listed one year ago as prisoners or missing in action and little is being done by the United States government to determine the fate of these men and ease the years-long anguish of their families; now, therefore, be it

Resolved by the Senate of Maryland, That its members express their feelings of greatest sympathy for the more than 1,200 families all across this country who continue to live with the incredible agony of not knowing where their husbands, sons and fathers are, and whether they are dead or alive; and be it further

Resolved, That the Senate of Maryland continue to pay tribute to these men through an annual resolution in the Senate and through the Maryland Freedom Tree, now growing on the State House lawn as a living memorial to all prisoners and missing in action; and be it further

Resolved, That copies of this Resolution be sent to Maryland Senators Charles Mathias and J. Glenn Beall; members of the Maryland delegation to the U.S. House of Representatives; the U.S. Secretaries of State and Defense; the U.S. Representative to the United Nations; the Maryland Chapter, National League of Families of American Prisoners of War and Missing in Southeast Asia; the national office of VIVA (Voices in Vital America); Le Duc Tho of North Vietnam; M. Phoumi Vongvichit of Laos; and Col. William W. Tombough, Chief of the U.S. Delegation to the Four Power Joint Military Team in Paris, and families of Maryland men who have been prisoners or who are missing in action in Southeast Asia.

THE FUTURE OF NEW HAMPSHIRE RAILS

Mr. McINTYRE. Mr. President, the Interstate Commerce Commission has recently held hearings in the Midwest and Northeast region to determine a rail reorganization plan for this area. These hearings represent the second step in a yearlong process to establish a feasible and economically sound plan for improving rail service for this region.

Representatives from all over New England were asked to give testimony in Boston last week on the preliminary report of the Department of Transportation's recommendations for reorganizing these rails. John Hoar, Jr., chairman of the Ad Hoc Committee on the Condition of the Railroads in New Hampshire and a representative of the New Hampshire General Court was able to speak from an informed background having studied New Hampshire's rail situation for the past 8 months. Mr. Hoar is also the author of legislation which would authorize the New Hampshire Public Utilities Commission to purchase and maintain the operation of rail service in the Granite State.

Mr. President, I therefore ask unanimous consent that his testimony at the rail reorganization hearings in Boston be printed in the RECORD.

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

NORTHEASTERN RAILROAD INVESTIGATION REVIEW OF THE SECRETARY OF TRANSPORTATION'S RAIL SERVICE REPORT

My name is John Hoar, Jr. I reside at Prescott Road, Epping, New Hampshire. I am a Representative to the General Court of New Hampshire, representing Rockingham County, District 8. I am a member of the House Committee on Executive Departments and Administration and I am Chairman of the Speaker's Ad Hoc Committee on the Condition of Railroads in New Hampshire.

Since the appointment of the Speaker's Ad Hoc Committee on the Condition of Railroads in New Hampshire in July of 1973, one of its chief aims has been to analyze the ramifications of the Regional Rail Reorganization Act of 1973, particularly as it might apply to New Hampshire and Northern New England. During the last eight months the Committee has carefully studied the state's rail situation. It has met with shippers and receivers of all sizes, railroad managers and operators, and state, federal, local and regional officials. It has inspected the state's entire rail system traveling by caboose, hi-rail car and on foot.

The Department of Transportation report came as no surprise to the Committee, nor was it entirely unwelcome. It brought to a head a problem that has long been festering in New Hampshire—the difficulty of securing decent service and maintenance on the state's light-density lines.

Over the last twenty years the Boston and Maine Railroad has followed policy of deferring maintenance, curtailing service, poor scheduling, diverting traffic and discouraging customers on New Hampshire lines until the resulting reduced speeds and light traffic density have provided grounds for abandonment.

At present, 224 miles of the state's 830 miles are abandoned or requested for abandonment, with many more under consideration. Track speeds have been cut in half throughout the state in just 10 years.

The Federal Act has temporarily halted this process and the D.O.T. Core System report has given us a hard, painful, look at what rail service would have been in five years under the B&M if the state had done nothing. The Federal bill has forced New Hampshire to step back and analyze its situation and made some hard decisions about the future of its railroads.

I must say here, parenthetically, that the D.O.T. report, as Mr. Bixler so ably presented this morning, is directed principally at Class 1 railroad operations. The lines in New Hampshire are principally light-density lines and as such belong under Class 2-type operations. The D.O.T. report specifically states that:

"The lines classified as potentially excess also merit close attention by states, local communities and shippers because they are the lines most likely to be determined to be financially non-viable and hence excluded from the Association's Final System Plan."

The Regional Rail Reorganization Act of 1973 provides for grants and loans to the state, etc., for acquisition, modernization and rehabilitation purposes.

The Railroad Committee has reacted by submitting legislation to the Special Session of the New Hampshire General Court that would authorize the New Hampshire Public Utilities Commission to purchase railroad rights-of-way and trackage and lease them to private operators. The legislation would establish a special rail office within the Public Utilities Commission with authority to develop and promote a state rail plan and administer this Act.

While the bill itself is enabling legislation only and specifies no plan, the Committee anticipates the purchase and lease of four or more rail networks that could be operated profitably in the state. The rail office would create those networks from segments of light and heavy traffic density, being careful to give each network a sufficient average traffic density and enough gateways to permit bargaining and competition for favorable divisions of revenue and service. The Office would lease each network on a all-or-nothing basis requiring an operator to serve an entire network or no lines at all. Our economic studies show these networks could be operated at a profit by a competent operator. If properly structured, this network concept would return the bulk of the state's trackage, regular service and maintenance, and upgrade tracks to the levels acceptable for rail passenger service.

The fate of House Bill 31 will be decided by the legislature and the Governor of the State of New Hampshire in the next few weeks. If it passes, New Hampshire will be in a position to restructure its own system and integrate it with CRC's core system. The 400 miles of track left out of D.O.T.'s Core System report will be kept in service and upgraded. The threatened job loss won't materialize; CRC will get more traffic than presently anticipated and New Hampshire will take a strong step toward developing a balanced transportation system that will save fuel, secure and promote a healthy economy and cut the cost of living and reduce unemployment as well as contribute to a cleaner environment.

Our sister state of Vermont, as Mr. Gensberg stated this morning, has for a decade

successfully pursued the course of state ownership and leasing of railroad lines which we propose to be adopted in New Hampshire. Neither state would think of interfering with the operations of viable railroads such as Vermont Central, Maine Central, Canadian National and Canadian Pacific as long as they continue to provide for our service requirement. On the other hand, should any of those railroads decide to cut back on their service, I am certain that both states would take a long look at the lines involved so that we could inure service in the affected area.

New Hampshire's plan of action, or any state's plan of action, should not stop with today's needs but should anticipate future requirements whether industrial, agricultural, or recreational, freight or passenger. We, in New Hampshire, have even adopted the term "rail banking."

The question of whether or not the Boston and Maine Railroad is reorganizable does not overwhelm my Committee. We do feel strongly, however, that the State of New Hampshire, regardless of the outcome of the bankruptcy proceedings, will always be the source of feeder traffic rather than main line traffic and for that reason, principally, we have recommended the legislative action now under consideration.

Your Honor, you have heard today and you will hear in the future, many criticisms of the D.O.T. report. You will hear the needs for railroad service continually stressed. I earnestly hope that the Interstate Commerce Commission in their analysis of the D.O.T. report consider the alternatives presented by that report and do not overlook Class 2 Operations, the service that those operations can provide; as well as the necessary bridge lines, which even though they be light-density, are essential to continuation of economic and competitive rail service in this region.

For your additional information, I am attaching a copy of our Final Report to the Speaker dated January 26, 1974, together with a copy of House Bill 31 as submitted to the New Hampshire General Court now in Special Session.

SUSTAINING THE PRESIDENT'S VETO OF THE EMERGENCY ENERGY BILL

Mr. FANNIN. Mr. President, thanks to the good sense and courage of 40 Members of this Senate, we voted last week to sustain President Nixon's veto of the emergency energy bill.

This bill with its phony oil price rollback provision was clearly a political ploy. The irony is that although it appeared to be a good piece of public relations for the Congress, it was in fact legislation which would have further eroded confidence in this branch of Government. It was another something-for-nothing promise which would have backfired by causing not more gasoline but less gasoline, not lower prices but higher prices.

With confidence in Government at such a low point we can no longer afford to play political games. We must have legislation that is truthful, that is realistic, that is economically sound, that will result in the product that our people need.

Mr. President, editorials which appeared recently in the Dallas Morning News on March 8, 1974, and the Dallas Times Herald on February 17, 1974, demonstrate that knowledgeable people across this Nation are not being fooled by the efforts of some Members of Congress to blame everyone but the Congress for the disastrous economic consequences of policies dictated by Congress for the past two decades. I request unanimous consent that these editorials be printed in the RECORD.

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

[From the Dallas Morning News, Mar. 8, 1974]

A CLOSE SAVE

President Nixon has vetoed the Congress' energy bill and its strange answer to the oil shortage, the oil price rollback. The veto was sustained in the Senate.

We suspect that quite a few members of the Congress heaved a sigh of relief, including some who voted for the bill. Thanks to the President's willingness to make this save, the lawmakers who voted to give the folks back home a bargain can feel a bit less guilty about the future consequences of their grandstand play.

The grandstand play was the part of the bill that would have solved the energy shortage by rolling back the price oilmen can get for their crude oil.

There is no minimum intelligence requirement for either house of the Congress, as has been demonstrated on frequent occasions. But anyone with the intellect needed to step out of the way of a speeding truck can see that you do not ease a shortage of oil by making it less profitable to produce more oil. By rolling back the price oilmen can get, you ensure that the nation will be furnished less, not more of the fuel we need.

Politicians are not entirely unaware of the power of greater income to attract interest. Some have been known to say from time to time that higher pay for elected officials—such as, for instance, congressmen—would attract more good men into public service. They have not been pointing out this truth much lately, of course—and considering the public's jaundiced attitude toward public servants, they are wise not to.

But it is true, nevertheless. The prospect of better income attracts more people to run for office just as it attracts more people to search for oil.

That being the case, the congressmen's vote to reduce the price of oil in an oil-short nation was an economic absurdity. And even now, with members of the House trying another rollback, we believe the congressmen are able to recognize it as such.

But politically, the pro-rollback majority can hope that it will pay off very well. Those who must run for reelection in the consumer states can now go home and tell the voters that they stood right up and tried to give a bargain to The People. They can condemn the President for keeping this bit of congressional generosity from the weary public.

So they get the credit for the grandstand play. And the President gets the blame for saving the country from the disastrous results of that grandstand play.

In the short-run, this sort of thing will probably work to help some congressmen win reelection. But over the years, just such irresponsibility has cost the legislative branch itself the public respect that it once enjoyed.

[From the Dallas Times Herald, Feb. 17, 1974]

SILENT ANGER ARMY

(By Felix R. McKnight)

Out in the middle of the torrent of inflation, shortages, corruption, moral foldups, attacks on American business, internal bickering and, now, incredible terrorist tactics is an outraged American public ready to lower the boom.

It has had it—to the limit. It is fuming in silent anger, and that is the worst kind of anger.

Public confidence has eroded. It is sick to the stomach from daily doses of charges, charges, charges arising from the political arena.

It hasn't heard any good, constructive news from its Congress or the White House since the night the boys jimmied the Watergate door. Everybody's busy knifing each other in the media or at the courthouse.

Not even in the depression '30s was there such a lack of confidence in national leadership. Indecision, bumbling, back alley maneuvering, absence of organized planning and a widening partisan breach between Democrat and Republican is creating a deadening situation.

And if you had the idea that all of this could be laid at the tired feet of Richard M. Nixon and his Watergate conspirators, you got the other half of the picture a few days ago when the Louis Harris Survey released findings on the public's rating of the Congress.

President Nixon seems to be in slightly better public favor than the Congress that is talking his impeachment, resignation or censure.

The Harris Survey reported that 69 per cent of the American public rates the job Congress is doing between poor and fair. Only 21 per cent voted good or excellent.

It wasn't Rchard Nixon they totally blamed for the inflation that has brought deflation of public confidence. It was the Congress that received a bruising 88 per cent negative rating on controlling inflation.

Further, the Congress that has spent a year Watergating and investigating the Nixon troupe, got an 82 per cent negative in inspiring public confidence. It rated 83 per cent negative on keeping spending under control and 82 per cent negative on handling the energy shortage.

Which isn't, by any means, reason to set the Nixon administration scot free for ills of the day. Its indecision and lack of leadership didn't rate much higher in the last Gallup poll.

But it all supports, nationally, the general atmosphere of the Dallas area. The people are restless and their mood undoubtedly will be expressed at the polls this year.

The current issue of U.S. News and World Report, from its own reliable pulse feeling, reports:

"Public anger at Washington's failure to cope with today's problems—energy shortage, inflation, recession threat—is getting sharper by the week . . . It appears to many that the U.S. is just lurching from one crisis to the next.

"Federal machinery is seen as cumbersome—unable to act swiftly, or at all."

It concludes with the obvious observation that Americans have been told for years that Washington can solve all of their troubles. Now, they are demanding that those promises be made good.

It is a mixed bag. The Congress and the President are getting the pressure from disgruntled citizens who will become disgruntled voters within the next few months.

They are quite weary with the shim-sham attacks on business that has brought to them the highest standards of the world. They want a little partnership between government and business, for a change.

They do not want Big Daddy pushing towards nationalization of anything. If the present drifting is an example of how they would run petroleum, automotive, steel or anything else—they don't want any.

FREE ENTERPRISE SCHOLARSHIP

Mr. TALMADGE. Mr. President, the Georgia State Chamber of Commerce last year launched a noteworthy effort to widen channels of communication and

understanding between private business and the academic community.

It is referred to as the "Free Enterprise Fellowship" program, and it operates under the auspices of the State Chamber's Committee on Economic Education, chaired by G. H. (Gerry) Auchenbach, president of Piggly Wiggly Southern, Inc., of Vidalia, Ga.

The program is designed to place business leaders in the world of college education, and to put a college professor into a business organization, each for a 6-week period, in an effort to broaden understanding of the work, problems, and needs of each other's area of endeavor. Under this extremely worthwhile pilot project, the first fellowship went to Prof. Del Presley of the Department of English, Georgia Southern College at Statesboro. Admittedly, Professor Presley entered the program with some skepticism and misgiving. However, on completing the program, he urged that it be continued and that more professors and more businessmen take advantage of this unique exchange program.

Professor Presley has prepared an interesting paper on his experiences, which I commend to the attention of the Senate and ask unanimous consent that it be printed in the RECORD.

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

AN ENGLISH PROF'S ODYSSEY IN MODERN INDUSTRY

(By Del Presley)

In the summer of 1973, I spent five weeks as an "intern" in residence at the headquarters of a food chain, Piggly Wiggly Southern, Inc., of nearby Vidalia, Georgia. My first two weeks were introductory: I attended various meetings, traveled with district managers, visited and worked in some local stores. The final three weeks were spent on assignments normally handled by a middle-level executive. At the end of my tenure there, the company president asked me to write a critique of PWS's weaknesses. My report became the subject of several in-house meetings which, I am told, produced some "reforms" in the company's operations. What follows is an inside report from the faculty side of this unique exchange program which allows executives and professors to swap jobs for brief periods of time.

After agreeing to postpone research and writing plans for the first five weeks of my cherished summer, I was still skeptical about the possible merits of this exchange program my superior had convinced me to endure "for the sake of the college." Like all pilot projects, this one looked good on paper. Trouble was, not much had been put on paper. The college, the business, and the Georgia Chamber of Commerce all agreed that something had to be done to diminish the misconceptions educators have about the business community and vice versa. In the words of Piggly Wiggly's president, dynamic Gerry Auchenbach, "we've got to stop fighting each other." And all parties concerned agreed that one way to get at the problem was to throw a typical college professor into a business organization and to observe the results. Later an executive would jump cold turkey into the academic whirl.

There are other ways to learn to swim, the saying goes, but the quickest way is to leap into water over your head. Actually, as I contemplated my leap, I was not so sure the waters I faced were very deep. The real depths, of course, were those in which I navigated daily—the seas of the intellect whose greatest treasures lay fathoms deeper than those found in the shallows of the workaday world. The chief beneficiary of the exchange, therefore, surely would be the executive who was scheduled to swap duties with me. He would glimpse the mysteries of the life of the mind. He would have that unaccustomed luxury of conversation with fellow scholars. There would be the required committee meetings, but there would also be time, time, time. That goddess of creativity, time, surely would captivate my opposite, the nine-to-five organization man.

When I packed away my colorful academic regalia and donned the customary white shirt and tie, I was reluctantly prepared to pay the price. Facing me was the expected boredom of an eight hour day beneath the bland celotex, interrupted occasionally by inane coffee break chatter, and inundated by the mushy sounds of Muzak. Naturally, I took along some good books I had been neglecting, hoping to salvage at least some stimulation from the experience.

I fully expected to encounter men and women who, while crassly defying Socrates' wisdom, daily lived the "unexamined life." Pity for those who foolishly had embraced the phantom of materialistic success! Would I not meet, first-hand, characters made immortal by legions of modern authors? Perhaps I would be working in the midst of an unimaginative, bureaucratic husband of a contemporary Lady Chatterly. Surely there would be pious, money-grubbing Babbits in every corridor of this building built by and for the Snopses of this world.

Thus began an English professor's odyssey in modern industry. But unlike so many trips in today's world, this one did not merely end where it started. I confess that I made some discoveries which have fundamentally altered my view of the world into which most of my English composition students eventually tumble. I will spare you the information about basic economics, industrial organization, and productivity. To be sure, salient facts about profits are crucial information, e.g., in 1973 the food industry's profits were less than 1% of total sales! But the most important gleanings from my five weeks of daily involvement in food distribution have to do with people—how they live, how they survive, and how some of them triumph in their vocations.

Six observations abide. If they seem obvious or commonplace to you, then consider these as one professor's capitulation to commonsense—the kind of commonsense educational institutions might well heed:

1. The importance of man in management—"man" as in human, humane/humanity, humanitarian. I speak not simply of the personal qualities of certain executives, but of the general integrity of countless individuals who prove false the notion that employees are cogs in some giant, impersonal machine. Employees can, and often do, experience self-realization in their daily tasks.

2. Tenacity, not tenure, is the most important factor in the company's system of rewards. Length of service means little if the quality of service is poor.

3. Successful, competitive employees function best when surrounded by other successful, competitive employees. (The Organization Man in that gray flannel suit, whose two favorite words are "yes, sir," functions best only in fiction.)

4. Candid is the style of good management. Honest opposition among mature colleagues is the glue which holds together the good, free ship Enterprise.

5. Each man can be his own manager if he belongs to a team. A member of a team is not ridden with distrust and jealousy, but depends on the competence and reciprocal trust of his fellow workers.

6. Decision making about operational matters—95% of the decisions in business—should begin at the level of operations. For example, truck drivers are well qualified to suggest how the company can increase shipping efficiency, and they are more than happy to implement decisions into which they have input.

I confess that I began my internship in business with the vague, albeit falsely supported, suspicion that businessmen were intellectual eunuchs. That deep down they were shallow. That under the veneer of respectability was an insensitive semi-slob whose sole motivation was materialistic gain. Thus began but did not end. Yet, and how confession hurts the hubris, I ended with a different kind of skepticism. And this dark feeling still abides.

I am deeply worried about a syndrome within our degree-producing institutions of higher learning—the "ABMAPHD" factories, Edward Albee once called them. How is it that 10 out of 10 college professors in this country share a body of genuine fakelore about the free marketplace? Volumes could be written about the problem—its roots, its consequences, and so forth. But books on this subject we do not need, not now at least.

Let more professors take brief sabbaticals in business. If a business is worth the paper its stock is written on, it will listen thoughtfully to the working proof. And the proof will have ample opportunity to receive the message of business at its very medium. And, if I am not mistaken, this kind of exchange is called DIALOGUE—something yet unheard of in the uneasy relationship between modern business and higher education.

FRIENDS OF THE EARTH URGE ACTION TO PROTECT FISH AND WHALES

Mr. STEVENS. Mr. President, negligent destruction of the world's fish and whale population—notoriously exemplified by the distant water fishing policies of Japan and other nations—demands whatever deterrents the United States can mobilize.

In their concern over this growing problem, members of the Friends of the Earth, both here and abroad, are supporting legislation to protect the threatened and endangered creatures of the sea until effective international conservation measures are agreed upon and in force. I would like to share with my colleagues the contents of a letter written to the Governors of all coastal States of our Nation by Mr. David R. Brower, president of Friends of the Earth, Inc., and secretary general of Friends of the Earth International.

In his letter, Mr. Brower outlines the circumstances which have led to the emergency in our coastal fisheries; he reviews recent developments which demonstrate the shortcomings of existing multinational conventions in protecting the species; he suggests that the Japanese and perhaps the Soviets are maximizing their harvest off U.S. shores while the getting is good, because they expect an extension of the fisheries jurisdiction zones of coastal nations; he recommends citizens' boycott of Japanese and Soviet products; and, finally, he asks the Governors' active support of 200-mile limit and economic retaliation legislation.

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

There being no objection, the letter

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

JANUARY 22, 1974.

DEAR GOVERNOR: Knowing of your concern, as governor of a coastal state, for far-reaching questions related to the marine resources of the earth, Friends of the Earth is seeking your help. We are attempting herein not only to represent the views of Friends of the Earth in the United States, but also of our many sister organizations in other countries, particularly in Australia, Britain, South Africa, and Sweden. Friends of the Earth International, of which I am Secretary-General for the moment, will be expressing its views, related to the critical situation described below, in the forthcoming United Nations conference on the Law of the Seas, in Caracas, and on Population, in Bucharest.

Most of the people of the earth have a crucial stake in the protection and restoration of marine resources, above all those upon which coastal fisheries are dependent. Yet this vital interest has fallen hostage in recent years to aberrant national priorities.

It has been overriden by an obsession with growth and profit without intelligent concern for consequences, producing disastrous pollution of inshore and offshore waters, destruction and poisoning of estuaries, damming of rivers used by anadromous fish and the construction of hugh coastal power plants which now kill billions of fish, fry and eggs, yearly.

In the United States this interest has been the victim of a foreign policy which led our government to drop 15 million tons of bombs in the jungles of Asia, while permitting the deliberate obliteration of fish stocks off our coasts by mechanized fleets from the Soviet Union, Eastern Europe, and Japan. As a result, we now face the spectre of the imminent total collapse of traditional coastal fisheries, some of which had remained stable for a century, which provide needed protein, and a livelihood for hundreds of thousands of Americans.

The immediate, overriding peril today is that posed by fleets of nations involved in the so-called "fisheries revolution" and their massively applied sophisticated lethal technologies which no marine resource can indefinitely withstand. The weak multilateral conventions negotiated to "conserve" fish and whales have proved hopelessly ineffective in curbing the implacable, mechanical voracity of the modern fleets.

Japan and the Soviet Union and certain other nations have alternately flaunted and paralyzed these organizations, and pursued policies that imperil our own right now. American protest within such organizations as the IWC (International Whaling Commission); the INPFC (International Commission for North Pacific Fisheries Commission); and ICNAF (International Commission for North Atlantic Fisheries) has usually garnered only minor concessions or has been rebuffed.

I would like to review briefly three recent cases with which I know you are familiar:

IN THE NORTHEAST

The Soviets, Poles, and East Germans have in a little over a decade of fishing extirpated the formerly abundant Georges Bank haddock, gravely imperiled once enormous stocks of sea herring, threatened the Yellowtail flounder fishery, and depleted cod and most other stocks. Total U.S. landings have declined by half in a few years.

The three-year ICNAF agreement signed this October, touted as "bringing new hope for gravely depleted fishing grounds in the Northeast," provides quotas for the Soviet Union and other Eastern bloc countries over three times greater than that accorded our fleet. The United States and Canada together received less than a quarter of the 923,000 metric ton quota for 1974. This ICNAF "victory" may prevent the Yellowtail flounder from joining the haddock and the Atlantic halibut in "commercial extinction." It clearly neither terminates Soviet hegemony off our coasts, nor provides enough catch reduction to permit overall recovery of stocks, or even, necessarily, to arrest their decline.

In the meantime, off the Central Atlantic coast, which does not fall under international regulation, a new Soviet purse seining fleet has appeared over the past two years with an estimated capacity greater than the entire U.S. menhaden fleet. This poses a threat to the menhaden fishery, one of the last reasonably viable coastal fisheries remaining.

OFF ALASKA

The Japanese high seas salmon fishery, which last year comprised ten 500-foot motherships and 332 catcher boats, each fishing one-fourth mile of bilnet, has grievously depleted the Sockeye salmon. Biologists believe that another season of Japanese netting will cut so critically into the salmon runs that the Bristol Bay fishery will be destroyed, and the survival of the species jeopardized.

At the same time, the American and Canadian halibut fishery in the eastern Bering Sea, according to National Marine Fisheries Service Director Robert Schoning, has been "for all practical purposes eliminated" by what are again called "incidental catches" by Japanese and Soviet fleets. Fishing in the central Bering Sea threatens the Western Alaska Chinook salmon; and King crabs, Alaska scallop, and Jenner crabs are declining. There is, in fact, tremendous pressure on all Bering Sea stocks, where total catch has risen from 28 million pounds in 1954, to five billion pounds last year, through an unprecedented expansion of Japanese and Russian effort.

The increasing destruction of species forming the feeding base for stocks of commercially important fish raises the possibility of a disastrous collapse of the entire fishery, with the most far-reaching ecological effects, within a few years. Yet at the recent meeting of the International Northwest Fisheries Commission in Tokyo, the Japanese, who account for more than 80% of the total catch, provided no indication that they are prepared to reduce their fishing even when failure to do so will result in the annihilation of the remnants of once plentiful stocks, such as the Sockeye salmon.

WHALING

During the past 25 years pelagic whaling fleets have brought Blue and Humpback whales to the verge of biological extinction and have decimated populations of other species. An entire suborder of unique and magnificent mammals, the great baleen whales, of inestimable aesthetic, ecological, and potential economic value to mankind, is rapidly disappearing. The whales are being sacrificed for the most trivial of uses, effaced from the oceans for no better reason than that their destruction contributes to the short-term profits of a few Japanese fishing companies and their Soviet competitors.

At the 25th meeting of the International Whaling Commission last June, the Japanese and Soviets, ignoring resolutions by the United Nations Conference on The Human Environment and the UN Environmental Secretariat calling for a ten-year moratorium on the commercial killing of whales, succeeded in turning back US-led efforts to significantly reduce the slaughter. Not satisfied with this, these nations have announced that they will disregard the modest conservation measures eventually voted by the IWC to protect sperm and minke whales in the Southern hemisphere.

The decision to ignore the sustained-yield quota recommended by the IWC scientific committee for taking minke whales means that Japan and Russia will actually be killing several thousand more whales this year than last year. It means that the minke whale, the last baleen whale which remains comparatively abundant, having largely escaped earlier massacres because of its smaller size, must now sustain the insatiable appetite of the whaling fleets until it follows its larger cousins into commercial extinction.

In the meantime, the unilateral Japanese decision to ignore the IWC vote to phase out killing of Antarctic finback whales means that the remnant population which survived the killing orgy of the 1960's will shortly disappear. Between 1960 and 1965, between 25,000 and 30,000 finbacks a year were taken in Antarctica. Last year the whalers were able to find and kill around 1500, and this is considered far above the ability of the population to sustain.

Friends of the Earth can now perceive no alternative to prompt unilateral action by our government if a succession of disasters is to be avoided. Those who have counciled delay until "relief" is forthcoming through Law of the Sea deliberations, have evidently failed to grasp the extremely parlous state of many fish stocks and whale populations. A single season's carnage may now result in the commercial, or even biological, extinction of irreplaceable species, while five years or more may elapse before Law of the Sea agreements are ratified. Such agreements, even then, may have limited impact.

From his vantage point in Washington, D.C., where he serves on interagency committees concerned with marine conservation, Friends of the Earth wildlife director Tom Garrett is in day-to-day contact with administrative and congressional offices. He reports a growing conviction that the Japanese, and possibly the Soviets as well, are reacting to the probable eventual emergence of a 200-mile national fisheries jurisdiction through the Law of the Sea deliberations by maximizing their take of fish off our Northwest coasts while such fish are still available. Several US negotiators to the recent INPFC conference left Tokyo with the shocked impression that Japan, since it will not have indefinite access to them, would probably prefer that our coastal fish stocks be destroyed, and our fishing industry bankrupted. This would, of course, make the United States largely dependent on the Japanese fishing industry to supply our domestic requirements. Already we import nearly three quarters of the fish consumed in this country. Another interpretation has been fanned by the acquisition of Alaska's largest fishing company, Whitney-Fidalgo Seafood, Inc. by Kyokuyo-Hogei Ltd. (one of Japan's three major whaling companies). This interpretation is that Japan is engaging in "softening up" the US fishery to facilitate a Japanese economic takeover.

Mr. Garrett served as a member of the US delegation to the International Whaling Commission during its past two meetings. He has expressed the view that, since small-scale sustained-yield whaling is not profitable, and since far too few whales remain to justify investment in new factory ships, the Japanese intend that the commercial extinction of whale populations should coincide with the efficient life expectancy of their aging fleet. He now fears that the Japanese have stepped up their timetable, owing to rising costs of upkeep and operation.

As you know, FOE has joined other conservation groups, all reluctant to do so, in asking the American public to cease buying Japanese and Soviet products, and to abstain from visiting these countries, until the tragic destruction of whales, and of stocks of fish off our coasts, is halted. We do not like such measures in international relations. We have hoped that international discussions would produce the essential long-term conservation policy essential to the interests of all. Those of us who lived through the period, may recall that a citizens' boycott of Japanese goods was launched after the Panay incident in 1937, to protest the in-

vasion of China. That boycott eventually developed considerable effectiveness, and set the stage for an official US government embargo. We continue to hope that reason will prevail instead, in a world that needs all the reason it can muster.

Our organization is also strongly supporting bills which have recently been introduced in Congress to protect these threatened species. Once passed, and properly implemented, this legislation should make the rather desperate recourse of mounting a citizens' boycott unnecessary. I have listed below the bills which we feel can, in combination, achieve necessary protection.

1. FOE strongly supports S. 1998, submitted by Warren Magnuson (D-Wash.) Mr. Garrett testified on behalf of this measure in hearings held in early December, and is lobbying for early hearings in the House on the companion bill introduced by Rep. Gerry Studds (D-Mass). S. 1998 would provide interim protection until the implementation of a Law of the Sea agreement, by establishing United States jurisdiction over marine resources up to 200 miles from our coastline.

Opposition to the bill comes from the shrimp and tuna industries, who fish primarily off foreign shores, ond who fear that US extension of jurisdiction might bring about foreign retaliation against them.

However, none of the foreign nations hosting these fisheries presently fish off US coasts. A favorable bilateral agreement has been worked out with Brazil for US fishing within its claimed jurisdiction. Chile, Peru, and Ecuador already enforce a 200-mile limit, and are unlikely to be influenced by what we do off our coasts. Mexico is reportedly on the verge of unilaterally claiming 200-mile jurisdiction, "come what may." In any case, shrimp and tuna landings comprise only about 15 percent of the US total, and I cannot see the logic in permitting the almost certain ruin of over 80 percent of US fisheries because remedial action might harm the remainder.

2. FOE will strenuously support SJ Res 184, introduced in the Senate by Warren Magnuson and by Claiborne Pell (D-R.I.), and Senator Hollings (D-S.C.), and in the House by Rep. Alphonso Bell (R-Cal.). This resolution is specifically designed to prepare the way for effective economic action against those nations, and those interests, that are now engaging in destruction of marine resources. The resolution instructs the Secretaries of State and Commerce to determine what action can be taken to effect compliance with conservation measures aimed at protecting marine resources. This includes a study of the Pelly-Stevens amendment to the Fishermen's Protective Act of 1967 (which gives the President discretion to halt fisheries imports from nations ignoring "international fisheries conservation programs"), to determine whether and to what extent it should be applied, and whether it should be amended to include products other than fisheries products, "and an examination of Trade Agreements with Japan and the USSR, particularly those agreements regarding industries which have a financial interest in the whaling or fishing industry."

We regard SJ 184 as a necessary complement to the 200-mile fisheries limit bills. Once the study mandated by this resolution has been completed, and the necessary implementing legislation introduced and passed, we will have a realistic means of protecting the great whales, as well as stocks of fish occurring in the open ocean beyond any potential national jurisdiction and endangered marine species such as sea turtles.

3. A bill which may provide the necessary vehicle for applying adequate economic leverage has already been introduced. This is S. 1366, sponsored by Ted Stevens (R-Alaska). Mr. Stevens' bill amends the Pelly-Stevens amendment noted above by widening the spectrum of offenses which can initiate retaliatory restrictions on fisheries imports. The offenses would in effect include "any . . . activity which endangers United States fish resources." FOE is prepared to throw its weight behind an amended version of S. 1366 that would provide discretion to halt importation of a range of products other than fish, and would further provide authority to halt exports as well as mention specifically the destruction of whales and endangered marine species among offenses which permit such measures to be invoked.

It is clear that we are moving rapidly here toward a tense situation. If the measures now being proposed in Congress to afford protection of fish and whales fail, or are long delayed, the fate of many marine species, and several of our coastal fisheries as well, may be sealed. We believe that the bills described above do have an excellent chance of passing Congress. We believe that the American people are increasingly aware of the situation and are becoming impatient with our continued reliance on impotent multilateral fisheries conventions. We sense that they are exasperated at appeasement of exploitative interests at the expense, not only of the American fishermen of today who are practicing conservation, but of fishermen of the world who would like to practice it, and must, in the future.

As governor of a key coastal state, your weight could well prove critical in tipping the scales toward the passage of effective interim protection legislation. I strongly urge you to move energetically in support of both the 200-mile limit and the authorization of economic-retaliation approaches if these are our only course. I urge you to join with the American conservation and humane movements in insisting that this protection be accorded whales as well as fish. None of us, surely, wishes to be a member of a generation which reached the moon, while the last great whales, creatures with immense brains, unfathomed and unexplored, were destroyed in the world's oceans.

Our organization offers its support of your actions to help achieve necessary protection. Mr. Garrett, in our Washington office, is prepared, when necessary, to remain in day-to-day contact with your staff.

Sincerely,

DAVID R. BROWER,
President.

CAREER EDUCATION

Mr. HATHAWAY. Mr. President, I have long felt that our traditional elementary and secondary educational programs have not done enough to provide high school graduates with a "marketable" skill, one which would enable them to acquire responsible and respectable employment upon graduating from high school. For this reason, I have urged the Committee on Labor and Public Welfare to include a section on career education in the major revision of the Elementary and Secondary Education Act due for consideration in this session of Congress.

The measure I am proposing, which has already been approved by the Education Subcommittee, recognizes the differences that exist in the educational community about the scope and precise meaning of career education; the proposal, therefore, is aimed at providing a vehicle for the development of the concept rather than at the choice of a definitive approach. I am suggesting that an Office of Career Education with its own director be created within the U.S. Office of Education with the responsibility of surveys and assessing the current status of career education programs and materials and reporting this along with recommendations for further legislation to the Congress. Also, we would authorize grants to State and local educational agencies, institutions of higher education and nonprofit agencies to support demonstration projects and exemplary career education models. Finally, grants would be authorized for the development of State career education plans.

The March 9 edition of Business Week includes some interesting observations on the subject of career-vocational education as well as some practical advice for today's student. I ask unanimous consent that his particular article be printed in the RECORD.

There being on objection, the article was ordered to be printed in the RECORD, as follows:

CAREER EDUCATION

NOT MANY JOBS FOR WELL-ROUNDED COLLEGE GRADS

The days are long gone when your youngster could waltz into college, choose any major he pleased, and expect to have a career. As any PhD who is driving a cab can tell you, a degree per se is no longer a passport to a good job. You should advise your son or daughter about the "new vocationalism" on campus—or steer him to someone who can.

"Beginning with the 1969 recession, the job outlook for college graduates has been less attractive than it has been for several decades," says Herbert Bienstock, head of the New York regional office of the Bureau of Labor Statistics. Employers are swamped with applicants and can afford to be very choosy. They want practical skills along with that degree.

Already there's a marked trend among students away from humanities courses and toward the sciences. "The idea of the well-rounded individual just doesn't go over any more," says one dean. More and more, job-oriented freshmen are eschewing liberal arts for business and public administration premed, pre-law, and urban design, notes New York University Admissions Director Herbert Livesey.

SPECIALIZATION IS THE GAME'S NAME

The job outlook is least favorable now for liberal arts and education majors. But that doesn't mean your youngster ought to pursue a course of study in which he lacks interest or aptitude. Rather, encourage him to sprinkle his arts curriculum with courses having job-market value; or have him tailor his liberal arts studies to professional programs.

Example: if your youngster is intent on being an English major, suggest a concentration in journalism. A social science major might do well to accumulate credits in criminal justice. A philosophy major might see the value of electives in economics.

Specialization will also improve your youngster's chances. "Even in a crowded field," says Livesey, "you'll do well if you have some expertise." Many graduates, in fact, are returning to school to do advanced work in a specific area. A graduate may have trouble landing a job as a secondary school teacher—but not as a teacher of drama. Similarly, the outlook is grim in many places for elementary school teachers, but there are jobs available for teachers trained to work with disabled, gifted, or ghetto children.

WHERE DEMAND EXCEEDS SUPPLY

The rapidly changing economic and social climate will doubtless affect the new job market for years to come. The energy shortage, for example, is expected to spur the rising demand for engineers—currently running 31% ahead of last year, according to a recent College Placement Council survey.

Only a few years ago, the outlook for engineers was bleak.

The energy shortage promises to send more people back to the cities, too, and that should promote new demand for urban planners, systems analysts, police administrators, criminal rehabilitators, and probation officers. In general, students with business and financial backgrounds are in the catbird seat. Indeed, the Labor Dept. reports that the largest number of job openings this year will be for business administration majors—especially accountants.

(NOTE.—Internships and work-study programs, if available at your youngster's school, may make more sense than ever. In this program, the youngster spends part of the school year working and part studying on campus. Besides gaining practical experience, this provides an "in" with a prospective employer. Of course, the job may not be exactly to his liking. "A few years ago, you could have had your choice of two or three jobs," says Asa S. Knowles, president of Northeastern University. "Today, this isn't so in many fields."

LETTER TO SENATOR MATHIAS

Mr. MATHIAS. Mr. President, not long ago I received a very unusual letter. It would be unique if only for the reason that while my correspondent sent a campaign contribution, he expressly stated that he had not yet committed his vote with his money. On a more substantive plane, however, the letter is a moving and accurate expression of the anguish which many feel about the present state of our democratic "experiment," now nearly 200 years old, but by no means guaranteed another century of testing. The responsibility which falls upon us to preserve our system is apparent, and the letter is recommended reading for each of us who feels a need to renew his faith and his humility. Yet, one does not read it with a feeling of hopelessness, because of the wisdom and confidence which lie behind its words. I ask unanimous consent that it be printed in the RECORD.

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

ROCKVILLE, MD.,
January 21, 1974.

Senator CHARLES MCC. MATHIAS, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MATHIAS: Enclosed is a small contribution toward your campaign. Although I am a Democrat, it seems to me that you have represented the State well. Nevertheless, I shall expect to reserve my vote until the candidates have had an opportunity to express their views. The purpose of my contribution is to support your conviction that candidates should be free of the pressures and restraints of financial obligation to particular groups.

What follows is written more for my benefit than for yours. It fulfills my obligation as a citizen to express my opinion.

I do not wish a government by poll. That would limit our wisdom to the average. I would hope that our elected officials would have better than average judgment. I expect them to be better informed and to have invested some time in consideration of the nature of our form of government and of the complex question of what constitutes the public interest. In applying those considerations to specific issues, it is not always important to me that we reach the same conclusion. I have some respect for my own judgment; I am prepared to respect yours. What is important to me is that your decisions represent a base upon which we can agree. That base is difficult to define, but some "truths are self evident."

I believe that our form of government is an experiment and that, as Walter Lippman has observed, "it is not engraved upon any tablets of stone that we are destined to succeed." Like Washington, who had his doubts, I am committed to make it work. But making it work means more than proclaiming the virtues of our form of government. It means recognizing the faults and the prices that must be paid.

Too often we have encouraged the belief that all advantages reside with democratic systems. This, of course, is not true. Many advantages lie with totalitarian systems. The failures of our present administration stem directly, in my view, from the fact that they were not intellectually prepared to recognize that the administrative disadvantages of a democratic system led them to embrace the virtues of a totalitarian system.

There are many legitimate arguments, for example, for secrecy in government. There are many instances where it is easier, more effective, and less damaging to the public interest to keep information from the general public. Yet I am firmly convinced that such secrecy is antithetical to the "noble experiment". There are prices we must be willing to pay to have an open society. Too many of our officials and representatives want the virtues of our form of government without paying the prices. The prices are real and must be paid. We should have the courage to face that.

This is true of many of our institutions. Not all films contribute to public taste or morality. The words of many speakers are pernicious, even dangerous. But we can't have it both ways. To believe in freedom of speech and of the press, to believe that the truth will prevail and that men have the ultimate right to exercise choice requires that we continue to resist the temptation that we know what is best for others—in what they shall hear or read or see. I believe that these freedoms are fundamental to our society. I also believe that there are real prices to be paid for those freedoms.

While I do not consider myself to be what Carl Sandburg called "a freedom shouter", I am melodramatic enough to believe that you and I should be willing to make sacrifices in defense of the human spirit. The test of that willingness is only rarely on the battlefield and, perhaps, that is the easiest test to face. More often the confrontation is more subtle: the choice between political survival and a gut conviction of the public interest. God knows it is easy enough to rationalize the choice in favor of how much one can accomplish if one survives! But I would prefer to believe that we have men in our government who are at peace with themselves on that issue, men who knows that they carry with them the burden of their own honor, that of their family, and of their fellow citizens whom they represent.

Having said this, I would also have to say that it is not enough to be right. It is easy to be "right". More is required. To be effective. To see the word made flesh. That is the challenge.

Yet I am also afraid of the tyranny of the righteous. As I would not have another's view of what is right imposed upon me; so I would not impose my view upon others. While this preference is not always easy to legislate in a complex and interdependent society, I would accept as a general guideline the separation of public and private behavior.

Finally, I would have to say that our form of government and society does not depend upon all men being virtuous. There will always be those who lie and cheat and steal. It may only be said that our country depends upon those who don't. At every level—from private citizen to public official—our country depends upon there being enough of those who have integrity, who may be trusted. With too few, no system of laws or of police or of armies will permit us to survive as a free people. Our country requires enough who can be trusted. And how many is enough? I don't know. I only know that it is important that you and I be among them.

Long ago, Pericles explained the choice to the Athenians, "We depend less upon system than the native integrity of our people." If we can share that belief, we can happily disagree about many things.

May I wish you every success in your most important work. And also, my apologies for fulfilling a personal obligation at your expense.

Sincerely,

JOHN S. CLAYTON.

SSI MESS

Mr. CRANSTON. Mr. President, the Social Security Administration's disastrous implementation of the new Federal supplemental security income—SSI—program is brought home in a letter to the head of the Social Security Administration which I recently received from Mr. Edward Wolf, administrator of a residential care home for the aged in Sacramento.

Among other things, Mr. Wolf reports that only 4 persons, among the 29 living in his home, are receiving the right amount of money in their SSI payment. The remaining 25 are either being underpaid, or—in the case of three persons—receiving no money at all. While SSA has repeatedly reported that all SSI accounts would be corrected, there seems to have been little improvement in February and March receipts and the cumulative losses individuals are incurring are mounting.

The personal hardships imposed by these administrative problems need hardly be detailed. With the prospect of skyrocketing food prices and cost-of-living increases already averaging 24 to 25 percent on an annual basis for January and February, it is not difficult to imagine what a reduction in or lack of assistance means for persons already stretched to their very limits in eking out a bare subsistence living from meager fixed incomes.

Mr. Wolf goes on to document the absolute futility of getting assistance from the local SSA office, recounting how he personally spent more than 3 hours—2 days in a row—waiting in vain to see an SSA representative.

The unresponsiveness of local SSA offices to the information needs of potential and eligible SSI recipients is one to which I can well attest. Last week a disabled SSI recipient appeared in my office and announced he had flown all the way from California to try and get someone to clear up his SSI payments problems. To this day, no one knows where he got the cash to buy an airline ticket, for he did not have a nickel in his pockets, nor even a jacket on his back when he arrived. Three days later, with the assistance of the Travelers' Aid Society of Washington, he was on his way back to California, satisfied that at last someone had responded to his problem.

It is easy to write off a case *like that* as one outrageous problem, but, in fact, this gentleman proved the tragic lengths older and disabled persons feel they must go to before they can get any attention

or satisfaction from the Social Security Administration. It should be mentioned that the gentleman's case was not really taken seriously by SSA, despite the efforts of my office until he finally took himself over to SSA Commissioner Cardwell's office and sat down, refusing to vacate the office until someone heard him out.

Mr. President, I ask unanimous consent that the letter from Mr. Edward Wolf, administrator, Del Paso Guest Home, be printed in the RECORD.

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

DEL PASO GUEST HOME,
Sacramento, Calif., February 22, 1974.

ALAN CRANSTON,
U.S. Senator, Senate Office Building, Washington, D.C.

HONORABLE SIR: I have been a supporter of yours since your days as the Comptroller of the State of California. I feel you are doing an excellent job as our Senator and plan to support you again when you next run for office.

I enclose a copy of a letter I've written to the Social Security Administration in Washington concerning their lack of interest and understanding in their new roll as the payee of moneys to the aged. Our industry and the aged we care for and represent need responsible leadership from our officials in Washington. I am hopeful that you may be able to add something for the cause of the aged, thank you.

Very truly yours,

EDWARD WOLF,
Administrator.

DEL PASO GUEST HOME,
Sacramento, Calif., February 22, 1974.

DIRECTOR,
Health, Education, and Welfare, Social Security Administration, Washington, D.C.

GENTLEMEN: We operate a Residential Care Home for the Aged which has a population of thirty four. The purpose of this letter is to obtain information and to register a compaint.

At times our residents suffer an illness which may confine them to a hospital or convalescent hospital. I've written to your Sacramento office on January 7th in an attempt to learn what guide lines you have concerning the reservation of the Resident's room during these times of hospitalized confinement. No response has been received by us in the form of reply to our written inquiry, and last evening I attended a meeting where your representative was to answer our questions. Connie Eaton, an Administrative Assistant from your Sacramento office conducted this meeting and stated that no policy had been formulated along these lines as yet. Please remember that most of these people come to consider our facilities as their homes and it is heartbreaking when due to illness they will lose their home.

My area of unhappiness lies with the "mess" we are now living with since your administration has taken over the payments of supplemental income previously handled by the County agencies. We are a small business who employ ten full time and one part time help. As of February 1, 1974 our (earned income) cash flow is short in excess of $2,000.00 due to the fact that your administration has either shorted or not paid anything at all to most of our residents. Of 29 persons receiving supplemental aid only four (4) are receiving the right amount of money. The balance, or twenty-five persons are being shorted, in three instances no money is being paid. During January, Newspaper accounts quoted your Administration as stating that all accounts would be corrected and shortages paid beginning with the February payment. There was no improvement in February, the same people were shorted or did not again receive a check. Last evening at the meeting mentioned above, Connie Eaton advised us that very few problems would be solved when the March payments are made, and perhaps IF they have no further problems all checks will be for the correct amount in April. If this is true, our cash deficiency will be in excess of $3,000.00 March 1 and our shortage will be close to $5,000.00 by April 1st. I pointed out this matter to Connie Eaton last evening and asked what suggestions your Administration may have which would alleviate our problem. She had no answers to this or other questions posed to her. I realize that it may be that the local Social Security office is under-staffed, overworked and possibly fed some wrong information but we are approaching the end of the first quarter in 1974 and to my knowledge guidance and leadership from Washington, D.C. is non-existent. Action is needed, not today or tomorrow, but yesterday. Our industry is one of narrow margins, food alone went up 32% in 1973, our taxes increased and during March we in California are faced with a minimum wage law compelling employers to pay a minimum of $2.00 per hour. The small increase we were to receive January 1st but haven't because you haven't paid the proper amounts will not cover our increased operating costs. The increase is inadequate at this time, it is a year or more late. We are to receive $250.00 per month effective January 1, 1974. Every study made by our industry and the State Department of Social Welfare as far back as one year ago indicated that a minimum of $300.00 per month should be paid so that competent administrative personnel may be employed, and the enterprise be entitled to some sort of return on investment.

I also wish to bring to your attention the inaccessibility of reaching people in your Administration. Today to get into your Sacramento office by phone required continual dialing and getting a busy signal for more than forty five minutes. Last month there were days on end when your lines were so busy the phone company overload system came into play with a recording which recited "that the number you are dialing is no longer in use and no new number is available". I personally made two trips to your Sacramento office, one day I waited more than three hours, another day more than four hours, in both instances I did not see any representative. Another source of irritation is that correspondence goes unanswered. Letters written January 2, 4, 7 and 16 have been ignored as of today.

A letter was received from your San Francisco office over the signature of Paul W. Quandt advising an elderly woman here that she would receive no check for one month due to some clerical error. On January 16 I addressed a letter to Mr. Quandt concerning this case for the purpose of providing him with information related to this incident. This morning I called long distance as much as I had received no reply to my letter to find out what progress was being made in this case. The amount of this check is $196.60 which is another account we are forced to carry on our books until the matter is corrected. * * *

Mr. CRANSTON. Mr. President, the problems of handling delayed checks, as well as enrolling new applicants, is fast approaching a crisis stage. I have called upon Secretary Weinberger to advise me of the immediate steps being taken to rectify this problem.

I ask unanimous consent, Mr. President, that my letter to Secretary Weinberger, dated January 25, 1974, and my most recent effort, a telegram sent today, be printed in the RECORD at this point.

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

JANUARY 25, 1974.

HON. CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare, Washington, D.C.

DEAR CAP: This week I returned from California where, as you are well aware, thousands of aged, blind and disabled persons have not received their welfare checks, due since January 1, when the Federal Government took over responsibility from state and county agencies for the Supplemental Security Income (SSI) program established under P.L. 92-603.

Even a day's delay in receiving cash assistance—which, for a significant number of SSI recipients, represents their only source of income—can cause serious hardship for these older citizens. Many recipients have had to go without food and to face the needlessly threatening situation of not being able to pay their rents. In California alone, delayed or missing checks already have topped 30,000 and the number could go still higher.

I am deeply concerned that this problem be rectified as quickly as possible. Although I understand that certain emergency measures have been initiated to resolve the immediate difficulty in California—for example, local welfare offices are now issuing $200 emergency loans, bureaucratic procedures required to process loan applications have been simplified, and personnel have been added to public social services staffs—there is still reason to be concerned about the Social Security Administration's future administration of the new federalized welfare payment system. New changes in address occurring in January may not have been properly handled because staff have been responding to the present crisis.

Thus, I would like to know what measures are being taken so that this transitional period will not result in any further delays of the kind that have been experienced in the past weeks.

I would especially like to be apprised of the emergency payment procedures being implemented in California and the reporting procedures that are being employed to ensure that reliable data on names and addresses is transmitted to the appropriate Federal SSA office. We must take all steps necessary to prevent SSI recipients from going without income for even a single day.

I would appreciate your response concerning this matter at your earliest convenience.

Sincerely,

ALAN CRANSTON.

[Telegram]

HON. CASPAR WEINBERGER,
Secretary, Department of Health, Education, and Welfare, Washington, D.C.:

Have not received response to January 25, 1974, letter on SSA administration of newly established SSI program.

As I am sure you know, the problems of handling delayed checks, as well as enrolling new applicants, is fast approaching a crisis stage. Also, according to the San Francisco Regional SSA office, there are no reliable statistical data available on the SSI program statewide.

Want to know immediately steps you are taking to rectify situation so that persons eligible for SSI checks will no longer be required to wait for entitled benefits, and so we may receive basic information regarding the structure and implementation of the program.

Sending under separate cover a copy of February 22 Wolf letter to head of the Social Security Administration detailing horror stories about Sacramento SSA's implementation of SSI program.

ALAN CRANSTON,
U.S. Senator.

DISEASES OF THE EYE

Mr. TALMADGE. Mr. President, the General Assembly of the State of Georgia has approved a resolution urging expanded Federal support and research into the prevention and treatment of eye diseases, particularly, toxoplasmosis. Further, the General Assembly has expressed its concern with the impoundment of funds appropriated by the Congress for these purposes.

Mr. President, on behalf of myself and my distinguished colleague from Georgia (Mr. NUNN) I ask that the text of this resolution be printed in the RECORD.

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

H.R. 648

A resolution requesting the President and the Congress to participate in the fight against diseases of the eye; and for other purposes.

Whereas, countless citizens of this State and of the United States are afflicted in each year by diseases of the eye, and especially the disease Toxoplasmosis; and

Whereas, the causes of almost all diseases of the eye are unknown to science, causing incorrect diagnoses and leading toward a lack of proper treatment which in turn may facilitate blindness and even mental retardation; and

Whereas, it is more feasible to appropriate money for research to prevent blindness than to appropriate money to provide for the blind whose sight might have been saved through research; and

Whereas, even when funds are appropriated by the Congress for this vital research into the causes and cures of eye diseases they are often impounded or vetoed by the President for reasons which are not related to the crying need for eye research; and

Whereas, it is absolutely imperative that research into diseases of the eyes be continued and expanded in the most rapid and most thorough fashion possible.

Now, therefore, be it resolved by the General Assembly of Georgia that this body respectfully requests the President and the Congress to immediately act for the support and expansion of research into the causes and cures of eye diseases, and particularly of the eye disease Toxoplasmosis.

Be it further resolved that the Congress is urgently requested to appropriate funds to the National Eye Institute to enable such research to be conducted.

Be it further resolved that the Secretary of State is authorized and directed to transmit an appropriate copy of this Resolution to the President of the United States; the President of the Senate and Speaker of the House of Representatives of the United States; to the Governors of the states of North Carolina, South Carolina, Florida, Alabama, Tennessee, Mississippi, Louisiana and Texas; to the Director of the National Eye Institute; to Secretary of the Army, Howard "Bo" Callaway; to Undersecretary of Agriculture. Phil Campbell: and to the members of the Georgia Congressional Delegation.

Be it further resolved that Senator Herman Talmadge and Congressman Bo Ginn are respectfully requested to read this Resolution to their respective Houses and, thereafter, to insert this Resolution into the Congressional Record.

Be it further resolved that the Governors and Legislators of our sister states are urged to join with us in our urgent request for action to find the causes and cures of diseases of the eye.

SENATOR BEALL'S TESTIMONY BEFORE THE ICC

Mr. BEALL. Mr. President, on March 11, 1974, I testified at the Interstate Commerce Commission hearing in Baltimore regarding the Department of Transportation's rail plan.

I ask unanimous consent that my testimony be printed in full in the RECORD.

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

STATEMENT OF SENATOR J. GLENN BEALL, JR.

I appreciate this opportunity to testify on the Department of Transportation Report.

As the manager for the minority when the Regional Rail Reorganization Act of 1973 was passed, I wish at the outset to emphasize a number of important points with respect to the law and the intent of the Congress.

The DOT Report does not constitute the final system plan. Rather, it is only the first step in a multi-step process before a final system plan receives a green light.

The second step, and that is where we are today, requires the ICC's Rail Service Planning Office to hold hearing on DOT's Report, and present the results of these hearings to the United States Rail Association (USRA) which has the responsibility of planning and financing the new rail system.

The USRA must then develop the preliminary plan, which also is required to be the subject of hearings by the ICC's special office. The ICC's special office is required to present to the Association, 60 days after the issuance of the preliminary report, a summary of the evidence presented, together with its critique and evaluation.

The USRA will then submit to Congress a final system plan on February 26, 1975. The plan is then reviewed by the Congress. Even then, at the end of the line so to speak, the legislation includes a provision providing for a subsidy of 70 per cent federal—30 per cent state or local for the continuation of the lines deemed essential by the State, region, and local communities or shippers. I joined Senator Pearson in insisting on this subsidy provision.

Thus, we are in the beginning of a process that hopefully will result in a new and viable transportation system that will better meet the transportation needs of Maryland, the Northeast region, and the Nation as a whole. While the Regional Rail Reorganization Act of 1973 is no perfect measure, the Congress and the Administration rightfully took action to avert a crisis that would have been disastrous.

I want to emphasize that the Department of Transportation Report, even assuming the validity of it criteria and calculations (and other witnesses will present testimony showing some obvious errors and shortcomings), essentially employ one criterion namely economic. The economic factors are only one of eight specific considerations that Congress listed in the statutes for the final system plan. Other criteria include the rail transportation service needs; improved passenger service; the preservation, to the extent consistent with other goals, of existing patterns of service and track, particularly in areas where natural resources are located, and the utilization of the transportation mode requiring the least amount of energy; the maintaining of competition; environmental standards and the environmental impact of alternative choices of action; and the minimization of job losses and associated increases in unemployment in the region presently served by rail service.

Congress in enacting the law rejected the either-or approach, that is a system based solely on economic viability or a system based solely on the need for service. Instead, we opted for a balanced approach based on both, as well as the other factors I listed.

According to the Department of Transportation Report, 20 per cent, or 225 miles of Maryland's 1,100 miles of track are deemed potentially excess. The Report also indicates that only 3 per cent of the State's rail service would be lost. These gross statistics, however, mask the harsh impact of the loss of rail service on individual areas or regions.

For example, the Eastern Shore of Maryland would lose approximately 65 per cent of its trackage and 28.9 per cent of all rail service. While I recognize that some lines will have to be abandoned in Maryland, the Report's "meat ax" approach on the Shore, if carried out, would pose a serious threat to the Eastern Shore's present economy and to its future economic development that it is unjustified and unwise.

The economy of the Eastern Shore is predominately agriculture and agribusiness. Unemployment in this eight county area for December 1973 ranged from 4.3 per cent to 9.6 per cent. Successful efforts have been and are underway to promote greater industrial development and diversification, but without adequate transportation, such efforts will be undermined.

Maryland ranks seventh in the Nation in poultry production, for example, and the State's poultry production is centered on the Eastern Shore.

Maryland's Eastern Shore and the entire Delmarva Peninsula are ideally situated to serve the major population centers of Wilmington-Philadelphia, and Baltimore-Washington, D.C. Damage to the agriculture industry would have a direct impact in these metropolitan areas and probably an indirect impact elsewhere in the country.

40 per cent of the Eastern Shore's economy is dependent upon the poultry industry. We must take into account the agriculture industries reliance on rail transportation. Rails are needed for feed for the poultry industry, fertilizer and the delivery of the produce. While the Eastern Shore at one time was self-sufficient in grain, this is not the case today as grain must be imported to meet the growing needs of the poultry industry.

Transportation costs may not have loomed so important yesterday as they are today. Fuel shortages, the increase in the price of fuel, and reduced speed limits, all have had the potential of making transportation costs a major factor in the cost of food to the consumer. The Senate Agriculture Committee, in a report issued in January of this year entitled, "The Immovable Feast" noted the growing impact of transportation costs for food products saying:

"Packing plants are shutting down for the lack of refrigerated trucks. Meat supplies are certain to be affected. The cost of shipping nonregulated perishable agricultural products, where higher costs of diesel fuel can be passed on to shippers, are bound to increase sharply and it is not known whether price increases on some items will price them off the market—that is, it is not known whether it will prove, to be uneconomical to harvest a given crop. For instance, very recently California lettuce was priced at $1.25 per carton, but the going truck rate to the east coast was $2.25 a carton—when you could get a truck. Loads of perishable vegetables, which were shipped last year for $1,700–$1,800 a load, are now shipping for $2,700 and the expectations are that as speed limit reductions are more and more enforced on the badly over extended refrigerator fleet, these costs could rise to $3,000 or $3,500. Poultry shipping rates have already increased 10 per cent. The price of shipping Washington apples has increased twenty cents a box.

Insofar as highway transport is concerned, current policies are limiting trucking capacity; and this in turn will limit food production, having a significant impact on consumer prices through artificial shortages."

This Report underscores the neglect of our transportation policies in rural areas, particularly in agriculture areas, warning that the rural transportation crisis has become:

"Over many years an increasing problem which will shortly have a profound effect on the prices the housewife must pay for food, and perhaps on her ability to get certain commodities, at certain times, at any price. Both the farmer and the housewife will be seriously hurt by the set of circumstances which prevail. An abundance of food at fair and reasonable prices is elemental to the prosperity of our society. Clearly it is time for some new and revised planning to diminish the rural transportation crisis, and the threat which this crisis implies for the American market basket."

When the Penn Central Bridge over the C&D Canal was knocked out on February 2, 1973, we received some idea of the impact of the loss of rail service. During this time, grain had to be transported in by truck from Southern Pennsylvania and the differential cost for the grain shipped by trucks compared to rail was $7 per ton.

The DOT Report would close the main Penn Central line south of Fruitland and thus eliminate service to the Virginia portion of the Peninsula which is linked by the Chesapeake Car Float. In 1972 a total of 27,962 cars utilized this car float. While the DOT in its analysis of this segment of the main line included traffic which originated or terminated on the Delmarva Peninsula, they did not include any consideration of the traffic that simply moved through the area. 65 per cent or 18,175 cars would fall in this classification.

It would seem that some apportionment of the through traffic should be included in considering whether to continue this main line of the Delmarva Peninsula, which is becoming an important north-south transportation artery. With the Potomac Yards in the Washington area already crowded, and with some traffic, because of its size or width, unable to make it through the tunnels along the Baltimore-Washington route, I believe the failure to continue this north-south artery would be a mistake.

The main line south of Salisbury is in terrible shape. Slow speeds orders are the rule on most of the tracks; derailments have been a problem; and it takes ten to twelve hours and a number of crew changes to make the run from Salisbury to Cape Charles. With such inefficiency and limited service, a shipper often turns in frustration to other modes.

One example of such shipper frustration is Salisbury Steel which a few years ago paid over $100,000 on freight to Penn Central. However, the service became so bad that the company had to utilize truck service, although from its standpoint the train generally would have been preferable. As a result, the company's freight business with the railroad diminished to $5,000.

With respect to some of the branch lines, you will be hearing expert testimony from the State and other witnesses with respect to the criteria used.

Even assuming, however, the validity of the DOT criteria, it is my understanding that some of the branch lines are profitable, with updated statistics, and would be more profitable with more attention and better services by the railroads.

In Western Maryland there is a 14 mile line on the Western Maryland Railroad from Westernport to Midland that would be eliminated by the DOT Report. I strongly oppose this recommendation which would harm the area economically, aggravate unemployment, and hurt the Nation's effort to find additional sources of new energy.

As a result of the energy crisis and a renewed interest in coal, the George's Creek area is experiencing a revitalization with respect to coal mining. At the present time there are 8 coal companies using the railroad to ship 70 railroad cars a day on a 6 day workweek, carrying 6,000 tons of coal from this area. The loss of this line would cause the unemployment of over 100 coal industry workers, as well as a number of railroad employees, and also deprive the Nation of coal that is needed to help us through the energy crisis. These developments must not have been foreseen and they certainly illustrate the need to pursue carefully and not precipitously given the changes that have taken place in our country.

The Washington Post in its Panorama Section recently featured a story regarding the renewed interest in coal in this area and I ask unanimous consent that this article be printed following my remarks. In addition, I ask unanimous consent that a resolution introduced by the Western Maryland Delegation in the Maryland Legislature with respect to this line also be included in this record.

In many respects we are in a whole new ball game. The energy crisis has added a new dimension and has given new life to the railroads as their economy, their energy efficiency, (railroads are 4 times more efficient than many trucks), and their environmental qualities are becoming more recognized and appreciated; and this is not just by the railroad buffs, but by all of us. Railroad stations are crowded with passengers as Amtrak business soars by 50 per cent; commuter trains are crowded; and the return to coal has reactivated some mines and has given increased business to railroads.

The agriculture scene is changing in this Nation. Yesterday our concern was over agriculture surpluses. Today our concern relates to agriculture shortages. Agriculture production is not only essential for the feeding of our population here at home at reasonable prices, but also it is important in helping to meet the food needs of the world. Agriculture represents a major plus in our balance of payments.

The surplus produced by the sale of agriculture products abroad will be needed to offset the growing costs of imported oil. Some of the estimates of the balance of payments deficit resulting from fuel imports are staggering. Thus, we will need a strong agriculture production to help offset this deficit in the oil import area.

I must say a word regarding the Department of Transportation's distribution of the Report. I believe a map depicting the lines to be abandoned in each State should have been printed. Secondly, the map could have been carried by the newspapers throughout the State thereby assuring that the public was alerted to potential abandonment problems.

I am not certain that the word has reached all affected areas in Maryland. Congress was deeply concerned that the public be alerted to potential problems and that the public interest be represented and even authorized the use of lawyers to represent and assure the public's voice was heard. I believe that the ICC or the Department of Transportation should consider making maps similar to the one I have made available.

Undoubtedly there will be abandonment of lines, in the Northeast region and Maryland. I am hopeful that the massive cuts proposed for Maryland's Eastern Shore will not occur. In any event, it behooves Federal and State governments, local communities, railroad labor and management and shippers to be alert to new ideas and approaches. For example, the Federal Government should consider the possibility of partnerships with affected states which would mobilize the talents of our agriculture land-grant colleges to develop new ways and methods to make certain that the giant agriculture production of this country will not be lost or subsequently diminished because of cutbacks in rail service or inadequate rail transportation. Intermodal centers and the use of containers for the shipment of goods offer intriguing possibilities. The consumer concept has been growing and is employed widely by industry and business. Yet, although the Department of Transportation has encouraged study in this matter, containerization has not really been demonstrated in the agriculture section.

Dr. William Thompson of Iowa State University, a recognized expert in the movement of grain products, has estimated that from the farm to our foreign markets grain must be handled and rehandled as often as eleven times. Much of the cost of shipping bulk commodities results from the handling and rehandling process.

Further, the problem of rehandling agriculture products severely limits the interface between two transportation modes.

Today the most desired car for handling grain by rail is the so-called "covered grain-hopper car." The nature of this car usually assures that it will be empty on its return trip, and that it will be only used seasonally to move agriculture products. Yet the flexible and adaptable flatcar could easily handle containers and could be used year round and would be more likely to be employed for back hauls. Also, plastic bags, like giant baggies, have been developed for containers and this now makes it possible to place agriculture products in a container on a farm. Refrigerated containers are also available for perishable commodities, such as poultry and meat.

I strongly urge that the subsequent products of this process, the preliminary system plan and the final system plan, reflect the work of the scalpel and not the meat ax. I, therefore, urge the continuation of the north-south artery on the Delmarva Peninsula. I also strongly recommend the retention of the coal line in Western Maryland.

Finally, I ask that the editorial from the Baltimore Sun on the DOT rail plan be printed in the record.

BREAKING THE LAW IN CAMBODIA

Mr. CHURCH. Mr. President, a disturbing dispatch from Cambodia on the front page of this morning's Washington Post reports that an American military adviser is at work assisting Cambodian Government armed forces in their civil war. The report by Elisabeth Becker reads:

During the dark hours of dawn the Cambodian insurgents were lobbing mortars around the government's command post at Kampot. Inside, U.S. Maj. Lawrence W. Ondecker was showing the Cambodian officers how to mount a counterattack.

"I want you to respond very quickly," he said. "If even one mortar falls in your zone, you must answer back with fire immediately."

If this report is true, then the Executive is breaking five statutes now in effect.

The first statute, commonly known as the Cooper-Church amendment, became law on January 5, 1971. Public Law 91-652 as amended by Public Law 92-226, prohibits the introduction of U.S. ground combat troops and U.S. military advisers into Cambodia. It reads as follows:

SEC. 7. (a) In line with the expressed intention of the President of the United States, none of the funds authorized or appropriated pursuant to this or any other Act may be used to finance the introduction of United States ground combat troops into Cambodia, or to provide United States advisers to or for mili-

tary, paramilitary, police, or other security or intelligence forces in Cambodia.

Subsequently, in 1973, four statutes, frequently referred to as Case-Church amendments, were enacted into law, barring engagement by U.S. military forces in hostilities in, over, or from off the shores of all of Indochina. This strict restriction is part of Public Law 93–50, Public Law 93–52 as extended by Public Laws 93–118 and 93–124, Public Law 93–126, and Public Law 93–155.

This morning's Washington Post account provides on-the-spot evidence that at least one American military man, perhaps more, is directly involved in hostile combat in Cambodia. This involvement breaks the law.

In his confirmation hearing before the Foreign Relations Committee, Henry Kissinger and I had an exchange about Executive compliance with the Cooper-Church amendment. Dr. Kissinger replied: "To the best of my knowledge, it is." Then this exchange took place:

Senator CHURCH. About a month ago, I watched a national network television news program which showed an American colonel, as I recall his rank, in the field in Cambodia with Cambodian forces. The film showed him pointing in various directions on the battlefield, discussing what must have been matters of tactical concern, with Cambodian soldiers in uniform, and opening a map and discussing with reference to the map and the terrain, what he had to say. The Cambodians were listening very intently to what must have been his advice.

Assuming that this film was actually taken in Cambodia, as it was purported to be, and that the camera accurately recorded the event, would not that colonel be acting as a military adviser, contrary to the provisions of the law?

Mr. KISSINGER. Senator, I honestly do not know anything about that event, and it is very difficult for me to speculate. If the colonel was advising Cambodian troops in combat actions he was acting in violation of the law.

But let me make a general comment. The Vietnam war was conducted in an atmosphere of extraordinary bitterness within this country, I would say on both sides of the discussion, in which both sides believed that very grave issues of national policy were involved; under those conditions it is possible that things were done that seemed overwhelmingly in the national interest and that that was considered the primary criterion.

If what I have said to this committee is to have any meaning, then it would be totally inappropriate for me, as Secretary, or as adviser to the President, to behave like a sharp lawyer and to try to split hairs and find some legal justification for something clearly against the intent of the law. So I think the better answer to give you, Senator, is to say, that when the law is clearly understood—and it will be my job to make sure that I clearly understand the intent of the Congress—we may disagree with it, but once the intent is clear we will implement not only the letter but the spirit. If such an event occurred as you describe, I will do my best to have it stopped.

Senator CHURCH. Dr. Kissinger, I want to thank you for that assurance and, knowing you as I do, I am certain that you will follow through with it.

Mr. KISSINGER. Thank you.

In the light of the Becker report vis-a-vis the five laws currently on the books and Dr. Kissinger's assurance to me that there will be no hair-splitting but genuine compliance with the law, I call upon the Secretary of State and Secretary of Defense James Schlesinger to account fully and openly for this apparent violation as soon as possible.

I ask unanimous consent that Elizabeth Becker's dispatch from Kampot, Cambodia, be printed in the RECORD.

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

[From the Washington Post, March 13, 1974]

AMERICAN ADVISERS IN COMBAT

(By Elizabeth Becker)

KAMPOT, CAMBODIA.—During the dark hours of dawn the Cambodian insurgents were lobbing mortars around the government's command post at Kampot. Inside, U.S. Maj. Lawrence W. Ondecker was showing the Cambodian officers how to mount a counter-attack.

"I want you to respond very quickly," he said. "If even one mortar falls in your zone, you must answer back with fire immediately."

While the American major was poring over maps with the Cambodian staff officers, the Cambodian general officially in command of the post was writing in his diary, alone in an adjoining bunker.

The U.S. embassy in Phnom Penh has repeatedly denied reports that Americans are serving as military advisers in the field. Congress has passed a law that prohibits the U.S. mission here from direct involvement in the conduct of the war.

But the situation in this coastal town about 80 miles south of Phnom Penh is critical, and Maj. Ondecker was flown down Sunday. "He was loaned to us from the 3d Infantry Brigade," Lt. Col. Choey Yeun said. "He is attached to the 3d and normally works in the field with them, but he is needed here. I am surprised that you did not know him."

In the past month rebel troops have moved within one to four miles of Kampot, capturing the city's main water supply and the country's only cement factory. They regularly shell the town with 75-mm. recoilless rifles and 81-mm. mortars.

Although government intelligence officers warned of an impending offensive as early as January, the Kampot garrison made no defense preparations. Over the past week the Cambodian high command sent reinforcements—and they sent Maj. Ondecker.

"Protect this area immediately," Maj. Ondecker said while the 31 rounds were falling in and around the city Monday morning. "Good, perfect," he said as a Cambodian officer pointed on the map after accepting the American's proposal.

The day before rebel gunners shot down one of the two helicopter gunships stationed here, and the second one was recalled to Phnom Penh. Maj. Ondecker arranged with the U.S. embassy on the morning of the attack that additional gunships would be sent to Kampot to support the infantry.

A member of the U.S. military attache's staff in Phnom Penh, Ondecker is in Kampot officially to gather information. Chuck Bernard, known as Monsieur Jacques, is the other U.S. representative in town. He has approximately the same official duties as Ondecker except that his area is civilian matters.

"Monsieur Jacques works with me," said Ker Sophay, director of political warfare. "He writes propaganda tracts with me. We have published and distributed 6,000 pamphlets in the three weeks he has been here."

While junior Cambodian officers say Americans advise in the field around Phnom Penh, it has never been confirmed. In Kampot, however, it is difficult to hide. Ondecker was in and out of the command post, openly recommending military maneuvers. Sometimes he prefaced his proposals with "I suggest and the general also suggests that you immediately fire in this direction."

The Cambodians were obviously pleased with the American's help. "Maj. Ondecker was very good with the 3d Brigade; he will be good with us," said Col. Choey Yeun.

Changes were made quickly after Ondecker's arrival. Another infantry brigade was called in to bolster the 2,000-man government garrison, and the top command was replaced within 24 hours. The city's defense perimeter was stabilized for the first time throughout the siege.

Villagers are still leaving the town—the population dropped from 50,000 to less than 20,000 in a month. Though all private shops are closed, and mortars still land within the city, the city's small open-air market reopened Sunday with some fruit and fish offered for sale.

INCOME TAXES AND THE OLDER AMERICANS

Mr. BEALL. Mr. President, as April 15, 1974 approaches, we should be mindful of the fact that between 7 and 9 million senior citizens will soon be filing their income tax returns. Data gathered by the Special Committee on Aging, of which I am a member, would indicate that perhaps 50 percent of all taxpayers 65 years of age and over may have overpaid their Federal income tax. Congress has sought to provide senior citizens with special tax benefits such as the retirement income tax credit, special treatment on capital gains through the sale of a home, and so forth. In providing these special benefits, however, Congress has made the Federal tax system more complicated for senior citizens and thus many fail to take full advantage of the opportunities offered them.

Internal Revenue Service has published a booklet entitled "Tax Benefits for Older Americans"—publication No. 554—which is available through IRS offices. A summary of the tax benefits provided for older Americans has been developed by the Special Committee on Aging and I ask unanimous consent, Mr. President, that the "Check List of Itemized Deductions for Schedule A (form 1040)" be printed in the RECORD.

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

CHECKLIST OF ITEMIZED DEDUCTIONS FOR SCHEDULE A (FORM 1040)

MEDICAL AND DENTAL EXPENSES

Medical and dental expenses are deductible to the extent that they exceed 3% of a taxpayer's adjusted gross income (line 15, Form 1040).

INSURANCE PREMIUMS

One-half of medical, hospital or health insurance premiums are deductible (up to $150) without regard to the 3% limitation for other medical expenses. The remainder of these premiums can be deducted, but is subject to the 3% rule.

DRUGS AND MEDICINES

Included in medical expenses (subject to 3% rule) but only to extent exceeding 1% of adjusted gross income (line 15, Form 1040).

OTHER MEDICAL EXPENSES

Other allowable medical and dental expense (subject to 3% limitation):

Abdominal supports.
Ambulance hire.
Anesthetist.
Arch supports.

Artificial limbs and teeth.
Back supports.
Braces.
Capital expenditures for medical purposes (e.g., elevator for persons with a heart ailment)—deductible to the extent that the cost of the capital expenditure exceeds the increase in value to your home because of the capital expenditure. Taxpayer should have an independent appraisal made to reflect clearly the increase in value.
Cardiographs.
Chiropodist.
Chiropractor.
Christian science practitioner, authorized.
Convalescent home (for medical treatment only).
Crutches.
Dental services (e.g., cleaning teeth, X-rays, filling teeth).
Dentures.
Dermatologist.
Eyeglasses.
Gynecologist.
Hearing aids and batteries.
Hospital expenses.
Insulin treatment.
Invalid chair.
Lab tests.
Lip reading lessons (designed to overcome a handicap).
Neurologist.
Nursing services (for medical care).
Ophthalmologist.
Optician.
Optometrist.
Oral surgery.
Osteopath, licensed.
Pediatrician.
Physical examinations.
Physician.
Physiotherapist.
Podiatrist.
Psychiatrist.
Psychoanalyst.
Psychologist.
Psychotherapy.
Radium therapy.
Sacroiliac belt.
Seeing-eye dog and maintenance.
Splints.
Supplementary medical insurance (Part B) under medicare.
Surgeon.
Transportation expenses for medical purposes (6¢ per mile plus parking and tolls or actual fares for taxi, buses, etc.).
Vaccines.
Vitamins prescribed by a doctor (but not taken as a food supplement or to preserve general health).
Wheelchairs.
Whirlpool baths for medical purposes.
X-rays.

TAXES

Real estate.
State and local gasoline.
General sales.
State and local income.
Personal property.

If sales tax tables are used in arriving at your deduction, you may add to the amount shown in the tax tables only the sales tax paid on the purchase of five classes of items: automobiles, airplanes, boats, mobile homes, and materials used to build a new home when you are your own contractor.

When using the sales tax tables, add to your adjusted gross income any nontaxable income (e.g., Social Security or Railroad Retirement annuities).

CONTRIBUTIONS

In general, contributions may be deducted up to 50 percent of your adjusted gross income (line 15, Form 1040). However, contributions to certain private nonprofit foundations, veterans organizations, or fraternal societies are limited to 20 percent of adjusted gross income.

Cash contributions to qualified organizations for (1) religious, charitable, scientific, literary or educational purposes, (2) prevention of cruelty to children or animals, or (3) Federal, State or local governmental units (tuition for children attending parochial schools is not deductible). Fair market value of property (e.g., clothing, books, equipment, furniture) for charitable purposes. (For gifts of appreciated property, special rules apply. Contact local IRS office.)

Travel expenses (actual or 6¢ per mile plus parking and tolls) for charitable purposes (may not deduct insurance or depreciation in either case).

Cost and upkeep of uniforms used in charitable activities (e.g., scoutmaster).

Purchase of goods or tickets from charitable organizations (excess of amount paid over the fair market value of the goods or services).

Out-of-pocket expenses (e.g., postage, stationery, phone calls) while rendering services for charitable organizations.

Care of unrelated student in taxpayer's home under a written agreement with a qualifying organization (deduction is limited to $50 per month).

INTEREST

Home mortgage.
Auto loan.
Installment purchases (television, washer, dryer, etc.)
Bank credit card—can deduct the finance charge as interest if no part is for service charges or loan fees, credit investigation reports. If classified as service charge, may still deduct 6 percent of the average monthly balance (average monthly balance equals the total of the unpaid balances for all 12 months, divided by 12) limited to the portion of the total fee or service charge allocable to the year.
Points—deductible as interest by buyer where financing agreement provides that they are to be paid for use of lender's money. Not deductible if points represent charges for services rendered by the lending institution (e.g., VA loan points are service charges and are not deductible as interest). Not deductible if paid by seller (are treated as selling expenses and represent a reduction of amount realized).
Penalty for prepayment of a mortgage—deductible as interest.
Revolving charge accounts—may deduct the "finance charge" if the charges are based on your unpaid balance and computed monthly.

CASUALTY OR THEFT LOSSES

Casualty (e.g., tornado, flood, storm, fire, or auto accident provided not caused by a willful act or willful negligence) or theft losses to nonbusiness property—the amount of your casualty loss deduction is generally the lesser of (1) the decrease in fair market value of the property as a result of the casualty, or (2) your adjusted basis in the property. This amount must be further reduced by any insurance or other recovery, and, in the case of property held for personal use, by the $100 limitation. You may use Form 4684 for computing your personal casualty loss.

CHILD AND DISABLED DEPENDENT CARE EXPENSES

The deduction for child dependent care expenses for employment related purposes has been expanded substantially. Now a taxpayer who maintains a household may claim a deduction for employment-related expenses incurred in obtaining care for a (1) dependent who is under 15, (2) physically or mentally disabled dependent, or (3) disabled spouse. The maximum allowable deduction is $400 a month ($4,800 a year). As a general rule, employment-related expenses are deductible only if incurred for services for a qualifying individual in the taxpayer's household. However, an exception exists for child care expenses (as distinguished from a disabled dependent or a disabled spouse). In this case, expenses outside the household (e.g., day care expenditures) are deductible but the maximum deduction is $200 per month for one child, $300 per month for 2 children, and $400 per month for 3 or more children.

When a taxpayer's adjusted gross income (line 15, Form 1040) exceeds $18,000, his deduction is reduced by $1 for each $2 of income above this amount. For further information about child and dependent care deductions, see Publication 503, Child Care and Disabled Dependent Care, available free at Internal Revenue offices.

MISCELLANEOUS

Alimony and separate maintenance (periodic payments).
Appraisal fees for casualty loss or to determine the fair market value of charitable contributions.
Campaign contributions (up to $100 for joint returns and $50 for single persons).
Union dues.
Cost of preparation of income tax return.
Cost of tools for employee (depreciated over the useful life of the tools).
Dues for Chamber of Commerce (if as a business expense).
Rental cost of a safe-deposit box for income producing property.
Fees paid to investment counselors.
Subscriptions to business publications.
Telephone and postage in connection with investments.
Uniforms required for employment and not generally wearable off the job.
Maintenance of uniforms required for employment.
Special safety apparel (e.g., steel toe safety shoes or helmets worn by construction workers; special masks worn by welders).
Business entertainment expenses.
Business gift expenses not exceding $25 per recipient.
Employment agency fees for securing employment.
Cost of a periodic physical examination if required by employer.
Cost of installation and maintenance of a telephone required by the taxpayer's employment (deduction based on business use).
Cost of bond if required for employment.
Expenses of an office in your home if employment requires it.
Payments made by a teacher to a substitute.
Educational expenses required by your employer to maintain your position or for maintaining or sharpening your skills for your employment.

Political Campaign Contributions.—Taxpayers may now claim either a deduction (line 33, Schedule A, Form 1040) or a credit (line 52, Form 1040), for campaign contributions to an individual who is a candidate for nomination or election to any Federal, State or local office in any primary, general or special election. The deduction or credit is also applicable for any (1) committee supporting a candidate for Federal, State, or local elective public office, (2) national committee of a national political party, (3) State committee of a national political party, or (4) local committee of a national political party. The maximum deduction is $50 ($100 for couples filing jointly). The amount of the tax credit is one-half of the political contribution, with a $12.50 ceiling ($25 for couples filing jointly).

Presidential Election Campaign Fund.—Additionally, taxpayers may voluntarily earmark $1 of their taxes ($2 on joint returns) to help defray the costs of the 1976 presidential election campaign. If you failed to earmark $1 of your 1972 taxes ($2 on joint returns) to help defray the cost of the 1976 presidential election campaign, you may do

so in the space provided above the signature line on your 1973 tax return.

For any questions concerning any of these items, contact your local IRS office. You may also obtain helpful publications and additional forms by contacting your local IRS office.

Other tax relief measures for older Americans

	Required to file a tax return if gross income is at least—
Filing status:	
Single (under age 65)	$2,050
Single (age 65 or older)	2,800
Married couple (both spouses under 65) filing jointly	2,800
Married couple (1 spouse 65 or older) filing jointly	3,550
Married couple (both spouses 65 or older) filing jointly	4,300
Married filing separately	750

Additional Personal Exemption for Age.—In addition to the regular $750 exemption allowed a taxpayer, a husband and wife who are 65 or older on the last day of the taxable year are each entitled to an additional exemption of $750 because of age. You are considered 65 on the day before your 65th birthday. Thus, if your 65th birthday is on January 1, 1974, you will be entitled to the additional $750 personal exemption because of age for your 1973 Federal income tax return.

Multiple Support Agreements.—In general, a person may be claimed as a dependent of another taxpayer, provided five tests are met: (1) Support, (2) gross income, (3) member of household or relationship, (4) citizenship, and (5) separate return. But in some cases, two or more individuals provide support for an individual, and no one has contributed more than half the person's support. However, it still may be possible for one of the individuals to be entitled to a $750 dependency deduction if the following requirements are met for multiple support:

1. Two or more persons—any one of whom could claim the person as a dependent if it were not for the support test—together contribute more than half of the dependent's support.

2. Any one of those who individually contribute more than 10 percent of the mutual dependent's support, *but only one of them*, may claim the dependency deduction.

3. Each of the others must file a written statement that he will not claim the dependency deduction for that year. The statement must be filed with the income tax return of the person who claims the dependency deduction. Form 2120 (Multiple Support Declaration) may be used for this purpose.

Sale of Personal Residence by Elderly Taxpayers.—A taxpayer may elect to exclude from gross income part, or, under certain circumstances, all of the gain from the sale of his personal residence, provided:

1. He was 65 or older before the date of the sale, and

2. He owned and occupied the property as his personal residence for a period totaling at least 5 years within the 8-year period ending on the date of the sale.

Taxpayers meeting these two requirements may elect to exclude the entire gain from gross income if the adjusted sales price of their residence is $20,000 or less. (This election can only be made once during a taypayer's lifetime.) If the adjusted sales price exceeds $20,000, an election may be made to exclude part of the gain based on a ratio of $20,000 over the adjusted sales price of the residence. Form 2119 (Sale or Exchange of Personal Residence) is helpful in determining what gain, if any, may be excluded by an elderly taxpayer when he sells his home.

Additionally, a taxpayer may elect to defer reporting the gain on the sale of his personal residence if within 1 year before or 1 year after the sale he buys and occupies another residence, the cost of which equals or exceeds the adjusted sales price of the old residence. Additional time is allowed if (1) you construct the new residence or (2) you were on active duty in the U.S. Armed Forces. Publication 523 (Tax Information on Selling Your Home) may also be helpful.

Retirement Income Credit.—To qualify for the retirement income credit, you must (a) be a U.S. citizen or resident, (b) have received earned income in excess of $600 in each of any 10 calendar years before 1973, and (c) have certain types of qualifying "retirement income". Five types of income—pensions, annuities, interest, and dividends included on line 15, Form 1040, and gross rents from Schedule E, Part II, column (b)—qualify for the retirement income credit.

The credit is 15 percent of the lesser of:

1. A taxpayer's qualifying retirement income, or

2. $1,524 ($2,286 for a joint return where both taxpayers are 65 or older) minus the total of nontaxable pensions (such as Social Security benefits or Railroad Retirement annuities) and earned income (depending upon the taxpayer's age and the amount of any earnings he may have).

If the taxpayer is under 62, he must reduce the $1,524 figure by the amount of earned income in excess of $900. For persons at least 62 years old but less than 72, this amount is reduced by one-half of the earned income in excess of $1,200 up to $1,700, plus the total amount over $1,700. Persons 72 and over are not subject to the earned income limitation.

Schedule R is used for taxpayers who claim the retirement income credit.

The Internal Revenue Service will also compute the retirement income credit for a taxpayer if he has requested that IRS compute his tax and he answers the questions for Columns A and B and completes lines 2 and 5 on Schedule R—relating to the amount of his Social Security benefits, Railroad Retirement annuities, earned income, and qualifying retirement income (pensions, annuities, interest, dividends, and rents). The taxpayer should also write "RIC" on line 17, Form 1040.

AMNESTY

Mr. THURMOND. Mr. President, there appeared in the March 2, 1974, issue of the Augusta Chronicle newspaper, Augusta, Ga., an editorial entitled "No Easy Out."

This editorial succinctly points out why so many Americans share views similar to my own reference amnesty.

Mr. President, 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:

NO EASY OUT

Army Secretary Howard H. Callaway is, we believe, correct in his stand against letting Vietnam War draft evaders clear their records by peace-time Army service.

The solution would set up two classes of citizens. One would be those who obeyed the law, served in our defense forces, and in thousands of cases died during the effort to hold back the tide of Communist aggression.

The other class would be those who chose to violate the law, then ask to be allowed to don uniforms when military compensation and benefits had vastly increased, and put in "honorable" service with little chance of having to bear the brunt of a shooting war.

The spirits of those brave men who did not skip out to Canada or Sweden when danger threatened should rise to haunt anyone who would agree to such a cynical double standard.

As Jim Bishop put it in a column in the Augusta Herald: The Nation "has about 40,000 deserters who skulk in bitterness . . . (the forgiveness plan) was not devised to help the 53,000 American soldiers who died in Vietnam. They lie uncomplaining in boxes."

The American people might go through the motions of forgiving those who preferred to let others shoulder their danger of dying. But could the people, if they agreed to so hypocritical a move, ever forgive themselves?

THE SCIENTIFIC POTENTIAL AND DOMESTIC PROBLEMS

Mr. DOMENICI. Mr President, today I am adding my name as a cosponsor of S. 2495, a bill to provide for the more effective utilization of our scientific and technological resources. The main thrust of the bill is to relate our scientific potential to our critical domestic problems.

This bill is a positive step in obtaining a much needed assessment of our scientific and technological abilities. I have always felt that we possess the necessary technological skills but have failed to devise a proper mechanism by which these may be applied to our everyday needs. Today it is vitally important that we effectively maximize the benefits that can be gained by the work of our scientific community.

The question must then be asked as to what is the most appropriate mechanism to effectively utilize these resources. In the past we have been unable to assess and motivate our scientific potential in an orderly manner. The testimony received before the Aeronautics and Space Sciences Committee reveals the peaks and valleys, the bursts of interest and the lulls of inattention which have plagued our national efforts.

The committee heard from: Dr. H. Guyford Stever, Director, National Science Foundation and Science Advisor to the President; Dr. James C. Fletcher, Administrator, National Aeronautics and Space Administration, and Dr. Philip Handler, president, National Academy of Sciences, where it was repeatedly established that our approach has been one of fragmentation and short-lived priorities.

If we are to establish a positive approach in meeting many of our domestic problems through utilization of our scientific resources, we must develop a vehicle to more effectively relate our capabilities to our needs. It is my belief that S. 2495 is a step in the right direction towards the establishment of such a vehicle in that it proposes both a total assessment of our abilities and creates a mechanism whereby these capabilities can be related to the legislative machinery. There are several provisions in this bill which I feel need revision, but it is the overall approach of which I offer my support.

I call upon my colleagues to accept the responsibility of designing and maintaining a mechanism whereby the potential of our scientific community is more effectively related to the needs of our people. We have for too long ac-

cepted a fragmented approach and we are now witnesses to the effects of this chaotic condition.

SENATOR THURMOND ADDRESSES NATIONAL ECONOMIC COMMISSION OF THE AMERICAN LEGION

Mr. HARTKE. Mr. President, recently the distinguished senior Senator from South Carolina (Mr. THURMOND) addressed the National Economic Commission of the American Legion at their Washington conference held here on March 7. Senator THURMOND, who is the senior Republican on the Veterans' Affairs Committee is a valued and hard-working member who has materially aided us in securing new and improved legislation for veterans. I believe my colleagues will find Senator THURMOND's remarks of interest and thus ask unanimous consent that the text of his remarks be printed in the RECORD.

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

REMARKS BY SENATOR STROM THURMOND

Mr. Chairman, Director Kerby, distinguished members of the Economic Commission, my fellow Legionnaires: As soon as I was eligible after World War II, I joined The American Legion. I have always been proud of my long and close association with you.

Since it was founded in 1919, The American Legion has made a valuable contribution to the National welfare. It has stood for the best values in the American character—*Americanism, freedom, good government,* and *service to one's follow man.* In my mind, The American Legion is synonymous with what is best for America.

Your support has been a vital factor in the maintenance of a strong National defense. Your unyielding concern for the American veteran and his family has been a National asset.

Along with many others in the Congress, I appreciate your hard work, and value your positions on the great issues which affect the destiny of our Nation.

I. ECONOMICS AND THE VETERANS

It is my understanding that the Economic Commission has specific jurisdiction over economic matters pertaining to veterans, with particular emphasis on *employment, veterans' preference in Federal employment,* and *VA housing.*

With your permission, I shall speak briefly to these particular points, and, more generally, to the economic implication of veterans' legislation for the individual veteran and the Nation as a whole.

I compliment The Legion for the sensible approach it has maintained in recommending responsible programs to the Congress. Your recognition of the limited resources with which the Federal Government must work, has given your views an added stature when you point to the economic needs of the veteran. Your voice does not go unnoticed.

The economic success of America's 29 million living veterans is essential for the total economy to prosper. Together with their dependents, veterans represent almost one-half of our population. The well-being of the veteran is interwoven with the economic prosperity for all.

II. EMPLOYMENT

Programs designed to aid the veteran in employment and reemployment play an important part in ensuring the well-being of other sectors of our economy.

The employment of veterans pays extra dividends to the employer. Veterans make good, sound employees.

They have *matured* in the service of our country.

They are trained in *self-discipline.*

Former officers and non-commissioned officers have developed *managerial skills,* which have proved to be a great asset in business, industry, and government.

Veterans have acquired an *expertise in vocational skills* through mandatory MOS qualification in the military.

They have learned *self-confidence through problem solving,* on the field of battle or under rigorous training programs.

In many instances, however, the veteran has been disabled in the service of our country. He requires vocational rehabilitation and special consideration in order to return to the civilian sector as a productive member of society.

We owe this man and his family every effort to help him readjust.

One of the pending bills before the Senate, S. 2784, deals with this problem. I am a co-author of this legislation. It contains several significant provisions for the employment of young and disabled veterans, their wives and widows.

S. 2784 extends vocational rehabilitation benefits to Vietnam veterans who have a compensable service-connected disability rating. Presently, the veteran must have a 30% disability rating or demonstrate the relationship between his need for such training and his particular disability.

Job training, counseling, and placement services will be extended to widows of veterans who die of service-connected causes, and wives of totally disabled veterans.

In the 1972 "GI Bill" amendments, now Public Law 92-540, the Congress passed a substantial provision to aid veterans in their employment problems. Public Law 92-540 authorized 67 Federal employment specialists to assist Veterans' Employment Representatives in seeking to solve veterans' employment problems.

Unfortunately, this law has not yet been fully implemented. I am aware of your concern in this area.

Earlier this week, I spoke with officials in The Department of Labor about this problem. I urged the Labor Department to expedite the implementation of this law, and to authorize higher grade levels for these slots, so outstanding individuals can afford to take these jobs.

You may be assured of my continued intrest in this problem.

Further, a new provision will be added to the law by S. 2784. It requires the VA, the Department of Labor, and the Civil Service Commission to establish an action plan for the preferential employment of disabled veterans and young Vietnam Era veterans.

Veterans preference for Civil Service jobs was first authorized by Public Law 78-359 in the "Veterans Preference Act of 1944". It is the law of the land, and it should be enforced. The provisions contained in S. 2784 will help ensure the employment and reemployment rights to which the veteran is entitled.

Hearings will be held on S. 2784 within the next several months, and the Committee will welcome the views of The American Legion on employment and veterans preference.

III. EDUCATION

The primary focus of S. 2784, the "GI Bill" Amendments, is the educational subsistence allowance and related provisions.

The "GI Bill" has been one of the outstanding programs to aid the economic success of the veteran, and to assure the economic well-being of our society.

An analysis of the economic return of the "GI Bill" substantiates this fact.

In 1965, the Department of Labor and The Department of Commerce analyzed the incomes of veterans and non-veterans in the same age groups. Approximately 10 million World War II and Korean Conflict veterans enrolled for education or training under the "GI Bill". The total cost to the government was $19 billion.

The income of the veteran who received "GI Bill" assistance averaged from $1,000 to $1,500 a year more than those who did not. On this basis, it was estimated that the trained and educated veterans generated additional income taxes in excess of $1 billion per year for over 20 years. This represented a $20 billion return in taxes alone on the $19 billion cost of the program.

Additionally, the skill levels of those who participated in the program were raised significantly. Around 45% of the World War II veterans, 29% of the Korean Conflict veterans, 10% of the post-Korean Conflict veterans, and 8% of the Vietnam Era veterans had less than a high school education when they entered training under the "GI Bill".

Since World War II, the "GI Bill" has provided an impressive part of the Nation's professional and skilled manpower. The number of jobs added to the National productive capability is revealing:

523,000 in engineering;

350,000 in education;

365,000 in the life sciences, physical sciences, and health sciences;

Over 1 million in business, commerce, and law; and

Almost 4 million in skilled trades, crafts, and industrial pursuits.

In each instance, the veteran has not been the only beneficiary. Society as a whole has benefitted from the training and educational pursuits of veterans under "The GI Bill". It has paid for itself many times over.

Education is one of our best investments in the future. I shall continue to work for a viable "GI Bill" program which is equivalent to the programs provided to veterans of other wars.

The Senate will be considering adjustments in the subsistence rate and vocational rehabilitation rates. We will consider an extension of the period of time in which the veteran may use his "GI Bill" eligibility for training. We will examine the usefulness and effectiveness of the "GI Bill" in today's economy.

Approximately 2 million veterans, widows, and dependents receive $2.5 billion annually in education benefits. These benefits generate an economic return which is of great value to a prospering economy.

I am sure that the bill which the Committee recommends to the Senate will reflect the best interests of both the veteran and the Nation.

The Legion was a pioneer in its support of the original "GI Bill," and we will value your continued suggestions in this area.

IV. HOUSING

Your Commission has jurisdiction over another important area—*housing.*

The VA home loan guarantee program has undergone many changes since its inception in 1944. Additional changes are in order. Any new legislation must, however, continue to adhere to the fundamental purposes of the original program.

First, it must assure the veteran that he can obtain mortgage loans at terms more favorable than those readily available in the credit market for low down-payment loans on houses, farm houses, and mobile homes.

Second, it must assure that the program is attractive to private lenders; so the veteran can, in fact, obtain a mortgage loan at favorable terms.

Third, it must continue to protect the financial interest of the veteran with respect to the quality of the property and the conditions of the sale.

Both rising costs and a tight housing market have had their effect on veterans, as well as other potential home buyers.

In light of these concerns, I am hopeful the Congress can consider at least two pieces of housing legislation which I am cosponsoring in the VA housing field.

First, consideration of an increase in the maximum limitation on guaranteed and direct loans will be in order.

Housing costs have increased during the past year by 19%. A corresponding increase in maximum limitations will ensure that the home loan program remains attractive to both the veteran and the private lender.

Second, an increase in the specially adapted housing program should be considered.

The specially adapted housing program has been called the "wheel-chair" home, because it is especially adapted to the needs of the totally disabled veteran, who is blind or who has lost the use of his lower extremities.

These veterans require extensive modification in their home plan, not required by the ordinary home-owner. Larger doorways, wider halls, and ramps are necessary in order to accommodate their mobility.

Presently, the VA is authorized to provide a grant of up to 50%, but not to exceed $17,500, to pay part of the cost of building, buying, or remodeling such homes for those who qualify.

In view of increasing costs and the demanding needs of these disabled veterans, their economic condition should be of first priority when housing legislation is considered.

Unfortunately, the problems of VA housing have not had the recent attention of the Veterans' Affairs Committee, as they should have. Recent developments in the field of housing command our attention to this area.

A review of the VA housing program is on the agenda of the Senate Committee later in this session.

The service organizations will be called on for your assessment of this important field.

V. OTHER LEGISLATION

There is one other program, although outside the specific jurisdiction of the Economic Commission, which I want to mention this morning. Briefly, it is the availaiblity of first-rate medical care for our veterans in the 170 VA hospitals across the Nation.

I want to applaud President Nixon's budget proposals in the area of VA medical care.

In fiscal year 1975, an additional 7,600 medical personnel will be added to the Department of Medicine and Surgery. Hospital construction for FY 75 will reach an all-time high of $276 million.

These budget proposals support the fundamental proposition that VA medical care must be among the best offered anywhere in the country.

At the present time, however, it concerns me that several of the National Health Insurance proposals pending before the Congress may endanger the independence of the VA health care system. I am pleased that the President has given his support to an independent VA system.

A separate VA medical care system guarantees the veteran priority care for his service wounds. Integration of the VA system with HEW would be disastrous.

You may be assured that I will fight with all my energy to keep the VA system separate! I urge The American Legion to offer its support to this position when National Health Insurance is considered by the Congress.

VI. CONCLUSION

Other areas, such as compensation and pension legislation, will also demand our attention this year; but I will not discuss them this morning.

In conclusion, the problems of our veterans will continue to be a priority item in this session.

As the senior Republican on the Senate Veterans' Affairs Committee, I will continue to fight for the economic well-being of our veterans.

Our Nation owes no greater debt to any group than to her veterans.

We are able to assemble here this morning in free and open discussion because of the sacrifices you, our veterans, have made. You have gone abroad in time of war; you have mobilized in time of crisis; you have always put America's interest first.

I applaud the work of The American Legion in bringing to the forefront of American opinion both the contributions and needs of America's veterans.

Your work as delegates to this Conference is most important. The resolutions which you have adopted, and the positions which you have formulated, are carefully considered by the Congress, the Administration, and the American public. Your membership has reposed a great trust in you.

I am confident, that by working together, we can continue to enhance the economic status of the American veteran and his family, thereby benefitting the Nation as a whole.

THREAT TO MILITARY JUSTICE SYSTEM

Mr. THURMOND. Mr. President, in the last year I have made several talks reference the connection between a decline in military discipline and its relation to the civilian judiciary.

On March 6, 1974, Col. R. D. Heinl, Jr., U.S. Marine Corps, retired, authored an article in the Detroit News entitled, "Civilians Threaten Military Justice."

Mr. President, I ask unanimous consent that this article be printed in the RECORD.

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

[FROM THE DETROIT NEWS, MARCH 6, 1974]

CIVILIANS THREATEN MILITARY JUSTICE

(By Col. R. D. Heinl, Jr., U.S. Marine Corp, Retired)

WASHINGTON.—Two federal court decisions in the news, widely separated as to cause, venue, and underlying issues, nevertheless indicate what a poor shake the Army, and more generally the Armed Forces, are getting at the hands of an increasingly activist, libertarian civilian judiciary which has taken to meddling in the administrative and disciplinary systems of the Armed Forces.

The Army is at this moment reeling under a 12-page ruling, handed down last month by U.S. District Judge Gerhard A. Gesell here in Washington, which strikes down the Army's drug abuse prevention program and has thereby ground to a halt every courtmartial or disciplinary or administrative action aimed by the Army at fighting its desperate battle against drugs. When this consequence was argued, Gesell, a judicial high-flyer not oversympathetic to the Armed Forces, blandly moralized in reply, "Military necessity may not embrace everything the military may consider desirable."

What the learned judge was waving aside as merely "desirable" for the Army was its contention (which few soldiers and even fewer young soldiers' parents, I surmise, would dispute) that in present service conditions, drug control is indeed a matter of paramount military necessity.

Where the Army pleaded that rigorous drug control measures alone could "prevent serious impairment of morale and discipline," Judge Gesell would hear nothing of necessity and replied in terms of desirability. The logical conclusion to be drawn from the judge's reasoning is that constitutional and libertarian abstractions intended to govern civilian society override the central requirements of a military organization for morale and discipline, the qualities which impel soldiers to fight and if need be, die.

What Gesell seems to be saying is a slight paraphrase of Robespierre: "Perish the Armed Forces, rather than the 4th Amendment!"

Far away from Judge Gesell's Washington courtroom, down in the rustic setting of Columbus, Georgia, a country cousin, so to speak, U.S. District Judge J. Robert Elliott, last week freed Lt. William Calley, convicted of 22 murders at My Lai and under 20-year sentence by an Army court-martial, on the nominal bail of $1,000 pending completion of the long-drawn appellate review of his cause celebre.

What is novel and unsettling in Judge Elliott's ruling (which at least foregoes the meretricious value judgment of the learned Gesell) is simply that the military judicial system, as framed by Congress and as it has functioned here for two centuries and in Britain for centuries more behind, intentionally makes no provision for the civilian privilege of bail.

Judge Elliott, to be sure, bottoms his unprecedented grant of bail to Calley on a Supreme Court affirmation of bail granted by the notoriously anti-military Justice Douglas to the seditious Dr. Howard Levy, after the latter's dismissal from the Army, though still serving sentence. The legal distinction between Calley (unfinished business, still in uniform, albeit confined) and Levy (a finally sentenced prisoner) is for the lawyers to sift. The matter for public concern is that a country judge in the red hills of Georgia casually takes on himself to dictate an unheard-of mutation—engraftment of civilian bail—onto the Congressionally closed system of military justice and administration as if he were adjudicating some tort case across the Chattahoochee River between litigious Georgia and Alabama squires.

Nor, in any case, is a man fairly convicted (as this reporter knows, having covered the trial) of 22 murders a person, never mind the excruciating circumstances, who should be released like a penitent chicken-thief or woolhat moonshiner, on $1,000 or any bail, especially over government objection.

It would be disquieting enough if these two cases represented unusual instances of judicial meddling in military matters far beyond the proper (and previously traditional) sphere of civilian courts. Unfortunately this is not the case.

Within the last year we have seen the 5th Circuit Court of Appeals strike at the heart of the long-standing military system of discharge graded according to the character of a soldier's service. If this ruling is finally upheld, the services will henceforth be unable to forewarn the public, or place on open record the facts of undesirable discharge for such offenses as drug addiction, internal resistance or sedition, let alone homosexuality or conscientious objection.

In still another monkey-wrench judicial interposition, U.S. District Judge Barrington D. Parker in Washington, D.C., recently ruled that the Air Force had no right (in time of war, mark you, and in the field) to stop airmen working in concert to round up signatures for antiwar petitions from Vietnam. If ever there could be a clear case of sedition in the presence of the enemy (if only by the express provisions of 18 USC 2387 and 2388, the military sedition laws the Justice Department has refused to enforce), here it was; yet Judge Parker chose the First Amendment over the imperatives of discipline in war.

It would be possible to go on, but the foregoing examples make a case which is simple enough. Every single judicial action, arrived at on the whim or particularities of a case, has intruded with little apparent regard for general consequences into the worldwide

workings of the defense Establishment, impelled by mindless devotion to libertarian constitutional literalities that predecessor generations of wiser U.S. judges have carefully sidestepped when dealing with the necessary practicalities of the Armed Forces.

In other words, what the defenseless military is up against is runaway exercise of nearly limitless judicial authority with no responsibility whatever for consequences. It makes no mind to Gesell whether our Army in Germany rots itself to death on drugs; that's for General Abrams to worry about. Elliott gives no second thought to reversing 200 years' precedents against bail in military cases. If airmen mutiny in Vietnam with his opinion in their fists, Parker will merely yawn.

Unless and until this larger issue of authority versus judicial irresponsibility can be worked out by Congress or the Supreme Court so as to protect the Armed Forces, we had better forget discipline, without which, anyway, an army is meaningless.

DETENTE

Mr. MATHIAS. Mr. President, on January 31, the Pittsburgh Jewish Chronicle carried an article highlighting the comments of the distinguished minority leader, Senator HUGH SCOTT, to the Jewish National Fund Annual Dinner guests. Senator SCOTT shared his views on the subject of détente between the United States and the Soviet Union in light of the recent events in the Middle East and controversy over emigration of Jews from Russia. I ask unanimous consent that this article be printed in the RECORD.

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

[From the Pittsburgh (Pa.) Jewish Chronicle, Jan. 31, 1974]

DÉTENTE STILL WORKING, SENATOR SCOTT TELLS JNF HERE

(By Joel Roteman)

Detente is alive, well and still working, despite passage of the Jackson-Mills-Vanik bill, despite the Yom Kippur War and the largely visible yet largely invisible role of the Soviet Union in orchestrating the Arab sneak attack, and despite the Arab oil embargo, which was encouraged somewhat also by the Russians.

Despite all these despites, Senator Hugh Scott assured the Jewish National Fund Annual Dinner guests, Sunday, Jan. 27 and earlier, The Jewish Chronicle, "detente has not suffered."

The "failure to get the Soviet trade bill was," Sen. Scott conceded "unfortunate. If we can work out the problem of Soviet Jewry emigration with Russia and then a trade agreement, we will be better off," he told The Chronicle.

As for the Yom Kippur War, "We'll never really know how much they knew of the actual attack plans."

Since then, "the US has been engaged in frequent interchanges of ideas with the Soviets, including Phase II of SALT. Obviously, detente is still working."

Sen. Scott expressed "cautious but reasonably good chances for Middle East peace."

"Nobody really wants to re-open the war and now physical separation makes war impossible without overrunning the UN forces. Both sides in the Sinai are beyond effective artillery range."

Scott also spoke of the "inevitable US role in the Middle East. No one else could have gotten the ceasefire and disengagement. Remember, peace comes only when war becomes improvident."

On a different front, Sen. Scott expressed guarded optimism for the UN Genocide Convention, which is being debated on the floor of the Senate this week. Adopted by some 75 nations since its drafting over two decades ago, the UN bill outlawing genocide has consistently been brushed aside by the Senate, mainly from the right.

"Opposition comes from those people who are critical of the UN and any extension of its authority. They fear so-called UN interference in our affairs and fear it is a step toward world government."

At the JNF dinner, it was announced that a Sen. Hugh Scott-Pittsburgh Forest would be planted in his honor.

THE ALABAMA NATIONAL GUARD

Mr. ALLEN. Mr. President, the Alabama National Guard has been an example of courage and patriotism since 1836 when it was known simply as the State Militia. At that time the guardsmen were primarily a defensive unit protecting the Alabama settlers from the warring Seminoles. The Alabama State Militia also offered protection during the War Between the States and, when it was officially named the National Guard, became a key force in World War I, World War II, and the Korean war.

The February issue of the distinguished publication, Alabama News Magazine, included a well-documented article telling the history of the Alabama National Guard. I ask unanimous consent that this interesting article be printed in the RECORD.

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

[From Alabama News Magazine, February 1974]

FROM SEMINOLE WARS TO VIETNAM, ALABAMA CITIZEN SOLDIERS WERE THERE

History books will tell you that the National Guard of Alabama came into being on July 15, 1911. That was in fact the official day of birth of the Guard in Alabama. But long years before that, Alabamians had banded themselves together in what was called the State Militia, and these brave men, the first real "Guardsmen", wrote some of the most glorious pages in the history of Alabama and America.

From the very beginning of the settlement of what is now Alabama, it was necessary on many occasions for these pioneers to band together to defend their families and homes from hostile Indians. Perhaps this was the real beginning of the "citizen-soldier Army" which today is called the National Guard.

The first record of an organized State Militia came in 1836 when the various tribes of the Seminole Indians made war on the settlers in Alabama and Florida. While the Alabama Militia for the most part participated only in defensive action, two volunteer units from this state—the "Montgomery True Blues" and the "Selma Guards"—marched off to Florida to aid their sister state. Their performance in combat at Fort Foster was so outstanding that the grateful Floridians later renamed the facility to Fort Alabama.

Only ten years later the Alabama Militia found itself again in combat. The young nation was involved in a war with Mexico, and it was in this war that for the first time the State Militia was mustered into federal service. One Alabama unit, the "First Alabama Volunteers" distinguished itself in the fierce Battle of Vera Cruz.

It was a different uniform the State Militia donned in 1861—the gray of the Confederacy. The incredible record of the Alabama Militia in the War Between the States could fill countless volumes of history books. Perhaps no unit more distinguished itself than the Fourth Volunteer Regiment, commanded by Col. Egbert Jones of Athens. It fought in an unprecedented 17 major campaigns, including Gettysburg, Chickamauga and Second Manassas. A total of 1,400 Alabamians went to war as members of the Fourth, only 300 returned home after the hostilities ended.

The next significant date in the history of the State Militia was that birthday referred to earlier on July 15, 1911. It was on that date that state militias throughout the nation were reorganized along federal lines and were given the name of the National Guard.

Yet another singular date in the history of the Alabama Guard was Aug. 14, 1917, when the state unit was designated as the 167th Infantry Regiment, and became a part of the 42nd Division—which shall be remembered forever as the "Rainbow Division."

The exploits of this division in World War I constitute one of the most remarkable sagas of heroism and courage in American history. The 167th, with its sister regiment from New York state, the "Fighting 69th," established an awe-inspiring record in France. During almost seven continuous months of combat (Second Battle of the Marne, Chateau Thierry, Croix Rouge, Meuse Argonne), this mixture of "Rebels" and "Yankees" put to rout the best the Germans had to offer. But the victories they won were at a terrible price. More than 30% of the division was killed or wounded.

After World War I, the 167th was reassigned to the 31st Division. Because this division was made up of units from Alabama, Florida, Louisiana and Mississippi, it was not long before it had a nickname—the "Dixie Division."

More than a year before Pearl Harbor, in November, 1940 to be exact, the Dixie Division was called into active duty under the command of Gen. John C. Persons of Birmingham. It was to be four long years before this proud division would see combat. Instead, it was used as a training division. In all, it trained more than 39,000 officers and enlisted men, most of whom later saw combat.

Finally, in 1944, the Dixie Division sailed for the South Pacific. Its initial combat was in the Aitape region of New Guinea. The area had been captured, but the Japanese had launched a fierce counter-attack. After four long years of training, the Dixie Division was ready. The enemy was repulsed with heavy losses. Later, units of the Division saw extensive combat in the invasion and recapture of Moratai, the second largest of the Philippine Islands. At the close of the war, despite its late arrival in combat, the 31st Division had inflicted 7,346 casualties on the enemy while suffering only 1,709 casualties.

Only six years after the end of World War II, the division found itself again called into active duty, being federalized following the outbreak of the Korean conflict. The division itself was never sent to Korea, but a number of its units were sent into combat in that far-off land.

With the national policy dictating that draftees make up the bulk of the fighting force in Viet Nam, the Alabama National Guard's participation in that long war was limited. Only one Alabama Guard unit was called into active duty, it being the 650th Medical Detachment of Birmingham. This group spent almost a year in Viet Nam.

Today the Alabama National Guard remains at the ready. It is not looking for trouble, but it it comes, the Guard will be ready just as it always has been.

SIXTH ANNIVERSARY OF MAURITIUS

Mr. HARTKE. Mr. President, today we salute the sixth anniversary of the independence of the Republic of Mauritius.

Mauritius is a strategic island in the Indian Ocean between the east coast of Africa and the west coast of Australia and because of its position the United States has used its airport facilities for air/sea rescue on most of our space expeditions.

Mauritius has had a long and unbroken record of friendly relations with the United States. In May 1794 Congress appointed the first American consul to the island. In the days of the sailing ships, over 100 American trading vessels used its ports every year.

Mauritius has no mineral wealth of any description and her economy is based on agriculture, predominantly sugar.

At the present time, approximately 215,000 acres or 46.5 percent of the total area of the country, are devoted to the cultivation of sugar. Sugar is not only Mauritius' largest foreign exchange earner, representing approximately 91 percent of the total value of its annual export trade, but it is also the largest employer of labor. The number of workers employed directly in the sugar industry is approximately 72,000 or over 30 percent of the working population. The well-being of most of the other industries on the island is directly related to the fortunes of the sugar industry, since sugar directly accounts for about one-third of the country's national income. Government revenue depends largely on sugar production through direct and indirect taxation, including an ad valorem duty of 9 percent on sugar exports, a duty of 5 percent on the exports of molasses, and a milling tax of $3.25 per ton of sugar produced.

At the present time, Mauritius is the ninth largest world exporter of sugar.

The United States is high on the list for import into the island nation and American businessmen have found a very favorable climate for investments.

At the present time, American business owns 50 percent of the largest industrial undertaking in the island—a fertilizer complex that will supply all of Mauritius' agricultural needs.

FUSION DELAY—TWO STEPS FORWARD AND ONE BACKWARD?

Mr. BIDEN. Mr. President, I was very concerned to learn that the Office of Management and Budget, apparently at the direction of the White House, has ordered the Atomic Energy Commission to cut substantially its budget for fusion research. Nuclear fusion is the process of creating energy by joining atoms together and is considered by most people to be the optimum method of producing electricity for the future. Although the overall budget for this program is still significantly larger than in the past, this slash in funds will delay the commercial application of fusion produced electricity by about 3 years—to the turn of the century.

Nuclear plants now in operation produce electricity by means of fission. Fission is the process of creating energy by splitting atoms apart. For some time now there has been a large controversy over the safety of fission power plants. The AEC and the electric companies maintain that they are safe to operate; many others disagree, pointing to such problems as thermal pollution, transportation of nuclear materials, and the storage of nuclear waste. The one thing that almost everyone agrees on, however, is that the fusion process will be the best method of nuclear energy production, in terms of safety and efficiency, once enough research has been done to make it commercially feasible.

I, therefore, question the wisdom of cutting this program, in light of this country's future energy requirements. Energy self-sufficiency is an essential goal which will enable us to maintain our position of strength in the world, sustain our high standard of living, and shield us from the whims of other countries on whom we are sometimes compelled to rely. It is crucial that wise and thoughtful decisions be made now on how to spend money for energy so that at the same time self-sufficiency is being attained, it is done in a manner consistent with the need to preserve a high quality of life for ourselves and for future generations.

Mr. President, I ask unanimous consent that an article on this subject by Mr. Thomas O'Toole, which appeared in a recent edition of the Washington Post, be printed at this point.

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

[From the Washington Post]

U.S. FUSION ENERGY PLAN DELAYED

(By Thomas O'Toole)

The Atomic Energy Commission has stretched out its program to make electricity from thermonuclear fusion to close to the turn of the century, mostly on orders from the White House.

The stretch-out delays by about three years the AEC's timetable to produce commercial power from fusion, which is considered the ultimate means of making electricity because it depends on nothing more than the hydrogen from sea water for its fuel.

What the stretch-out does is to cut $32 million from the AEC's fusion budget for fiscal 1975, leaving it at $102.3 million. This is still an increase of 55 per cent over what it was in fiscal 1974 and still allows for manpower gains of about 30 per cent in the fusion program.

The $32 million reduction was ordered by the Office of Management and Budget, which also told the AEC to trim $140 million from its five-year plan for fusion research. This still left the fusion budget for the next five years at about $1.2 billion.

Reducing fusion spending by $140 million over the next five years means that the AEC timetable for thermonuclear fusion will stretch out into the late 1990s instead of 1995. This also means a timetable revision along the way to 1995 as well as a cutback in the number of fusion test plants from three to two.

Spurred on by unusual success in three different areas of fusion research, the AEC last year had planned to build fusion demonstration plants based on all three methods of making power from fusion.

The first plant was to have been ready in 1938, the second in 1987 and the last in 1995. The third one was to be the largest of the three and was to provide the "basis for commercial fusion power."

With the upcoming budget cuts ordered by the White House, three plants can still be built but only at a stretched-out schedule and only using two designs instead of three. The third plant would be a demonstration facility instead of a full-scale test plant.

This means the first plant will be ready in 1985, the second in 1980 and the third in the late 1990s, probably right before the turn of the century.

THE ECONOMIC PROSPECTS OF THE DISTRICT OF COLUMBIA METROPOLITAN AREA

Mr. MATHIAS. Mr. President, the economists tell us that the year ahead will be one of testing for the American people. Inflation will remain high, energy will remain short, unemployment may rise.

No one can escape the effect of these unfortunate economic trends, and all of us must work to blunt their overall impact—by measures to stimulate the economy, to insure fair treatment for the unemployed, to readjust our energy policies so as to lay a basis for a prosperous America in the years ahead.

But before we can fully respond to the economic challenges we face, we must understand their breadth and depth. William H. Jones, assistant financial editor of the Washington Post, surveyed the metropolitan area surrounding the District of Columbia and summarized his findings in an article in the Potomac magazine section of the Post on Sunday, February 10, 1974. I believe that his article is realistic and helpful. He points out that the metropolitan region has traditionally been affected less by economic swings than most other areas of the country, and yet he notes a number of ways that each resident of the Capital area will be affected.

I believe that my colleagues may find this article of interest not only in their planning for their own family but in planning for the policies of the whole Nation. I, therefore, 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:

[From Potomac magazine, Feb. 10, 1974]

HOW RECESSION PROOF IS WASHINGTON?

(By William H. Jones)

"The bubble is about to be pricked for the time being," says shoe merchant and Washington native Frank H. Rich, describing the local economy.

"Yeah, but how'd you like to be in Detroit?" counters banker Joseph W. Barr. "We gotta be darn thankful . . . we're lucky . . . there's no other city in the world that's a better place to be this year."

Austin Kenny is not so sure. The area's chief promoter of tourism and conventions, Kenny prefers to concentrate on optimism: "Convention business will remain strong, because of commitments for hotel space already made . . . there may be an increase in business meetings to delve into the energy crisis."

Otherwise, he concedes, "this thing's so damn big, nobody's got a handle on it . . . I think we can develop some business from

closer areas, things like get away from Baltimore, Harrisburg, Philadelphia for the weekend." But will anyone come, if there's gasoline rationing?

More to the bitter point many Washingtonians in the cold winter of 1974 are wondering if the restless churning of a fragile, nearly leaderless, economy will leave them out of a job by the winter of 1975. That's news, in itself, because the economic bubble of this community has hardly wavered at all during several American recessions and economic downturns since World War II.

There are a variety of potential economic scenarios for this year, but in every instance some degree of a slowing down is anticipated. The degree of slowdown—and possibly real economic decline—depends upon when and if the energy crisis is resolved to the extent that we know how much gasoline will be available for autos and how much fuel there is for industry.

Most people here haven't had time to participate in real slowdowns, because they either worked for the federal government or served the people who work for the government. And more and more power has been concentrated at the federal capital, no matter the obstacle—even pledges by Presidential candidates.

In the 1960s, metropolitan Washington became a champion. The fastest growing urban market in America. The most affluent households. The best educated marketplace. The highest per capita and family incomes. The most retail sales per household. The highest stock ownership per capita.

Some of these superlatives have been blunted by statistical quirks, including a decision by the Commerce Department last year to carve a new metropolitan statistical area out of the rich Long Island suburbs of New York—thus downgrading Washington to No. 2 in income per household, and retails sales per home.

We're still leading the pack in drug store sales per household (which some casual observers might attribute to a pressure-cooker political atmosphere), as well as air trips per capita, passports issued per thousand households, the number of telephones, and education (40.6 per cent of all our adults 25 years and over have attended or graduated from college.)

But there is reason to believe that an anticipated worldwide recession, now perceived to be in its infancy, will trim some of Washington's traditionally buoyant growth outlook.

Since the days of the Founding Fathers, it has been a goal and gospel for Washington to have a "recession-proof" economy.

Between 1783 and 1790, as Congress studied 22 possible sites for the national capital, strong arguments were heard against placing the seat of government in a city where commerce and industry were strong factors.

"A great obstacle to the exercise of control in a large commercial community, would be found in the mixed character of the population, and the many elements of discord which existed there," wrote Joseph Bradley Varnum, in recounting the debate.

". . . disturbances would frequently occur in times of high party feeling, or during any period of stagnation in business, when unemployed multitudes could easily be aroused, by real or imaginary grievances, to overcome all opposition, and stay the operations of government."

Once the decision was made to keep the capital some distance from chief commercial centers, "many members of Congress did not favor the growth of such enterprises within the District," bank historian David M. Cole noted, while emphasizing that a lack of enthusiasm for—and even hostility toward—commercial business developments here has extended beyond Congress to rival cities and some D.C. residents.

George Washington, who acted as sort of a one-man Board of Trade in his day, was a maverick on this issue. He saw great commercial futures for both Alexandria and Georgetown, which is why he wanted the government here in the first place. And he backed canals, roads, bridges, banks and other investments with enthusiasm and money, only to see most of them fail.

Throughout the area's history, the same theme has been repeated, often in the midst of economic chaos elsewhere:

"Fortunately, from its position and the nature of its business, Washington City suffers less sympathetically by reason of the (financial) disasters in New York than any other American city of its size." (The Evening Star, 1873)

"Perhaps the escape from . . . upheavals has been due to the fact that Washington has never been a financial center in the commercial sense of the term." (The Washington Post, 1909)

"Washington makes its own bread, brews the larger part of its beer, slaughters and packs a good portion of its meats, makes its brick, saws lumber and works iron and steel." (Washington Board of Trade Annual Report, 1904)

"Washington is the one depression-proof city in the U.S. . . . the backbone of Washington business . . . is the huge government payroll, which is almost unaffected by the depression." (Frederick William Wile, The Evening Star, 1931)

The large stable-salary population of Washington has caused business conditions of the city to remain on a reasonable satisfactory level. The effect of the recession has been experienced, but not nearly so much as in other parts of the country." (Thomas J. Groom, president of D.C. Bankers Association, 1937)

While the economic stability of Washington during the Great Depression did tend to demonstrate how wise it was to have the seat of government removed from the wild gyrations of industry and the business cycle, it was during this era that the foundations for diversifying the local economy were established.

The very bigness of New Deal federal government led to changes, in some cases quickening trends already established (the location in Washington of trade associations' headquarters, for example) and in other instances developing a huge potential market for specialized services.

When Franklin D. Roosevelt took office, in 1933, Marriott Corp. consisted of hardly more than a few root beer stands. Such ventures as Government Employees Insurance Co., Giant Food, Drug Fair, Dart Drug, Allegheny Airlines, Quality Inns, the Rouse Co.—none of these had even been born. Nor had two of the area's biggest firms of today—Communications Satellite Corp. and Federal National Mortgage Association—products of big government at a later date.

Tourism was a minor factor, with the first Cherry Blossom festival having been held in the late 1920s.

Local businessmen were hardly enthralled by the Roosevelt administration, not seeing in the early 1930s that their fortunes actually had been blessed. FDR ordered 15 per cent cuts in federal salaries and instituted a ruling that cut in half many incomes—one government job per family. Places in new federal agencies seldom went to oldtime civil servants and bank deposits fell.

"A measure of the gloom," writes historian Constance McLaughlin Green, "was the listlessness with which baseball fans celebrated the Senators' winning of the American League pennant. . ."

Still, by comparison, Washington had little about which to complain. The federal establishment grew rapidly—63,000 government jobs in 1933, 93,000 by 1935 (mostly filled by newcomers to the D.C. area), 149,300 by 1940.

Compared with the 15 per cent salary cuts, the reductions averaged 50 per cent in other cities, and 10 per cent was restored here by July, 1934, (the rest in early 1935). Businessmen poured into the city for conferences, filling Washington hotels.

Effective buying income averaged $3,782 in Washington, $2,000 in other U.S. cities; Evening Star advertising linage was the biggest in America; D.C. population rose by 36 per cent over the 1930s; builders couldn't keep up with the demand for apartments and houses.

Consumers flocked to Hecht's, Woodward & Lothrop and Julius Garfinckel to spend their government salaries, making Washington the number one retail market in America—in terms of retail sales per capita—in mid-Depression 1935.

Such affluence, although it didn't extend to the city's huge black population, helped spark economic expansion into non-government businesses. Research and technology companies were opened, Washington became a headquarters city for labor unions, wholesale distribution centers were located here to serve the Middle Atlantic region.

Today, George Washington would be happy that his early conviction—about his community being an important commercial center—has become a fact.

But is it still true that a recession is simply not possible here?

A quick glance at local employment figures would tend to confirm this, with about 500,000 persons in a 1.3 million civilian work force holding positions in either the federal or state-local governments.

Long-term job figures, however, indicate that government is becoming less of a direct economic factor almost every year, but, while the majority of workers don't get salary checks from the taxpayers, government spending and payrolls have an enormous impact here.

For example, major employment sectors in the local economy include retail and wholesale trading of merchandise (250,000); all services, including doctors, lawyers hotels, restaurants (286,500); construction (86,500); financial institutions, insurance and real estate (79,400); transportation and communications (63,600); and manufacturing (46,-100). In the manufacturing sector, the largest industry is printing and publishing, a fact that hasn't changed for a century in a city of words.

Large local employers outside the government include Government Employees Insurance Co. (over 5,000), Marriott Corp. (10,000 or so), Washington Post Co. (about 3,000 in the D.C. area), Potomac Electric Power Co. (over 4,000), Woodward & Lothrop (6,000), and Riggs National Bank (1,500).

"I think," Rich observes, "that Washington is more recession-proof than any large American city, but there are strange factors at work this time, different from ever before, and no one knows what's going to happen."

The biggest uncertainty is the availability of energy resources—petroleum from which to refine gasoline for autos or oil for heating; electricity, which depends upon oil or coal to fire generating stations; natural gas, which heats many area residences.

A long-term problem of short supplies could lead to basic changes in lifestyles and spending habits. Some people are losing jobs—airline pilots, gasoline station attendants, people who've held part-time slots at suburban stores—and little alternative employment is available here.

At the same time, the bills for necessities—food, the rent or mortgage, taxes, necessary clothing—are going up *faster* than incomes.

There is no question, then, that some cutbacks in personal spending have to be made.

On-the-town entertainment will be reduced, on the one hand, while spending for permanent at-home entertainment will rise.

Sony Corp. is increasing its output of color television sets because of huge demand experienced over the Christmas holidays at such stores as Sun Radio in the Washington area. Demand remains high for tape recorders, too.

One recession-related trend that will intensify this year is less bizarre clothing and a return to fashion conservatism.

Look at it this way: Unemployment is rising, and you're a young college graduate looking for a job. Do you dress like you might have in 1973, in faded blue jeans, paisley shirt and sandals? Or will you try a pressed pair of slacks, polished shoes, shirt and tie—probably more colorful than might have been the case a decade ago, but still neat?

When the resources begin to dwindle, people tend to concentrate their spending less on silly and frivolous items and more on durable, practical goods. It's already happening, in the recent sales booms for electric blankets, Franklin stoves, furry slippers, flannel pajamas.

There's little doubt that the great leaps forward for the Washington economy, experienced annually in recent decades, have reached a plateau.

A variety of dampers are operating to strongly retard area population growth. Five of the key factors are:

Fertility decline—Half of Washington's 1960s population growth was from natural increases; a current sharp drop in fertility means a big slice in the overall growth rate.

Singles boom—Americans are marrying less and separating more; the divorced population in the Washington area rose 72 per cent in the 1960s, the separated by 49 per cent, the never married by 68 per cent, and the married by only 34 per cent. Thus, a continuing damper on natural birth increases.

Sex gap—There are a lot more area women than men in the critical 20–24 age group when most marriages take place (16 per cent more females in 1970); since many of these women won't marry, population growth is again affected.

Income plateau—Pay scales of the federal government in the 1960s were brought into line with the private sector, creating high and rising incomes that are "a powerful attractor of in-migration." But the catching up has been largely completed and the very high average family incomes cannot continue to grow at the pace of recent years.

Capital plateau—In the 1960s, there was also a catch-up with Washington as a growing center for the arts, finance, information and decision-making, leading many associations and institutions to move to Washington or expand existing operations. But with most such organizations already lodged here, the potential for future growth in this sector has to be leveling off.

The first hints of sluggishness became apparent in the 1969–1970 recession. Although great strength was demonstrated at that time, with real economic gains experienced by most area residents and an unemployment rate half the U.S. average, there was an unusual concentration of white collar joblessness.

Engineers and technicians lost their jobs by the thousands when cutbacks in government and business research spending had a severe impact on a burgeoning local research and development industry. Dozens of small R and D firms were plunged into bankruptcy and others were absorbed by larger companies.

This year, the impact is expected to be far broader, affecting many unskilled workers. This will tend to aggravate the employment picture for young black males, already the largest single group of unemployed persons here. Successful jobs programs of the past, such as finding summer work for disadvantaged youths, or permanent employment for ex-addicts and former convicts, will become failures if a recession leads to layoffs of people already at work.

First, recently-hired workers will be furloughed. Then, more shoddy merchandise may be substituted as a way to reduce costs, affecting the lower-priced goods purchased mainly by people on low incomes.

Finally, businesses will shut down unprofitable or marginal stores, a trend already well under way with the death of Lansburgh's department stores, the sale of Erlebacher's and closing of the Kenton Center in affluent Friendship Heights, the closing of G.E.M. discount department stores in the suburbs, and the abandonment of a historic F Street location by Jelleff's.

Joseph Barr looks at all of this with a detachment that reflects his background as an Indiana businessman and Congressman, a government, career in regulation and the Treasury Department (he served briefly as Secretary of the Treasury under President Johnson), and currently the chairmanship of American Security & Trust Co., second largest D.C. bank.

What he sees are long-term trends that add up to increased deposits and more loan business for his bank, a vision that can suffer with the short-term dislocations which may hit Washington this year.

If you've got a job, and if you live where your television set can pick up the Washington channels, the chances are you'll be better off this year than almost anywhere else, in Barr's view.

Nationwide, unemployment probably will top 6 percent, Barr believes. In the Washington area, overall joblessness will rise slightly to perhaps 4 per cent or more. For young men here, the unemployment percentage will be much higher—well over 10 per cent, with the rate of jobless blacks three times that of jobless whites.

In this climate, the prices of essentials—food, clothing, energy to operate houses and autos—will continue to rise, with worldwide shortages of raw products and basic foods combining with unprecedented demand from a richer world to create an inflationary cycle.

Organized labor won't sit still for dilution of their weekly pay checks, increasing the prospect for confrontations with management and work stoppages that would further aggravate shortages.

If you want to buy a house or a car, or borrow money to fix up the house you have, Barr thinks you'll pay dearly in 1974, although interest rates should be on a gradual decline. In terms of home mortgages, this means "down" to about 8 per cent by the end of the year, equal to the usury ceiling in D.C. and Maryland which has effectively limited new mortgages in those areas since mid-1973.

Gasoline shortages could decrease the automobile tourist business, Barr says, but many people might switch to buses and trains. For future years, "The subway system has got to be one of the great investments," which will lead to young, unmarried people and childless couples moving back to the center city.

Kenny, head of the Board of Trade's convention and visitors bureau, says Washington will remain alive and well. While hotel owners are complaining about the lack of business early this year, he points out, there was a Presidential inauguration last year which inflated business volume.

The travel industry as a whole, he insists, will continue to expand and prosper, with Washington now a major cultural and entertainment capital, the site of a "fantastic growth in quality restaurants," and a place where a lot of foreign tourists—notably Japanese—are spending time while in America.

It would be ironic if one of the strong points in the local economy this year is the presence of a large number of Japanese visitors to the Cherry Blossom festival in early April. Don't count on it, however, because Japan's economy already is in a tailspin.

USDA COMMODITY PURCHASING AUTHORITY

Mr. BIDEN. Mr. President, Public Law 93–86, which authorizes the U.S. Department of Agriculture to purchase commodities at fair market value for distribution to schools, will expire this June unless Congress takes the necessary action to renew it.

USDA's purchasing authority has in the past enabled schools to keep food costs down and to purchase commodities in greater quantities. If this authority is not extended, a severe burden will be placed on schools. In this instance, the State may be called upon to administer the program, and without the sufficient resources of the USDA, the schools would suffer.

Moreover, if the purchasing authority is not extended, schools, if they are unable to get enough funds from the State, will have to increase the price they charge children for lunch.

Therefore, Mr. President, I would like to share with my colleagues the resolution adopted by the Delaware State Senate, which urges the continuance of the Department of Agriculture's authority to purchase commodities for schools and other institutions. I ask unanimous consent that the text of this resolution be printed in the RECORD.

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

RESOLUTION

Memorializing the Delaware congressional delegation to exert every effort to provide for the continuance of USDA donated commodities to schools and other institutions

Whereas, Public Law 93–86 allows the U.S. Department of Agriculture to purchase commodities at fair market value to be distributed to schools and other institutions; and

Whereas, this authority to purchase terminates on June 30, 1974; and

Whereas, if special purchase authority is not extended or made a permanent amendment to the law, food commodities will no longer be made available to institutions; and

Whereas, schools will still be able to receive donated food commodities; however, the amount which USDA will be authorized to provide will be reduced substantially; and

Whereas, if donated food commodities should not become available to institutions the State will most likely be called upon to pick up the program; and

Whereas, schools will either have to increase the price they charge children for class A lunches, or more than likely seek an appropriation from the State to off-set the value of the donated food commodities; and

Whereas, during fiscal 1973 a total of 2,752,596 pounds of donated feod was distributed to the schools and 390,736 pounds to institutions which the federal government placed a value of $.25 per pound on this food or approximately $800,000; and

Whereas, if the schools and institutions have to purchase these commodities themselves, we can safely anticipate that the cost of them would double over the costs to the USDA.

Now, therefore:

Be it resolved by the Senate of the 127th General Assembly of the State of Delaware that the Delaware Congressional Delegation

is hereby requested to initiate every effort and influence of their respective offices to provide for the continuance of USDA donated commodities to schools and other institutions which is scheduled to terminate on June 30, 1974.

Be it further resolved that this Resolution be made a part of the Senate Journal and that copies be sent to Senator William V. Roth, Senator Joseph R. Biden, Jr., and Rep. Pierre S. duPont, IV.

PHASE-OUT OF IMPACT AID FUNDS DUE TO AREA BASE CLOSINGS

Mr. PELL. Mr. President, it was with great delight that I received a copy of a resolution of the council of the city of Newport which endorses Senate bill 896, a portion of which relates to the phase-out of impact aid funds due to area base closings.

The city council is laboring to insure continuing service to all Newport citizens in spite of the loss of Government revenues due to the arbitrary closing of Newport naval bases. Final passage of S. 896, presently pending in the House, would ease some of the financial pressures caused by the loss of impact aid funds.

I would like to print in the RECORD a copy of the resolution.

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

RESOLUTION

Resolved: That the Council of the City of Newport hereby endorses Congressional Bill S896 which provides that local educational agencies qualify for a phaseout of impact aid over a 5-year period if: (a) the local educational agencies experience a 10-percent decrease in the number of federally connected children during either fiscal year 1974 or fiscal year 1975, or (b) if such a decrease occurs in the 2-year period beginning July 1, 1973, and if these decreases are due to a cessation or decrease of activities announced after April 16, 1973. The amount to be received by such agencies in any fiscal year shall not be less than 90 percent of what the agency was entitled to in the preceding fiscal year; and be it further

Resolved: That a certified copy of this resolution be forwarded to:

(1) Each member of the Rhode Island Congressional Delegation.

(2) Department Health, Education, and Welfare Washington, D.C.

(3) All other local communities affected by impacted aid funds.

POKE WEED

Mr. ALLEN. Mr. President, in this day of high-priced synthetic foods and precooked meals—everything from artificial eggs to TV dinners—there are in Alabama and other parts of the South simple, but little-known foods growing wild. One is the "poke weed," a plant of many uses and little cost. It has been used as food, an itch medicine, writing ink and, in 1844, symbolized support for Presidential Candidate James K. Polk. This weed saved the life of many a southerner in the sad days following the War Between the States since it grew wild and could be cooked or eaten raw.

Many southerners were eating poke and other nourishing wild plants which Mother Nature sowed on Earth long before some public relations consultant discovered the salability of health foods or organic foods.

Bill Crowe, a staff writer for the Birmingham News researched the poke weed and an article singing the praises of this unglorified plant appeared in a recent issue of that newspaper. With the thought that modern Americans should be reminded of the abundance that grows wild around them, I ask unanimous consent that the article, "Poke Weed Earned Place in History," be printed in the RECORD.

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

FOOD: POLITICAL SYMBOL, AND SO FORTH—POKE WEED EARNED PLACE IN HISTORY

(By Bill Crowe)

It has saved folks from starvation, served as a political symbol, been squished into writing ink, distilled into medicine and pureed into itch lotion.

Yet the noble poke week goes largely unrecognized—not to mention unhailed—in this age of back-to-nature cereals and ersatz health foods.

Archie Phillips, a Fairfield taxidermist, is a naturalist and local Ewell Gibbins of sorts. An avid outdoorsman, he's made it a point to know the history and uses of wild plants.

He, along with other authorities, claims the little poke weed was "the salvation of the South" following the Civil War.

That was in its use as food—"sort of like turnip greens, if you get it when it first comes up," says Phillips—but the poke has also been used as a source of writing ink, an ingredient in home remedies, a cure for cancer (in 1789) and was a prime prop in a presidential campaign.

That was in 1844, with James K. Polk running against Henry Clay. Polk partisans took on the poke weed (also spelled "polk") as their campaign symbol, carrying plants in street parades and such.

Ox drivers in the South stained the horns of their animals with the juice of the poke's berries to show their choice as Polk, while Clay men dabbed clay on the horns of their oxen.

The berries were also used in a compound with vinegar and sugar to make a red writing ink. Some of Jefferson Davis' letters to his wife, now at the First White House of the Confederacy in Montgomery and still legible, were penned in poke ink.

According to Phillips, the root of the plant was used as a medicine by Indians, and is still an ingredient in some modern stimulants and emetics.

The "pot likker" produced in boiling the leaves was also used medicinally. One old recipe called for one part poke juice and three parts whisky, a potion which should have cured most anything.

The plant's greatest fame—as well as its place in history—has been in its use as a food, however.

Phillips says it was the primary food of many Southerners, especially in Alabama, following the War Between the States.

"All the seeds were gone and the fields were grown up in weeds so there just wasn't much to eat," says Phillips. "But the woods were full of poke weed—and that saved a lot of people from simple starvation."

The poke can be eaten in several ways. And that is the reason for some confusion about its proper name.

"A lot of folks call the plant 'poke sallet,' but that's just not right," says Phillips.

Actually, the plant is the poke weed. From it is made poke salad and poke sallet. The salad is like any green salad, while sallet is the cooked form, according to the Dictionary of Americanisms published by the University of Chicago Press.

The sallet can be cooked alone, or in combination with turnip and mustard and sometimes radishes. Phillips warns "you need to boil it, then run the first water off, and boil it again in fresh water. If you don't it can be pretty strong."

Ham or side meat is usually cooked in with the sallet.

Phillips himself favors another concoction, in which the boiled poke is then fried with egg to produce a sort of omelet. "It looks pretty awful, but it tastes mighty good," he says.

If you want to sample poke for yourself—as food, ink, itch ointment or whatever—"it's out there all over the place," says Phillips. "Why, there's enough between Fairfield and Birmingham to feed an army."

Most armies, traveling on their stomachs, poke along anyway.

HONORING THE DEAD BY HELPING THE LIVING

Mr. HARTKE. Mr. President, I and the other members of the Committee on Veterans' Affairs, of which I am privileged to chair, received the legislative program of the Veterans' of Foreign Wars of the United States this week during the annual conference of State and national officers of the VFW. I always appreciate this opportunity to hear first hand from the delegates of this great organization as to needs of America's veterans.

I wish to congratulate the VFW on its Diamond Jubilee Year for 75 years of unfailing and dedicated service to our Nation's veterans and their dependents. The VFW is still growing, now over 1,800,000 strong, with 10,000 posts throughout the land. I especially wish to commend the VFW for its vigorous support for legislation to increase the GI education benefits and disability compensation, both priority items of the committee this year.

I consider the testimony to the committee of the distinguished commander in chief of the VFW, Ray R. Soden, to be exceptional and extremely informative and commend it to my colleagues.

Mr. President, I request unanimous consent that Commander Soden's testimony be printed in the RECORD.

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

STATEMENT OF RAY R. SODEN

Mr. Chairman and members of the committee: It is a great privilege to appear before your distinguished Committee and present the legislative program of the Veterans of Foreign Wars of the United States.

We are here in Washington at this time for our annual Conference of State and National Officers. The men who have accompanied me to this meeting comprise the top leadership of our organization. They come from every state in the Union, and some from foreign countries. They too consider it a rare privilege to be permitttd to attend this session of your Committee. It gives them an opportunity to observe at first hand the true friends of the American veteran—to hear for themselves the comments of your distinguished members. They will carry their personal reactions back to the communities and states they represent, and to their many constituents.

We in the Veterans of Foreign Wars are celebrating our 75th Anniversary. We will wind up our Diamond Jubilee Year at our National Convention, August 16 to 23, in Chicago, Illinois.

As most of you know, the Veterans of For-

eign Wars was founded in September, 1899, by returning veterans of the Spanish American War. They perceived a need for an organization of men who had shared the hardships of war far from their homeland. Paid off at the rate of sixteen dollars and seventy cents per man for their service to their country, many of them suffering from malaria and tropical fever, and with no medical care or hospitalization available to them, they also saw the need of helping each other. They pledged themselves "to honor the dead by helping the living."

From that day to this—for seventy-five years—we in the organization they founded have honored that sacred pledge to the veterans of every war.

Today, the Veterans of Foreign Wars of the United States has more than one million, eight hundred thousand members—in 10,000 Posts throughout the nation we love beyond self and family. In addition, we have more than a half million women in our Ladies Auxiliary. We are rapidly expanding a subsidiary organization which we call "The Sons of the V.F.W."

Every man in this room with me today knows that the V.F.W. Story can be summed up in two words—GROWTH and SERVICE. For more than twenty consecutive years there has been a steady increase in our membership. We have a reasonable expectation of reaching two million by the time we go to our Seventy-fifth National Convention in Chicago.

More than 450,000 of our present members are veterans of the Vietnam War. A major reason for this is the steadfast support our organization has given three Presidents and the Congress on behalf of our armed forces in Southeast Asia during the past decade.

Another reason is our opposition to a general amnesty for the deserters and draft dodgers who placed self above country during those troubled years.

But the most compelling reason of all is that most Vietnam veterans know of the V.F.W.'s long and successful leadership in the fight to obtain Congressional approval of benefits, assistance, and programs geared specifically to their needs.

There are many other programs of service, Mr. Chairman, to veterans and their families— to our communities and to the Nation, which have contributed greatly to the continued growth and importance of the Veterans of Foreign Wars, but time does not permit me to enumerate them on this occasion.

These comrades who stand with me here are the leaders who are largely responsible for the success of all of our programs. Many of them have already visited with you and your Committee members. Others will be calling on you during our Conference. Please feel free to ask them any questions you may care to ask concerning our organization.

Some of you may wish to know more about our National Home for widows and orphans of our deceased members and Ladies Auxiliary at Eaton Rapids, Michigan, a community of 640 acres and more than thirty homes where children are reared in family-sized units under the guidance of a house mother or house parents.

Our National Veterans Service processes hundreds of thousands of claims for veterans and their dependents each year. The V.F.W. maintains 350 accredited representatives, with approximately 150 full-time service officers at VA facilities throughout the land. These services are performed without charge to veterans and their dependents, regardless of their affiliation with our organization, and whether they are eligible for membership or not. It is a matter of simple mathematics that these service officers save the federal government many thousands of dollars each year by performing services which otherwise would require additional federal employees.

We are extremely proud of our V.F.W. Voice of Democracy Program. This Program, entirely financed by our organization, attracts approximately 500,000 high school students each year who vie for $400,000 in scholarships to institutions of higher learning.

Each year we bring the winners from each state and three foreign countries, as well as the District of Columbia, here to our Washington Conference for the final contest. Scholarships totaling $22,500 will be awarded to the first five winners at our Banquet tomorrow night. The young man or woman who places first will receive a $10,000 scholarship to be used at the college or university of his or her choice.

This, as most of you know, is a script-writing contest calculated to strengthen an understanding and appreciation of true Americanism. The theme this year is "My Responsibility as a Citizen." We will have the privilege of hearing the winner deliver his or her script tomorrow night.

Our Veterans of Foreign Wars Legislative Program is established each year through the adoption or rejection of more than 300 resolutions discussed and voted upon by the delegates at our National Convention. Our present list of resolutions was adopted at our National Convention in New Orleans, Louisiana, last August.

In September, our National Security and Foreign Affairs Committee, together with our National Legislative Committee, met here in Washington, under my direction, and analyzed each of those resolutions. At the conclusion of those meetings they assigned a priority number to each resolution, and submitted their recommendations to me as Commander-in-Chief. Out of this careful study has come our V.F.W. Priority Goals for 1974—a copy of which has been furnished to each member of the Congress.

It would be deeply appreciated, Mr. Chairman, if a Digest of these Resolutions, together with a copy of the V.F.W. Priority Legislative and Security Goals for 1974, may be made a part of my remarks at this time.

Mr. Chairman, and members of the Committee, it has been more than a year since the official termination of the War in Vietnam. On the record of history, the sacrifices in the national interest which were made by this most recent group of veterans will be forgotten all too quickly by the general public.

Those who have always been opposed to special programs for veterans are once again being heard.

The Veterans of Foreign Wars believes implicitly that service in the Armed Forces in time of war or national emergency is a very special service to the Nation. We believe that this special service entitles every man who renders it, or, if deceased, their surviving dependents—widow, child, or parent—to equal special consideration. We are aware, and grateful, Mr. Chairman, that you and the members of your Committee share this view. You have demonstrated your abiding faith in that principle, which has been a part of the philosophy of this great Nation since the days of George Washington.

It is out of this philosophy and this partnership that the comprehensive programs of veterans rights and benefits have been built. It is out of this unity of gratitude for the suffering and the dying by those who fight this nation's wars that the great structure of VA hospitals has been maintained. We in the Veterans of Foreign Wars thank each of you, and your predecessors on this Committee, for your steadfast support.

Each year some new threat to veterans programs rears its ugly head. We know, and you know, that there are troubled times ahead.

The V.F.W. has always given primary consideration to the needs of men who were wounded in action on the battlefield—or, if deceased from service-connected causes, to their surviving widows and orphans. Compensation to living veterans, and dependency and indemnity compensation to survivors of veterans, is the cornerstone of veterans programs. In this regard, the V.F.W. is greatly heartened that your Subcommittee on Compensation and Pensions will be taking up V.F.W. supported proposals later this week providing for cost of living increases for the more than 2.2 million veterans receiving service-connected disability payments and the 375,000 widows of veterans who died from service-connected causes, who are now receiving survivors' benefits.

Another problem which has been repeatedly called to my attention during my travels throughout the states this year, is the growing needs of our Vietnam veterans in relation to the GI Bill. These young men total almost seven million, and far too many of them have not availed themselves of assistance under that Bill which was first enacted for their benefit in 1966. It was then called the "Cold War GI Bill", and included all veterans who had served in the Armed Forces after the official ending of the Korean Conflict on January 31, 1955.

These young men were given a period of eight years in which to avail themselves of the assistance provided under the third GI Bill.

On June 1, 1974, that eight-year period will come to an end unless Congress extends the termination date. There are thousands of "Cold War" veterans who must have this date extended if they are to complete their education under the Bill.

The V.F.W. is deeply grateful that the House has unanimously approved a provision in H. R. 12628, The Veterans Education and Rehabilitation Amendments of 1974, which will extend this limitation date to June 1, 1976.

It has long been a V.F.W. priority objective that the Vietnam veterans should be entitled to readjustment assistance comparable to that received by veterans of World War II. The House has passed H. R. 12628 which has increased the educational allowance rate by 13.6 per cent, extended the termination date, and liberalized requirements of qualification for school and job training, which go a long way toward achieving this goal. The V.F.W. is encouraged by the concern of the United States Senate for the Vietnam veteran, which is found in the large number of Senators who have placed their names on proposals to improve and liberalize the GI Bill. Approval of the education bill introduced by you, Mr. Chairman, S. 2784, and cosponsored by all members of your Committee, will substantially carry out the V.F.W. goal of comparability of assistance for the Vietnam veteran as was available for the World War II veteran.

However, there is still one area in which there is rather widespread concern among the veterans throughout the nation. That is the inability of qualified veterans, otherwise eligible for admission, to attend certain schools of their choice whose higher tuition rates render the GI Bill allowances too low. These veterans know that the allowances provided the veterans of World War II made it financially possible for them to attend schools of their choice.

Again we are impressed by the large number of Senators who are sponsors of provisions in Veterans Education bills before your Committee which provide for an additional allowance or assistance for tuition, books, and fees to those veterans who attended a college or university whose rates are higher than the national average.

Your Committee will consider these Education bills in the near future and we are confident that this Committee will do justice

for Vietnam veterans as provided in these bills.

Two of the V.F.W. Priority Goals relate to the veterans pension program. We strongly endorse the principle of independent veterans pensions for totally disabled veterans; and for all veterans who become disabled and in need.

Unfortunately, there exists a sharp difference of opinion as to what constitutes "need" in connection with the veterans pension program. The Veterans of Foreign Wars completely disagrees with the need concept embodied in the so-called VA pension reform proposal which was recommended to this Committee by VA spokesmen last year. A draft has been printed, carrying out the VA recommendations. In addition, the President has endorsed this reform proposal, both in his message to the Congress on Veterans, and in the 1975 VA budget.

It has been reported in the press that the President has recommended an increase in pensions, when in reality, the VA reform proposal would provide a modest increase for only a small number of veterans. We in the V.F.W. are gravely distressed at this misleading publicity which has given false hope to hundreds of thousands of veterans and their surviving widows througout the nation.

If this VA pension reform proposal is approved by Congress, it will bar three-fourths of the veteran applicants for pension in the future who otherwise would be qualified under current income standards.

We are also deeply distressed that veterans and widows of veterans have either lost or had their VA pensions cut because of Social Security increases. It has long been the V.F.W. position that veterans pensions are wholly unrelated to Social Security and similar retirement income, and that the latter should be disregarded in determining entitlement to a VA pension based upon a veteran's military service in time of war.

We continue to urge the Congress to disregard Social Security increases by increasing veterans income limitations, and rates, each time Social Security payments are increased.

It is true that the pension rates were increased 10% by Public Law 93-177 (H.R. 9474), but in respecting a provision to increase the income limitations as well, the result is that the VA pension program has fallen behind and has failed to keep up with the ever-rising cost-of-living.

We all know that an 11% Social Security increase has been authorized for 1974, which will be counted as income for veterans pension purposes, beginning with 1975.

It is our clear and unalterable position that the veterans pension program should be kept up-to-date by increases in both the rates and the income limitations, so that when Social Security payments are increased there will not be a corresponding decrease in veterans pension payments because of it.

When the V.F.W. speaks of a veteran "in need" we do not mean that he is or must be a welfare case, as proposed in the VA pension reform. Such an interpretation would place the brand of shame on men who have proudly served their country in time of war, and we in the V.F.W. will never accept any such degrading definition—by the Veterans Administration or by the Federal Government.

Mr. Chairman, the VA has indicated that it will ask for funds from Congress to locate a new national cemetery within each of the ten Federal Regions. In addition, they plan to assist with federal funds those states which would establish veterans cemeteries.

While a step in the right direction, we in the V.F.W. view this proposal as highly inadequate. We firmly believe that the only equitable solution is to require the VA to establish, under its National Cemetery System, a veterans' cemetery in each state. There is no other way to provide reasonably accessible burial space for deceased veterans who choose to be buried in a veterans cemetery. If left to the various states, we will end up with different specifications and admission requirements, as well as delaying political controversy.

One of the great national assets of this Lation, Mr. Chairman, is the VA Hospital and Medical Care System. We in the V.F.W. are concerned, and many veterans and their families are afraid, that the finally-approved National Health Program will either decrease or end that system. It is our unchanging position that the national health insurance program must not be permitted to infringe upon or reduce the integrity and independence of the VA Hospital and Medical Care Program.

We seek assurance that the VA will not be made subservient to or under the control of a health czar, or the Department of Health, Education and Welfare, which has a long history of hostility toward the concept of a separate and independent hospital and medical care program for veterans. We will be relying heavily on this Committee to support this V.F.W. position as legislation regarding national health insurance is considered in the Congress.

For a number of years, the Office of Management and Budget has been successful in curtailing the average number of patients being cared for in VA hospitals on a given day, by cutting the VA's budget, and imposing personnel and fiscal limitations on VA hospital directors.

This year it is noted that the average daily patient load is expected to hold at 82,000. We commend the Honorable Melvin R. Laird, who in his capacity as Counsellor to the President, was a key figure in having Dr. Marc. J. Musser reappointed for another four years as Head of the VA's Department of Medicine and Surgery.

I should also like for the record to show our appreciation to this Committee, and to you, Mr. Chairman, for the many hearings you have held respecting the VA hospital and medical care programs.

The information obtained by your Committee and Subcommittee on Health and Hospitals was crucial evidence in bringing about the authorization of extra money for the VA hospital and medical care budget during recent years.

We are grateful also to the Appropriations Committee, which so eloquently spelled out its own position during the first session of the 93rd Congress, in the following words:

"The Committee expects that the Administration will also drop the arbitrary restrictions it has imposed, which have limited available hospital facilities for the care of veterans. The Committee expects the VA to accept for treatment eligible veterans in need of care, as required by law, and stands ready to favorably entertain consideration of future justified proposals submitted by the Administration to supplement medical funding provided in this bill."

You will remember, Mr. Chairman, that a proposed revision of the VA Rating Schedule in the 1974 VA budget would have taken $160 million out of the pockets of combat disabled Vietnam veterans, but for the subsequent uproar which caused it to be withdrawn.

There is a bill now pending which will prevent any future occurrence of arbitrary and precipitous actions of this kind by the VA Administrator under the direction of the Office of Management and Budget. This is the VA Accountability Act (S. 1076). The V.F.W. strongly supports S. 1076, with the amendment by Senator Cranston, regarding the accountability of principal VA officials, which will require Presidential appointment and confirmation by the Senate, of the Deputy Administrator, Chief Medical Director, and Chief Benefits Director of the VA, and urge your Committee to take up and advance this bill in the very near future.

Mr. Chairman, these are but a few of the concerns of veterans which have come to my attention during my travels throughout the nation during the past six months. Another is the total support of the members of our organization for the restoration of Veterans Day to November 11th. We wish to thank Senator Thurmond and members of this Committee for sponsoring S. 3079, which will accomplish what has already been done in a majority of the states.

We oppose the enactment of legislation which will, in any way, forgive draft dodgers and deserters who have violated the law. It is our continuing position that they must answer in a court of law for their crimes—that justice must be permitted to take its course.

I speak for every member of the Veterans of Foreign Wars when I say again, we thank you for the privilege of appearing here before your distinguished Committee. I extend the commendation of our entire membership for the dedicated work you are doing for the veterans of this nation. You have been our great ally and influential friend in maintaining existing veterans programs and liberalizing and establishing new ones. These V.F.W. leaders who are with me today share my own personal gratitude.

It is also hoped that this meeting has shed further light on the legislative process for these 53 young patriots who are our Voice of Democracy winners.

We look forward to visting with each of you at our annual Congressional Banquet at the Sheraton-Park Hotel tomorrow night. We will be especially honoring one of your distinguished colleagues, the Chairman of the House Committee on Appropriations, the Honorable George Mahon, of Texas. He will be the eleventh recipient of our annual Congressional Award for outstanding service to the nation.

The dinner will begin promptly at 7:00 p.m., with a reception starting at 6:00 p.m.

THE 50TH ANNIVERSARY OF COLUMBIA SCHOLASTIC PRESS ASSOCIATION

Mr. KENNEDY. Mr. President, this year, the Columbia Scholastic Press Association is celebrating its golden anniversary. I am pleased to take the Senate floor today to honor the association on this significant occasion and to commend it for its extraordinary half-century of achievement and contribution to American life and letters.

Over the years, the association has compiled an outstanding record of service to student journalism. Generations of professional journalists have found an early training ground in the association's programs, workshops, and competitions. Today, the association is the best-known school press organization in the country engaged in training programs for student editors. Its annual conventions have attracted nearly 200,000 students and their advisers, from every State in the Union.

This Thursday, on the campus of Columbia University in New York City, the association begins its annual convention, whose theme this year is "Looking Forward." I know that all Members of the Senate will join me in congratulating the association on this historic anniversary, and in wishing it well as it looks forward at the beginning of its second 50 years.

Mr. President, I ask unanimous consent that there may be printed in the RECORD a brief description of the associa-

tion prepared by the Office of Public Information at Columbia University, as well as the text of the address which I delivered at the association's convention last year.

There being no objection, the description and the text of the address were 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 evaluations 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 delegates and later returned 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.

ADDRESS OF SENATOR EDWARD M. KENNEDY, COLUMBIA SCHOLASTIC PRESS ASSOCIATION, 49TH ANNUAL CONVENTION

NEW YORK CITY,
March 17, 1973.

I am honored to be here today to address the delegates to this annual convention of the Columbia Scholastic Press Association. Year after year for nearly half a century, you and the generations of young editors who preceded you have come together from schools and colleges around the country and around the world for these annual sessions of learning and exchange in the art and science of journalism. The thousands of school newspapers, magazines, and yearbooks you represent are a living public tribute to the energy and vitality of American students in every corner of the nation. I welcome the opportunity to share my views this afternoon with so many outstanding student leaders and educators in American academic life, especially in our secondary schools.

Not all of you, I know, will go on from here to professional careers in journalism. For those who do not, the skills you have learned already in your high school and college training are tools that will serve you all your lives, whatever career you follow. But, for those who do go on to careers in journalism, you are entering one of the most important professions in public service—the service of the people's right to know.

President John F. Kennedy believed that public service was the highest calling in a democracy, and he also believed that journalism was one of the highest forms of public service. Journalism was his early love and first career. In fact, if he had not won his initial race for the House of Representatives as a young returning veteran in 1946, he almost certainly would have become a journalist.

Like all of you here today, President Kennedy loved to write, and he found an early strong attraction to student journalism. At Choate, he served on the yearbook staff, and later, as an undergraduate, he worked for the Harvard Crimson.

And then when World War II was over, he went to work for the New York Journal American. As a young reporter in 1945, he was assigned to cover three of the most historic events of that post-war year, events that shaped America and the world for a generation and beyond.

In April and May of 1945, he covered the United Nations Conference in San Francisco, reporting on the historic meetings at which the groundwork for future international cooperation was laid.

In June and July of 1945, he covered the famous election in Great Britain. A month before it happened, he filed a dispatch forecasting that Winston Churchill would be defeated by Clement Atlee.

And later, at the end of July that year, he covered the historic Big Three Conference in Potsdam that set the future course of postwar Europe.

Then came the Massachusetts Congressional primary in the spring of 1946, when John Kennedy took the fork in the road that led to his career in public life. He never forgot the love he had for journalism and writing. And down through the years, the interest and tradition he established has always been honored and encouraged by our family.

In fact, we are proud to be part of a major recent step that continues our long-standing interest in high school journalism. Earlier this week, as many of you know, the Robert Kennedy Foundation in Washington, established five years ago to carry on the ideals my brother stood for, took action that holds great promise for those who will follow in your footsteps. The Foundation has launched an independent national Commission of Inquiry into High School Journalism, to be composed of 25 men and women experienced in the fields of education, journalism and youth affairs. Beginning next week in San Francisco, the Commission will hold public hearings and discussions in many different parts of the country, designed to produce a comprehensive study of the problems and potential of high school journalism in America.

Three inquiries the Commission plans to undertake are of special interest:

The first will be into the serious problem of minority opportunity and access in the field of high school journalism. Too often a school newspaper or yearbook or magazine is the private preserve of the scholastic elite, with the top positions reserved for students who earn A's in English. Automatically, this selection process has worked unfairly against black and Chicano and other high school students whose abilities are waiting to be tapped, whose contributions can be massive on issues that are basic not only to the school, but to the community as well,

The second area of inquiry will be the scope of free expression in student journalism, the degree, if any, to which school authorities should control the tone and content of high school publications. In this area, as in so many others, I believe that we should view high school journalism as a process of education, not probation. We need to encourage the maximum possible expression of ideas and opinions, so that high school students are free not just to agree with conventional policy and standards, but free to disagree, free to be wrong as well as right.

The third major area of the Commission's inquiry will be an effort to suggest some new directions in the role and function of high school journalism. For every school newspaper in which interference with student editors is an issue, there are dozens more so dead that controversy would be welcomed as a spark of life, a sign that the publication is alive and well, still relevant to students, still raising issues that matter to the school. In this sense, I think there can be a "new" journalism in high school education, a counterpart to the breakthroughs in so many other areas of education in recent years.

To a great extent, of course, these issues are not restricted to high school journalism, but are deeply felt in the world of professional journalists as well. The controversy over access and opportunity is a growing problem for managing editors of almost every publication in the country. A recent study by the American Society of Newspaper Editors reported that, of the professional journalists in America today, all but three-quarters of one percent are white, a situation that is a national scandal and disgrace.

The controversy over official interference with reporters' rights is also very real today, having risen to its highest pitch since the infamous Alien and Sedition Acts at the end of the 18th Century.

The men who wrote freedom of the press into the Bill of Rights understood the value of free expression in a democratic society. They believed, as Oliver Wendell Holmes and Louis Brandeis so eloquently put it, that the only measurement of truth is its ability to get itself accepted in the competition of the marketplace, where ideas can test their value in free and peaceful combat. Our founding fathers believed that freedom to think as you will and speak as you think are indispensable to the discovery and spread of truth. They believed that public discussion is a political duty, that the greatest menace to freedom is an inert or apathetic people.

What would those who wrote the First Amendment have said about freedom of the press today, when the modern scourge of journalists is no longer the deadline against which they write, but the subpoena they may receive from Federal, State or local prosecutors if they write too well or their stories strike too close to home? What a travesty of the First Amendment and basic justice it is for the Administration to hide its own transgressions behind an unprecedented new expansion of executive privilege at the very moment it refuses to honor the ancient and long respected tradition of newsman's privilege.

As high school and college journalists, probably none of you has spent a night in jail for defending the freedom of your profession. But I suspect that over the past three years you may have begun to feel increasingly exposed and vulnerable—perhaps even to the distressing extent that the appeal of a future career in journalism looks less attractive now than when you joined your school or college paper.

For nearly two hundred years, ever since the First Amendment and the Bill of Rights were ratified, reporters and prosecutors have coexisted without the need for federal laws to protect their basic freedoms. Throughout our history, reporters have enjoyed a de facto privilege from subpoena in grand jury proceedings, a privilege of the sort traditionally afforded to doctors, lawyers, priests, husbands, and wives, and others in society whose special relationships of confidentiality have long received the generous protection of the Constitution and the law.

Yet, today in Congress, one of the major pieces of legislation we are now considering urgently is a bill to give reporters precisely the sort of freedom we thought they always had, Senator Alan Cranston of California and I are proposing a comprehensive bill to give all reporters, including high school and college journalists, an absolute and unqualified immunity from the reach of unfair law enforcement tactics. The protection would apply before grand juries and every other agency of government, Federal, state or local, before all branches of government, legislative, executive, or judicial, and in all proceedings, civil or criminal. I see no need whatever to allow a situation to continue in which a journalist is forced to become an unwilling investigator for a local prosecutor, in which the New York Times becomes simply the Manhattan office of the FBI.

In the present debate, nothing is more misleading than the suggestion that the issue is a choice between requiring reporters to testify or letting criminals go free. The question is not whether we shall have privileged news or unprivileged news, but whether we shall have more news of less news. The public itself will be the greatest loser if the media are compelled to open their files and notebooks at every lawyer's whim.

To some extent, we already know the impact of the current crisis. Reporters destroy their notes, rather than keep them in a file that could be subpoenaed. Sources of information the public ought to have are reluctant to come forward, for fear their identities may be disclosed. We know how hard the Department of Justice itself has fought in recent years to prevent the courts from disclosing names of informers in criminal proceedings. Why, then, is the Department so quick to want reporters to disclose their sources?

One thing we know much less about, however, is the effect these darkening storm clouds over the First Amendment and other issues are having on the career, choices of young men and women like yourselves.

The sudden barrage of subpoenas sprayed on professional reporters throughout the country in recent years is bad enough. But it is even worse if the new oppressive atmosphere is deterring young men and women like yourselves from entering careers in journalism.

Today, on many different issues, we are only beginning to understand the ominous impact that the government's short-sighted social policies may now be having on generations of future students in schools and colleges around the country. How many engineers are we losing because the Administration has down graded science and technology? How many Nobel Prizes will not be won ten or twenty years from now by American physicians, because enthusiastic young men and women doing research in high school laboratories can already see the handwriting on the wall, in the budget cuts for health? We can't afford those cuts. America has the finest medical research of any nation in the world today, and I want to keep it that way tomorrow.

The same is true of journalism. How many Pulitzer Prizes will not be won because high school and college editors like yourselves are abandoning journalism for professions less vulnerable to the intrusion of government's heavy hand? America has the finest tradition of freedom of the press of any nation in the world today, and I want to keep it that way tomorrow.

As you and I both know, the issue over the First Amendment is only a symptom of the basic issues that divide our society in many respects today. There are no simple remedies to heal our deep divisions over foreign and domestic policy. There are no easy answers to the difficult questions we face. However much we may be troubled by an issue, we cannot yield to the blandishments of those who play on fear and prejudice, or who mislead the people in the hope that serious problems will simply go away.

The answer to crime cannot be capital punishment. Yet, on many issues, not just crime, capital punishment seems to be the only answer the Administration ever has.

I disagree profoundly with this approach.

The answer to equality of education cannot be death for the inner city. The answer to poverty cannot be death for the Office of Economic Opportunity. The answer to the Federal budget deficit cannot be death for social programs helping citizens too poor or weak to help themselves.

On other issues, the answers are no easier. The answer to amnesty cannot be "never." The answer to unrest in Asia cannot be arms for Pakistan. The answer to health reform cannot be cuts in Medicare for the elderly. The answer to tax reform cannot be "not now, not my loophole." The answer to equal justice and evenhanded application of the laws cannot be neglect of the average citizen, and special benefits for the special interests.

Above all, the answer to corruption in government cannot be a cover-up that goes by the name of executive privilege. President Eisenhower knew how to handle the issue of integrity in government. In 1958, Sherman Adams, the number one assistant in the White House, was allowed to testify in Congress on serious charges raised about his conduct. There was no question about executive privilege then, because President Eisenhower knew how important it was for people to keep their faith in government. I say, President Nixon ought to follow that example. He ought to allow John Dean to go before the Senate to answer all the serious questions raised about his handling of confidential FBI reports in the Watergate investigation.

In all the areas where we need better answers for our policy at home and overseas, we also need the vision and inspiration of young men and women like yourselves. More often than not, on some of the most difficult challenges we have faced in these recent painful tragic years, it has been the young men and women of America who have seen most clearly the direction America ought to take, who have led the nation forward.

On the overriding issue of our time, the Vietnam war, it was the voice of students on high school and college campuses across the country that first sounded the alarm. On the crucial issue of race and ending segregation, you were there for the freedom rides and the March on Washington at the beginning of the Sixties. You were there for Vista and the Peace Corps, too, always at the ramparts for equality and human rights, beacons summoning those who had lost their way in the fog of America's complacency, neglect, and outright prejudice.

And you must be there today, on issues like homes and schools, jobs and health, crime and drug and gun control, and every other aspect of our policy. That's where you belong, and I'm here to say that, as never before in recent years, Congress is ready to go to work to achieve the goals we share.

When Robert Kennedy spoke to the students at the University of Capetown in South Africa on his visit there in 1966, he put the challenge this way:

"Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring, these ripples build a current which can sweep down the mightiest walls of oppression and resistance."

That is the message I would leave with you today, because it symbolizes the best in American life, the real message of 1973—not the negative self-defeating message of despair and alienation that is so widely heard today, but the positive, self-fulfilling message of hope and progress and opportunity, the message that people must get involved, that individuals can make a difference.

That's the challenge youth must face. You did not make the world you live in, but you have the chance to change it. With the 18 year old vote now in force, you and millions like you around the country have a powerful, new voice to bring back confidence in government, to shape the future of America in your community, state and nation.

If in this new era, we stand against the people, if we give them war instead of peace, if we stand with the rich against tax reform, with the insurance industry against health reform, with the auto industry against pollution and safe cars, with the highway lobby against mass transit, with the gun lobby against safe streets and gun control, then we do not understand the direction of our country. We deny our heritage and our history.

You and I and all the other citizens of this country are stewards of the sacred rights and traditions handed down to us by the greatest architects of freedom the world has ever known, the men who met at Independence Hall in Philadelphia in 1776.

When they signed the Declaration of Independence they launched a great experiment that changed the course of history. Three years from now, when we meet in every city hall and village green across the country to celebrate the two hundredth anniversary of their historic action, we want to be able to look the founding fathers in the eye and say that the experiment they began is still alive and well, that we have been faithful to our stewardship, that the promise of America is being kept.

A TROUBLED ALLIANCE

Mr. HUMPHREY. Mr. President, I would like to call to the attention of my colleagues an editorial in the New York Times of March 13, 1974, entitled "Transatlantic Slanging."

This editorial properly expresses concern over the state of America's relations with its European allies. I share the concern expressed by the New York Times

and I believe we are witnessing a serious deterioration in the political, moral, and economic strength of the NATO Alliance as a result of the constant level of high-level feuding over issues of great import to the peoples of Western Europe and the United States.

To be sure, both the United States and various European nations have been guilty of behavior which annoys, and frustrates its allies. Both the United States and our allies have from time to time failed to consult with one another; have taken steps which exacerbate tensions with each other; and have unfortunately allowed purely national concerns to come before the common interest of the Alliance as a whole.

Honest differences of opinion should not be glossed over or covered up. And substantive disagreements over fundamental policy issues must be resolved. But there can be no place for the rancor and the public hostility which is taking the place of the deliberative calm needed when legitimate differences arise.

I believe that the administration should realize that many Members of Congress are extremely concerned with the current trend in European-American relations. The policy differences caused by the energy crisis are being swept into a type of emotionalism which is being fueled by intemperate statements on both sides of the Atlantic. To say the least, this type of atmosphere is totally counterproductive to the interests of all concerned.

If the Atlantic Alliance is indeed the cornerstone of U.S. foreign policy those who formulate our foreign policy must stop giving the impression by word or deed that we are anti-European.

Ever since I came to the Senate, I have observed that the Soviet Union has one of its primary goals the creation of divisions and strife within the Atlantic Alliance. Despite the end of the cold war, despite the progress we have made toward détente, I do not seriously believe that the Soviet Government has altered this fundamental policy objective. It is indeed ironic and unfortunate that the Government of the United States seems to be unwittingly aiding the Soviets in the attainment of this policy objective. Our close relationship and alliance with Western Europe does not stand in the way of a better and more constructive policy relating to the Soviet Union. We should pursue a course of détente with the U.S.S.R., but we must not permit any act of ours to erode or weaken our alliance with NATO and other European friends.

The time has come for self-restraint. The time has come for a constructive dialog at the highest level with our European friends. The time has come for the squabbling to end. The damage must be repaired—not glossed over with pious platitudes. But there must be found an informal mechanism to deal with legitimate differences in a framework which is not destructive.

Mr. President, I ask unanimous consent that the editorial in the New York Times be printed in the RECORD.

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

TRANSATLANTIC SLANGING

It is difficult to understand why President Nixon and his Secretary of State are allowing the differences between the United States and its European Common Market allies to be exacerbated into a verbal brawl. The latest salvos can only make it harder for Washington to get wholehearted European Community backing—leaving aside the hopeless case of France—for a collective approach to the oil producers or even for Middle East peace efforts.

Secretary Kissinger's remark, in briefing wives of American Congressmen, that "there have been, very rarely, fully legitimate governments in any European country since World War I," is incredible—even though he apparently thought at the time he was speaking off the record. European parliamentary democracies have every right to respond that they require no lessons in "legitimacy" from the Administration Mr. Kissinger serves.

Mr. Nixon raised the squable to heads-of-government level with a letter to Chancellor Brandt of West Germany, complaining of inadequate consultation prior to the Common Market's offer of far-reaching, long-run cooperation with twenty Arab countries, and asking postponement of a meeting scheduled for today in Brussels on a new declaration of principles regarding the relationship of the United States with the European Community. An American official concedes that the President's letter was couched in terms "franker than the usual diplomatic language;" Europeans call it "harsh."

The Community's offer to the Arabs may have come at an inopportune time, and conceivably could damage the laudable effort now under way by all major oil-consuming nations except France to develop a common approach for a conference with oil-producing states. What baffles the Europeans—particularly the Germans who currently hold the presidency of the Community—is the charge that the United States was inadequately consulted.

Bonn insists that Washington was kept informed throughout the preparation of the Community's Arab initiative. Europeans suspect that what they regard as verbal overkill in Washington's reaction represents parts of an Administration effort to shock the allies into a greater measure of cooperation with American objectives, whether on oil, NATO's future or United States relations with the Community.

Both White House and State Department moved yesterday to repair the damage done by Mr. Kissinger's denigration of democratic Europe before the Congressional wives. President Nixon reiterated through a spokeman that the Atlantic Alliance was "the cornerstone of U.S. foreign policy." Mr. Kissinger, acknowledging "real and serious" differences within NATO, declared in a statement, "but we are determined to resolve them with patience and goodwill."

Both qualities are badly needed and long overdue on both sides of the Atlantic relationship. No matter how maddening France, in particular, may be, such an approach on Washington's part will go further toward realizing Administration goals in Europe than implying, as Mr. Kissinger did Monday, that the most recent show of independence by the Community reflects "basic hostility to the United States."

DEATH OF JESSE A. HELMS, SR.

Mr. THURMOND. Mr. President, while the Senate was in recess last month, sadness came to one of our distinguished colleagues. Senator JESSE HELMS of North Carolina lost his father.

I mention this, Mr. President, for two reasons. First, because we extend our deepest sympathy to our colleague and his family. But there is another and equally important reason: Senator HELMS' father was a remarkable American who, in a very real sense, typifies all that is great and good about this blessed land in which we are privileged to live.

Senator HELMS' father, Jesse A. Helms, Sr., was a legend in the city of Monroe, N.C. For a half century, his career was devoted to protecting the lives and property of the citizens of that community. Mr. Helms served as fire chief and police chief of Monroe during his career—and at one time, he served in both capacities simultaneously.

However, that is not the important aspect, Mr. President. What is important is the way in which he served. When memorial services were held in Monroe on February 12, the city virtually shut down to pay homage to a quiet, loving, compassionate man who had won the hearts of his fellow townsmen. They paid tribute to a man who had enforced the law with patience and understanding, a man who throughout his career had constantly gone the second mile with thousands of citizens in showing them that it was far better to be law-abiding instead of violating the law.

A Charlotte television station recited some of the deeply personal tributes paid to "Mr. Jesse," as he was known. One man recited the instance when Mr. Helms had stopped him for a traffic violation. The man said:

> That was 30 years ago, and I had been drinking. Mr. Jesse could have locked me up for drunk driving. Instead, he parked my car, locked its doors, and took me home. He sat with me for an hour or more. He told me that I had a fine wife and family, and that I would ruin myself if I continued to drink whiskey. He asked me to promise him that I would never drink again—and I never did. By that simple act of kindness, Mr. Jesse changed my life.

Mr. President, citizens of Monroe will tell you that there is no way to count the number of times that "Mr. Jesse" fed the hungry out of his own pocket, or sat with the unfortunate in times of trouble, and prayed with them in times of distress. The greatest tribute that can be paid any man is that he has the capacity for love of his fellow man. It is no wonder that the father of our distinguished colleague was so widely loved and respected. He was a credit to law enforcement. He was a man who loved his God, his country, his family, his friends, and his work.

So it was fitting, Mr. President, that when "Mr. Jesse" died in his sleep on February 11, his passing was mourned. He had devoted his life to law enforcement and public service in a small town. However, his deeds created a beneficial impact far beyond his realm. The measure of the esteem in which he was held was shown by the gathering at his death of hundreds of friends and officials, including the Governor of North Carolina, to pay their last respects. The life that "Mr. Jesse" lived will be his own greatest monument.

Mr. President, I know also that it must have given Chief Jesse A. Helms great satisfaction when his son, JESSE A. HELMS, Jr., became a U.S. Senator where he is making such an outstanding record. I look upon Senator HELMS not only as a personal friend but as one of the great men of this country, one whose views are reasonable and whose philosophy is sound.

Mr. President, I ask unanimous consent that an article from the Monroe, N.C., Enquirer-Journal of February 11, 1974, entitled "Jesse A. Helms" be printed in the RECORD.

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

JESSE A. HELMS

Jesse A Helms, 80, of 109 North Westover Drive, one of Union County's best known citizens, died early this morning in Union Memorial Hospital after a short illness.

He was born July 19, 1893, in Union County, son of Joe C. and Sarah Ellen Mosser Helms. He served the City of Monroe in various capacities for over 50 years as: Police chief, fire chief and deputy sheriff. He was city fire marshal at the time of his death.

Helms was a Monroe Civitan with many years of perfect attendance. He was president of the N.C. Firemen's Association's 25-year club; honorary member of the N.C. State Firemen's Association, member of the International Fire Chief's Association, Southeastern Association of Fire Chiefs, and honorary member of the State of North Carolina Sheriffs' Association.

He was also a member of the Monroe Masonic Lodge No. 244 A.F. and A.M., the Oasis Temple, the Union County Shrine Club, and the First Baptist Church.

His first wife, Mrs. Ethel M. Helms, died in 1966. He is survived by his wife, Mrs. Ethel Sell Helms; two sons, Wriston A. Helms of Pascagoula, Miss., Senator Jesse A. Helms, Jr., of Washington, D.C.; one daughter, Mrs. R. E. McNeely, Jr., of Monroe; seven grandchildren and three great grandchildren; also two sisters, Mrs. Estelle Keziah and Mrs. Cordie Brantley, both of Monroe.

Funeral service will be Tuesday, Feb. 12, at 11 a.m. at the First Baptist Church, conducted by Rev. Joe S. Larrimore. Burial will be in Lakeland Memorial Park with Masonic rites.

Pallbearers will be members of the Monroe Masonic Lodge. Honorary pallbearers will be: city officials, the sheriff's department, the Monroe Fire Department, Monroe Police Department, and members of the Men's Bible Class of the First Baptist Church.

McEwen's is in charge of arrangements.

GUATEMALA AT CROSSROADS

Mr. KENNEDY. Mr. President, Guatemala is on a tightrope today between less democratic rule and a more free and open political society.

The election that took place less than 2 weeks ago began as an admirable effort to take a firm step toward greater political liberty. The participation of the Christian Democratic Party in the election and the unfettered opportunity given its candidate to express his views represented a new willingness to permit the voters to have a legitimate choice for the first time in the past two decades.

But then at the last moment, those in power refused to permit the outcome of the election to reach its final conclusion. The initial returns and reports from a wide variety of official and unofficial sources showed a victory by the Christian Democratic candidate Rios Montt. Unfortunately the current government immediately ceased issuing election returns, dropped a heavy blanket of secrecy over the entire electoral process, and finally announced that preliminary returns showed that the government candidate had won.

If this were to occur, it would be a tragic step backward for the people of Guatemala and it would once again seem to push the nation toward a more repressive and therefore more violent society. Guatemala already has had its full share of violence, by terrorism and by counterterrorism of the "Mano Blanco."

Already, recent press reports talk of clashes between students and campesinos trucked into the capital by the government. Student demonstrations broken up by government police have yielded at least three persons seriously wounded. And the threats of further violence are increasing.

Many had looked with great hope at the progress of this Presidential election campaign. Now it appears that hope is to be swept away.

It is in that context that one is disturbed by the silence of the administration, both publicly and, from all accounts, privately as well. The scuttling of the democratic process is one which should at least draw some expression of concern by our diplomats.

Mr. President, I ask unanimous consent that recent articles on the subject of the elections in Guatemala be printed in the RECORD.

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

GUATEMALA VOTE BRINGS TURMOIL

GUATEMALA.—A week after presidential elections in both government and opposition candidates claimed victory, daily street clashes between leftist students and policemen are keeping this Central American republic in a state of political turmoil.

So far three people have been seriously wounded and more than 100 arrested by policemen using clubs, tear gas and sometimes firearms to break up groups of students protesting what they charge was fraud by the Government.

The preliminary official election results give the Government candidate, Gen. Kjell Eugenio Laugerud García, 41.2 per cent of the 640,000 votes cast. Gen. Efraín Ríos Montt of the National Opposition Front 35.7 per cent and Col. Ernesto Paiz Novales of the Revolutionary party 23.1 per cent.

The left-leaning National Opposition Front, which is led by the Christian Democrats, claims that General Ríos Montt was a clear winner. It is said to be hoping that the disturbances will cause the military to intervene to reverse the official result.

THE ARMY'S OPTIONS

But local political sources indicated that the army was more likely to press for new elections rather than risk a direct confrontation with the country's President, Gen. Carlos Arana Osorio.

Other options open to the army high command include the direct assumption of power or endorsement of General Laugerud García as the President-elect.

Before the elections the Defense Minister Gen. Fausto David Rubio, said on television that the armed forces would guarantee the fairness of the elections. Since the results came in, however, he has made no public statement.

"Until the army defines its position, the situation will continue to deteriorate," a retired politician said. "The high command knows that Ríos Montt won, but it wants to pick the right moment to step into the ring."

LAST COUP IN 1963

The last coup d'état here took place in March, 1963, when Col. Enrique Peralta Azurdia overthrew President Miguel Ydogoras Fuentes. Free elections were held in 1966 and 1970, but the army has retained its political importance. All three candidates last Sunday were military officers, chosen because of the army's reluctance to accept a civilian as President.

While remaining the final arbiter of Guatemalan politics, the army has been able to reduce its ties with particular political groupings. An important consequence of this has been its steady separation from the right-wing civilian coalition that nominated General Arana to the presidency in 1970.

For the army high command there is little to choose between the three candidates. All are middle-of-the-road army professionals and the two generals have even held posts during the Arana Administration.

General Laugerud is certainly more to the center than the right-wing coalition that nominated him and General Ríos Montt, has demonstrated that he is not a puppet of the more radical groups that back him. The prospect of a Rios Monti administration is therefore not entirely unacceptable to the army.

CONGRESS TO ACT

The Congress is examining the detailed election results and expects to proclaim the next President formally some time next week.

The Opposition maintains that the detailed returns, signed by party delegates at every election booth, differ drastically from these announced by the Government. Some opposition sources have therefore expressed the hope that, despite the government majority in Congress and the apparent fraud in computing the preliminary results, General Ríos Monti might still be proclaimed the winner.

If neither candidate obtains an absolute majority, as seems likely, the Congress will have the authority under the Constitution to choose between the two front-runners. As a result, General Laugerud could still be named President even if General Ríos Monti comes out on top.

"There is no precedent for the runner-up to be picked, although it would be strictly legal," one diplomat said. "But the support for Ríos Monti is so large and the anti-Government sentiment so strong, that it would be risky to name Laugerud."

"This is a country with a terrible tradition of violence," the diplomat went on, "and it would be dangerous to ignore the warning signal implicit in the Government's defeat."

[From the New York Times, Mar. 8, 1974]

GUATEMALAN LEFT THREATENS STRIKE

(By Alan Riding)

GUATEMALA.—Guatemala's left-leaning opposition has vowed to paralyze the country by strikes of nonviolent resistance if the apparent victory of its candidate in the Presidential election of last Sunday is not upheld.

Although the conservative Government has already proclaimed its own candidate as President-elect, opposition sources said they hoped that mass protests would lead to a military intervention to reverse the official election results.

Government, military and well-placed diplomatic sources have all supported in private comments the general impression that the authorities resorted to extensive fraud to in-

sure the victory of their candidate, Gen. Kjell Eugenio Laugerud García.

The opposition's offensive began last night with a series of protest meetings in different parts of town. Riot policemen were called out to stop the demonstrations and, by nightfall, tear-gas fumes hung heavily over downtown Guatemala City. Several students were arrested, but no one was seriously injured.

In the next few days, the opposition hopes that the street clashes will be complemented by a wave of strikes. The Powerful National Confederation of Workers has given its support to the opposition, while electricity workers are reportedly planning strike action.

"We want to build up the protests slowly until we have a general strike," one opposition leader said. "If the army sees just how unpopular the Government is, I think it will intervene in our favor."

The Government of President Carlos Arana Osorio, himself a retired general, has in turn moved quickly to smother any organized protests for fear of losing control of the delicate situation.

After long, unexplained delays in the publication of election returns, the Government-controlled electoral registry last night suddenly announced completion of final results.

General Laugerud Garcia was said to have won 260,313 votes, or 41.2 per cent of the total; General Efrain Ríos Montt of the Nation Opposition Front 225,586 votes, or 35.7 per cent, and Col. Ernesto Paiz Novales of the middle-of-the-road Revolutionary party 145,-967 votes, or 23.1 per cent.

The National Opposition Front contends that its candidate won 44.8 per cent of the vote, General Laugerud Garcia 33.6 per cent and Colonel Paiz Novales 21.6 per cent.

But the Government has warned that it is subversive to give out misleading information on the election results and has already closed down three radio stations that insisted on broadcasting a protest message from General Ríos Montt.

More than 60 people have been arrested by the police during the last 48 hours.

So far, at least, the street clashes have not involved firearms. But the Government and the opposition both control tough shock troops, which are mobilizing.

Last night, at a heated meeting at San Carlos University in the capital, militant students asked General Ríos Montt to provide them with arms with which to fight the Government. But the 47-year-old general, who until eight months ago was army chief of staff, refused to encourage them and said that the Government's violence should be met with intelligence, not arms.

Earlier, the official Vice-Presidential candidate, Mario Sandoval Alarco, a much-feared man who has a private army of gunmen and bodyguards, threw down a challenge to the opposition to take the battle to the streets, where, he said, "We will be waiting to meet them and show them that we will not tolerate blackmail and threats."

[From the Washington Post, Mar. 8, 1974]

POST-VOTE VIOLENCE

GUATEMALA CITY.—Students holding a wake for three of their number killed Monday were fired upon Wednesday night, and their demonstration was broken up by rightist civilian supporters of the uniformed police. One injury was reported.

The three students found dead on a roadside were sent by the opposition Christian Democratic Party to witness last Sunday's election in a remote rural area.

Efrian Rios Montt, the party's candidate, threatened to call strikes unless alleged fraud is corrected. Another retired general, Kjell Laugaraud was proclaimed winner though only 65 per cent of the votes were counted. He was backed by outgoing President Carlos Arana Osorio.

[From the Washington Post, Mar. 6, 1974]

CANDIDATE OF RULING PARTY LEADS IN GUATEMALA COUNT

(By Bruce Handler)

GUATEMALA CITY.—Kjell Laugerud, a U.S.-trained former army general who is the candidate of the governing party, emerged today as the apparent winner in Guatemala's confused presidential election.

Opposition candidate Efrain Rios Montt, who had claimed victory yesterday, accused the government of "fraud" to protect unnamed "big economic interests." He called on supporters to "peacefully resist" the installation of Laugerud as the next leader of this poor Central American republic of 6 million people.

The official vote count from Sunday's balloting—with partial returns from 203 of 325 districts, but complete totals for the populous capital—gave Laugerud 41 per cent, Rios Montt 38 per cent and a third candidate 21.

Rios Montt contends, however, that the true figures give him 52 per cent, compared to 31 per cent for Laugerud. Rios Montt, 47, also is a retired general, representing the mildly left-of-center Christian Democratic Party.

Laugerud, 43, whose father immigrated to Guatemala from Norway, was the handpicked candidate of outgoing President Carlos Arana Osorio, a tough anti-Communist army general who was elected in 1970. Laugerud, a tall, thin man with traces of Indian features in his face, has pledged to carry on Arana's modestly successful drive for political stability and economic progress.

Three-fourths of the people of Guatemala are illiterate. Average income is $300 a year. Until recently, Guatemala's history was one of constant violence, coups and dictatorship.

Government backers have proclaimed Laugerud as president-elect, but the candidate himself has made no public statement.

Rios Montt, on the other hand, was angrily articulate. "The government is altering all the election results," he complained to newsmen.

"We tried to do things legally—by means of the vote. But due to the government's ignorance and immaturity, the peoples' will could not be carried out," he said.

Rios Montt said he would not encourage violent resistance, "we have no strikes planned, no demonstrations, no blockades. When that happens people always get killed. I do not want bloodshed.

"But I am a soldier, and I cannot abandon our peoples' cause.

All radio stations had to join a government network which today carried official returns interspersed with music. Monday the reporting of returns was suspended.

During the campaign, Laugerud supporters made accusations that Rios Montt was a Communist. Laugerud warned that it would be dangerous to vote for Christian Democrats, whom he blames for "opening the door" to socialism in Chile in the 1960s.

Rios Montt pointed out that Communism has been against the law here for 20 years and that the current government recognizes the Christian Democrats as a legal party.

Laugerud has said he "absolutely believes" in the democratic system, as opposed to socialism and communism. He has pledged to improve living conditions for the impoverished Mayan peasant farmers.

Laugerud joined the army as a cadet at 15. He rose quickly through the ranks and later became chief of staff and finally defense minister. He went through officer's training courses at Ft. Benning, Ga., and Ft. Leavenworth, Kan.

If no candidate gets an absolute majority in the official vote count, the election goes to Congress, which is expected to select the man who polled the most popular votes.

[From the New York Times, Mar. 6, 1974]

GUATEMALAN SAYS ELECTION IS RIGGED

GUATEMALA.—The main opposition candidate for President said today that he had won a absolute majority in the voting last Sunday, but warned that the Government was preparing to declare its own candidate the winner.

At a news conference this morning, Gen. Efrain Ríos Montt, the candidate of the Christian Democrat-led National Opposition Front, said, "My historic responsibility and my honor as a soldier oblige me to reject emphatically in the name of the people the fraud that is being attempted."

He then called for "peaceful resistance" to the Government, but added that "to hold a public demonstration now would be taking the people to their death."

GOVERNMENT'S FIGURES

The Government announced this morning that so far Gen. Kjell Eugenio Laugerud Garcia of the ruling right-wing coalition had won 175,940 votes, General Rios Montt 145,-840 and Col. Ernesto Paiz Novales of the centrist Revolutionary party 85,941.

"According to the National Opposition Front, however, General Rios Montt has so far won 335,427 votes, General Laugerud Garcia 201,712 and Colonel Paiz Novales 108,-992. Even Government and army sources said privately that General Rios Montt had won.

As their results came in yesterday, there was a moment when the Government seemed willing to accept defeat. It stopped a march on the opposition-held City Hall by some 3,000 armed peasants and lifted its control of radio and television transmissions.

THE SIGNS CHANGE

Later in the day, however, reportedly after the ruling National Liberation Movement and key business groups had applied pressure on the Government, the signs once again began to point to victory for General Laugerud.

President Carlos Arana Osorio received General Rios Montt last night and assured him that the electoral results would be respected. Now, however, it seems that the official results will show General Laugerud to have won.

So far the army has kept clear of the political crisis, but its senior officers have been meeting almost without interruption.

Military sources indicated that key commanders recognized that General-Rios Montt had won the election, but they were apparently reluctant to interfere directly, even if only to guarantee the fairness of the elections.

In the absence of military intervention, a new wave of political violence seems inevitable here, where it has been continual for the last 20 years.

President Arana eliminated a strong leftist guerrilla movement through indiscriminate repression of all opposition groups in 1970 and 1971. Since then, however, the opposition has reorganized itself and may not be willing to accept its defeat without some response.

The government parties, on the other hand, have well-trained "shock troops," who may be used against the Opposition in anticipation of Leftist activities.

Already yesterday the Opposition mayor of the provincial capital of Cuilapa in the South of Guatemala, Victor Manuel Monterroso Granados, was murdered. Three medical students sent by the Opposition to supervise voting in the eastern department of Zacapa were found dead beside a highway.

[From the New York Times, Mar. 5, 1974]

OPPOSITION SEEMS VICTOR IN GUATEMALA

GUATEMALA.—A general representing the opposition appears to have scored a clear victory over two other military candidates

in Guatemala's Presidential election yesterday, but the Government has so far refused to concede defeat publicly.

In an atmosphere of mounting tension and uncertainty, the Government said that "unforeseeable circumstances" had delayed the announcement of final results.

But in private, Government sources conceded defeat as reflected in figures issued by a left-leaning opposition group, the National Opposition Front.

The front's candidate, Gen. Efraín Ríos Montt, has reportedly won about 49 per cent of the votes cast; Gen. Kjell Eugenio Laugerud García of the governing conservative coalition, about 34 per cent, and Col. Ernesto Paiz Novales of the centrist Revolutionary party, 17 per cent.

At present, the two leading parties are exchanging accusations of fraud. The reaction of the armed forces is, of course, crucial.

The current President is a retired army officer, Gen. Carlos Arana Osorio, who seems solidly committed to an official victory.

But many key army officers, having privately conceded the Government's loss, reportedly feel that the electorate's will should be respected. According to one source, an overriding consideration among senior officers is to preserve at all costs "the unity of the military institution" in the present crisis.

One of the partners of the governing coalition, the ultra-conservative National Liberation Movement, is believed to favor a wave of disturbances to prompt military intervention and thus prevent General Ríos Montt from taking office.

SUPPORT IS ARRANGED

This morning, the National Liberation Movement brought some 3,000 peasants, many armed with sticks and pistols, into the capital's main square to celebrate the Government's "victory." A speaker then urged the crowd to march on City Hall, which is an opposition stronghold, "to demand justice" from the Mayor. After several hours of tension, policemen dispersed the crowd.

But rumors of possible violence persists as most Guatemalan politicians and their followers are heavily armed.

General Ríos Montt, who has already proclaimed his victory, cabled President Araña this morning asking for an audience to discuss ways of preventing bloodshed in the next few days. So far he has received no answer.

Even followers of General Ríos Montt have been surprised by the apparent margin of his victory in the three-way race yesterday.

If he fails to win a majority, a runoff against General Laugerud is to be held in Congress, where the Government enjoys a clear majority.

[From the Washington Post, Mar. 5, 1974]

GUATEMALAN RESULTS WITHHELD

(By Bruce Handler)

GUATEMALA CITY.—Confusion and suspicion surrounded the outcome of Guatemala's general election, as the government stopped giving out vote totals at mid-morning, today.

Opposition Christian Democratic candidate Efrain Rios Montt declared himself the winner.

Early official returns from yesterday's voting showed government candidate Kjell Laugerud in the lead. Then the flow of results halted.

A third candidate, Ernesto Paiz Novales, seemed to be out of the running.

Both Rios Montt and Laugerud are recently retired army generals. During an animated presidential campaign in this poor, coffee-producing country of Central America, Laugerud's backers accused Rios Montt of being a Communist. Rios Montt, a former chief of staff, dismissed the charges as nonsense.

"Communist ideology" has been illegal here for 20 years. The Guatemalan armed forces do not allow suspected leftists to participate in the political system.

Rios Montt claimed 49 per cent of the vote on the basis of his party's tally of early returns. The Christian Democrats said Laugerud had 34 per cent.

The official vote count—in sharp contrast—with 165,000 ballots tallied, showed Laugerud with 43 per cent and 37 per cent for Rios Montt.

A telling sign that Rios Montt's own figures might have been closer to the truth was that official returns from Guatemala City, with 373 of 493 precincts checked, gave Rios Montt 56 per cent and Laugerud 28 per cent.

"We have won the election," Rios Montt, 47, a short trim man, beamed at a press conference. Later, speaking over a Central America radio hookup, he referred to himself as the "president-elect."

Rios Montt sent a telegram to President Carlos Arana Osorio—who openly had urged voters to back Laugerud—asking for an audience. The self-proclaimed victor said he wanted to avoid "bloodshed and public disturbances."

Laugerud, whose father was a Norwegian immigrant to Guatemala and whose first name sounds like shell, made no immediate public statement.

Some 5,000 farmers wearing straw hats and carrying machettes marched down busy Sixth Avenue this morning in a disorganized pro-Laugerud demonstration. Then they piled into the trucks and buses that had brought them to the capital and disappeared. Many observers charged that the government had arranged the show.

Complete election returns were not expected until late in the week. In contrast to Guatemala City, where a computer tallied the results, ballots from remote outlying areas had to travel by canoe and muleback to get to the nearest state capital.

About one-sixth of the registered voters live in Guatemala City.

The election was one of the most peaceful in this country's history. The last two presidents of Guatemala were chosen in more or less fair elections—unusual for a nation traditionally run by dictators and military juntas—though with Marxists excluded.

Arana, an anti-Communist ex-general who has brought internal peace and some economic progress during his four-year term, is slated to turn over power to his successor on July 1.

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

GUATAMALANS VOTE, WITHOUT TURBULENCE, FOR NEW PRESIDENT

GUATEMALA.—Some 700,000 Guatemalans voted in apparent tranquility but with little overt enthusiasm today for a new President from among three military candidates.

The Government candidate is a narrow favorite to win, but all three are expected to make a strong showing.

Despite the calm atmosphere—all the more notable because of Guatemala's recent history of political violence—there is underlying uncertainty about the reaction of the Government and armed forces to a victory of either opposition candidate.

The candidate of the ruling conservative coalition, Gen. Kjell Eugenio Laugerud Garcia, 44 years old, has repeatedly accused his main rival, Gen. Efrain Rios Montt of the National Opposition Front, of representing Communism.

General Rios Montt, 47 who was army Chief of Staff until last July, has in turn accused the Government of planning to block his victory, by fraud or even military intervention. The candidate of the middle-of-the-road Revolutionary party, Col. Ernesto Paiz Novales, 54, has also accused the ruling coalition of planning fraud.

According to sources close to the army, there is a clear division between those officers who favor victory for General Laugerud, even through fraud, and those who insist that the electorate's will be respected.

"The real story begins once the election results are known," a foreign diplomat said.

If no candidate receives an absolute majority, as seems probable, the present Government-dominated Congress will choose the winner from between the two leading candidates. One of the biggest political questions is whether Congress will endorse General Laugerud even if he runs second. Another is whether the army would accept such a decision.

[From the New York Times, Mar. 2, 1974]

ARMY HOLDS KEY TO GUATEMALAN ELECTION

(By Alan Riding)

GUATEMALA.—In a strange marriage of civilian democracy and military power, all three candidates in the presidental elections here Sunday are high-ranking army officers.

The unusual formula was worked out by Guatemala's three political groupings after the armed forces indicated privately that they would not accept a civilian successor to President Carlos Arana Osorio, a general, who cannot seek reelection.

As a result, this Central American republic, with its long tradition of political violence between civilian factions, has enjoyed one of the quietest election campaigns in its history.

But even with three army officers—two generals and a colonel—running a close race for the presidency, the armed forces are still in a position where they can either uphold or reject the choice of the voters.

MILITARY DIVIDED

According to sources close to the military, the officer corps is deeply divided between those who believe that the genuine winner should be recognized and those who favor victory for the official candidate at all costs.

This division may be emphasized if no candidate receives more than 50 per cent of the votes cast and a second election between the two leading vote getters must take place in Congress, where the Government has a clear majority.

The two opposition parties have already accused the ruling conservative coalition of preparing to secure its re-election by fraud. One opposition candidate has even said that on Monday the Government will declare a state of seige and suspend constitutional rights.

Tensions have risen with every new wave of rumors. The embassies of at least two Latin-American countries have reportedly collected bunk beds and food in case of disturbances next week.

Much of the nervousness comes from memories of Guatemala's recent political past. Four months before the 1966 elections, the left-leaning favorite, Mario Méndez Montenegro, was assassinated. His brother, Julio César, stepped into his place, won election and served as President until 1970.

During his stormy term, however, the country was continuously shaken by left-wing guerrilla activity. In 1968, the United States Ambassador John Gordon Mein, was gunned down in his car. On the eve of the March, 1970, elections, Foreign Minister Alberto Fuentes Mohr was kidnapped by leftist guerrillas. A few days later, the West German Ambassador, Count Karl Von Spreti, was kidnapped and murdered by a group called the Rebel Armed Forces.

The violence made victory easier for the law-and-order candidate, Arana Osorio, whose main campaign promise was to pacify the country.

Since then hundreds of leftist and even moderate opponents of the Government have been killed. Some have died in direct confrontations with the United States-trained

army; many have been murdered by a right-wing terrorist group known variously as The White Hand and An Eye for an Eye.

CHOOSING A CANDIDATE

In September, 1972, the Government was also blamed for the disappearance of the entire Central Committee of the Guatemalan Communist party.

Recently, however, political violence has sharply declined. Many Guatemalans attribute this to the growing strength of the army as an independent political force that has succeeded in controlling extremist civilians within the ruling coalition.

This new military predominance became apparent when the right-wing coalition—the ultra-conservative National Liberation Movement and the probusiness Democratic Independence party—came to choose its presidential candidate for Sunday's election.

The secretary general of the National Liberation Movement, Mario Sandoval Alarcón, a fervent anti-Communist who picked General Arana as the coalition candidate in 1970 because of his fame as a guerilla fighter, clearly hoped to become the official nominee. However, General Arana, in his joint role as President and Commander in Chief of the armed forces, obliged the coalition to nominate the Defense Minister, Gen. Kjell Eugenio Laugerud Garcia, 44 years old, as the candidate. Mr. Sandoval was given the second spot on the ticket.

The middle-of-the-road Revolutionary party, which was in power between 1966 and 1970, eventually chose Col. Ernesto Paiz Novales, 53, who recently served as Guatemala's Ambassador to Venezuela.

The left-leaning Christian Democrats formed a National Opposition Front with two smaller movements and nominated Gen. Efrain Rios Monit 47, a former army Chief of Staff who was exiled to the diplomatic post in Washington last summer because of his supposed liberal tendencies.

[From the Washington Post, Mar. 1, 1974]

GUATEMALA ELECTION QUIET

(By Bruce Handler)

GUATEMALA CITY.—Guatemala will choose a new President Sunday. Surprisingly, the general election is expected to take place with almost no gunfire and bloodshed, once an accepted part of the voting scene in this Central American country.

Three recently retired Army officers are running on similar platforms.

All are against Communism, crime and inflation and in favor of law and order, motherhood and the family, the Catholic Church and economic progress for Guatemala's impoverished masses of Indian peasants.

Because 75 per cent of Guatemala's 6 million people are illiterate, the various national and local candidates have identified themselves in campaign advertising by symbols.

Posters urge voters to mark their Xs through a rooster, sword, map of Guatemala, corn stalk, arrow, bell and heart.

Anyone over 18 may vote. The law says men who can read and write must vote, but this rule is not strictly enforced. Women and illiterates may vote if they wish.

Of the estimated 3 million Guatemalans of legal age, about 1.6 million are registered voters. Of these, perhaps 1 million will appear at the polls, experts say.

Election propaganda also has been intense on radio, because many Guatemalans now own cheap transistor sets, and many campaign spots are set to catch bolero and cha-cha beats.

The presidential candidates:

Gen. Kjell Laugerud. He is being pushed by outgoing President Carlos Arana, an anti-Communist army general chosen in a semi-democratic election in 1970. Laugerud, 43, is the son of a Norwegian immigrant and a Guatemalan. His first name is pronounced "Shell."

A former defense minister, Gen. Laugerud has pledged to intensify Arana's largely successful drive for political stability in the nation, and to improve living conditions. Forty per cent of the population is comprised of Mayan Indian farmers who speak little Spanish and barely participate in the economy.

Col. Ernesto Paiz Novales. He is the standard-bearer of the political group which ran the government before Arana. A career officer, diplomat and businessman, Col. Paiz Novales, 53, says he, too, wants internal peace and economic progress.

But he warns against "continuismo," the Spanish word that describes the tendency of political parties in this part of the world to continue holding power once they have it.

Gen. Efrain Rios Montt. This career man represents the small but well-organized Christian Democratic Party. Opponents have been trying to convince voters that Gen. Rios Montt, 47 is a Communist, although Communism is illegal in Guatemala. The army holds power behind the scenes, and Gen. Rios Montt is a former army chief of staff.

Although all presidential contenders are surrounded by armed guards, the massive outpouring of policemen and soldiers which formerly characterized elections is absent.

Guatemala City hotels are filled with American and European tourists here to see ancient Mayan ruins, Indian markets and spectacular lake and volcano scenery.

There have been unsettling incidents. Unidentified attackers tried last week to kidnap two of President Arana's sisters, but they could not start the escape car and fled without the intended hostages. A bomb exploded in a car carrying backers of a Guatemlaa City mayoral candidate, but no one was killed.

The overall scene is quite different from that of the late 1960s, when left-wing terrorists assassinated the American ambassador in Guatemala, soldiers toting submachine-guns patrolled streets and highways and foreign travel agents were alerted to scratch Guatemala from Latin American tours.

"We've made a lot of progress. We don't settle our political differences with bullets anymore," Gen. Laugerud said. And he added, with a sigh, "Gracias a Dios (Thank God)."

A grain vendor in the central market put it this way. "Before, when election day got close, you were crazy if you went out in the the street. Now there's no problem. Arana has taken care of that."

The vendor made a fist to symbolize the current governments tough anti-terrorism policy.

Since a right-wing movement, backed by the U.S. Central Intelligence Agency, overthrew leftist President Jacobo Arbenz in 1954, Communism and "Communist ideology" have been against Guatemala law.

Arana erased practically all remaining left-wing guerilla resistance by repression in 1970 and 1971.

Edmundo Guerra Theilheimer, 41, a self-styled "anti-fascist" who admires Che Guevara and Ho Chi Minh, labels the election "a farce." He runs a legal-aid office in Guatemala City which defends political prisoners and people who allegedly have been secretly kidnaped by the police.

"It doesn't make any difference who wins," he said. "Violence and repression will continue."

Longtime observers say the presidential voting will be close. If no candidate gains a majority, the Constitution calls for Congress to select the winner, and Congress is expected to choose the man who receives the most popular votes.

If this happens, Guatemala will have experienced its third consecutive presidential election held under more-or-less democratic terms. The catch is that anyone the government considers leftist cannot participate.

Even under these ground rules, a reasonably democratic election will be an unusual achievement in Latin America where authoritarian rule is sharply on the rise.

[From the Christian Science Monitor, Jan. 22, 1974]

HOW GUATEMALANS AVOID MILITARY COUP

(By Alan Riding)

In an unusual attempt to save formal democracy in Guatemala, three military officers have been nominated as candidates for March's presidential elections.

The current President, General Carlos Arana Osorio, who won the 1970 elections, predictably chose another right-wing general to be the official candidate. But the opposition parties also have nominated military officers in the knowledge that no victorious civilian candidate would be allowed to assume office by the armed forces.

In other words, to avoid a military coup, Guatemalan civilians must allow the armed forces to continue to run the government in everything but name. And the formal trappings of democracy—Congress and elections—may thus be preserved.

EARLIER CIVILIAN RULE

The last military coup took place in Guatemala just 10 years ago. Elections were then held in 1966, and left-of-center reformist Julio Cesar Mendez Montenegro was returned by a comfortable majority. Reluctantly, the armed forces allowed him to assume office on condition that he temper his reformism and allow them to control security matters.

But during his presidency, leftist guerrilla activity increased sharply, and the country suffered serious political instability. In the 1970 elections, the right-wing civilian opposition therefore ran on a "law-and-order" platform and chose a military officer, General Arana, as its candidate.

But while officially the elections were won by the conservative civilian coalition comprising the Movement for National Liberation (MLN) and the Independent Democratic Party (PID), once General Arana was in office, the Army assumed an increasingly important role in day-to-day government.

The civilian Right was quietly eased out of power, while leftist and even moderate opponents of the regime were subjected to a violent two-year "pacification" crackdown.

When it came to choosing the MLN–PID candidate for the March elections, it was therefore the armed forces rather than civilian politicians who had the final word. And the nomination of another general was inevitable.

VICTORY SEEMED CERTAIN

Until recently this candidate, Gen. Ljell Laugerud, a former Defense Minister of Norwegian descent, seemed certain of victory next March because of constant in-fighting among the various opposition groups.

The government helped maintain these divisions by denying legal inscription to several political groups that were sponsoring potentially strong candidates. This strategy in turn gave greater bargaining power to the only legal opposition groups—the Revolutionary Party, which had been in power between 1966 and 1970, and the Christian Democrat Party—whose leaders were regarded as only mild opponents of the regime.

But some of the confusion evaporated in October, when leader of the Christian Democrats Rene de Leon Schlotter, unexpectedly withdrew his candidacy on the understanding that the united Left would nominate an Army officer for the presidency.

LEFT PICKS GENERAL

The choice fell upon Gen. Efarain Rios Montt, a former Army chief of staff. The gov-

ernment naturally was distressed by the nomination, but it could still count on the cooperation of the head of the Revolutionary Party (PR), Carlos Sagastume Perez, who seems more interested in the reelection of the government than an opposition victory.

Although his attitude has badly divided the PR, the party nevertheless retains a significant organization in the country and can therefore be expected to take votes from any other opposition candidate—in this case, General Rios Montt.

Revolutionary Party chief Carlos Sagastume Perez took a government hint, withdrew his own candidacy, and agreed to the nomination of another Army officer, Col. Ernesto Paiz Novales, while remaining himself as the vice-presidential candidate.

ONE FINAL MOVE

Should the opposition unite behind General Rios Montt, however, the government has one final move left.

Col. Enrique Peralta Azurdia seized power in a coup in 1963 and remained in office until the 1966 elections. Nevertheless, he is surprisingly popular, and the government has therefore constantly blocked his candidacy by refusing registration to his Party of National Action and Reconstruction.

But should General Rios Montt seem a serious threat to General Laugerud, Colonel Peralta might be encouraged to run by the government to weaken the opposition vote.

With at least three military candidates in the race, the Army's support is already seriously divided and could therefore lead to trouble next March.

Whatever the outcome, a continued military presence in government seems guaranteed. The only real question at stake is therefore whether the elections can save formal democracy in one of the few Latin American countries where voters are still invited to the polls.

BLACK LUNG BENEFITS ACT HELD CONSTITUTIONAL

Mr. WILLIAMS. Mr. President, on February 21, 1974, a three-judge Federal court in the District of Columbia upheld the constitutionality of title IV of the Coal Mine Health and Safety Act of 1969 and the Black Lung Benefit Amendments of 1972. This judicial decision is not only important to the thousands of disabled miners but for all workers who are relying on legislation such as S. 2008, the Federal workers' compensation standards legislation which I have sponsored to bring them financial and medical relief from their occupationally related disability.

I ask unanimous consent that the text of the decision in National Independent Coal Operator's Association against Brennan be printed in the RECORD.

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

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

(Civil Action No. 1711–73)

National Independent Coal Operator's Association, et al., Plaintiffs, v. Peter J. Brennan, Secretary of Labor, Department of Labor, Washington, D.C., Defendant

Civil Action No. 2054–73

Association of Bituminous Contractors Inc., et al., Plaintiffs, v. Peter J. Brennan, Secretary of Labor, Department of Labor, Washington, D.C., Defendant

Appearances:

John L. Kilcullen, for plaintiffs in Civil Action No. 1711–73.

Francis T. Coleman, for plaintiffs in Civil Action No. 2054–73.

James G. Johnston, Department of Labor and David Orlikoff, Department of Justice, for defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled matters having been consolidated and come on for trial on the merits on December 21, 1973; the Court having considered the pleadings, the motions for permanent injunctions filed by plaintiffs in both actions; plaintiffs' memoranda in support of said motion and supporting affidavits, defendant's memorandum in opposition to said motion, the memoranda and supporting affidavits filed by plaintiffs and defendant for trial, oral argument of counsel, and all proceedings heretofore had herein, and the Court being fully advised in the premises, now makes its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

A. The Parties

1. In C.A. 1711–73 the plaintiffs National Independent Coal Operator's Association and Rocky Mountain Coal Association are associations of operators of coal mines and coal processing facilities. The remaining 48 plaintiffs in C.A. 1711–73 are or have been owners and operators of coal mines and coal processing facilities.

2. In C.A. 2054–73, the plaintiff Association of Bituminous Contractors, Inc., is an association of construction companies that construct coal mines. The remaining 14 plaintiffs in C.A. 2054–73 are general and independent contractors who engage in the construction of coal mines.

3. Defendant Peter J. Brennan is the Secretary of the United States Department of Labor. In that capacity, he has executive responsibility for the implementation, operation and enforcement of Section 415 and Part C of Title IV of the Federal Coal Mine Health and Safety Act of 1969.

B. The statutes

4. The statutes involved are:

(a) the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 801 *et seq.* (1970), *as amended* (hereinafter cited as the Act). Title IV of the Act, 30 U.S.C. § 901 *et seq., as amended,* 30 U.S.C. § 901 *et seq.* (Supp. II, 1972), provides benefits to coal miners who are totally disabled due to pneumoconiosis, and to certain surviving dependents of coal miners whose death is due to pneumoconiosis or who are totally disabled by coal workers' pneumoconiosis at the time of their deaths (Act, Section 401); and

(b) the Black Lung Benefits Act of 1972, 30 U.S.C. § 901 *et seq.* (Supp. II, 1972), *amending* 30 U.S.C. § 901 *et seq.* (1970), which amended certain provisions of Title IV of the Act and added new provisions to that title in order to remedy certain deficiencies to Title IV and its administration.

C. Definitions

5. "Pneumoconiosis" is defined in Section 402(b) of the Act, 30 U.S.C. § 902(b), as "a chronic dust disease of the lung arising out of employment in a coal mine." This definition is applicable to both Parts B and C of Title IV of the Act. Pneumoconiosis, sometimes called "black lung" disease, is a severely disabling and often fatal disease which once contracted, may progress to disablement without further exposure to coal dust.

"Total disability" is defined in Section 402(f) of the Act as having "the meaning given it by regulation of the Secretary of Health, Education, and Welfare except that such regulations shall provide that a miner shall be considered totally disabled when pneumoconiosis prevents him from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he previously engaged with some regularity and over a substantial period of time. Such regulations shall not provide more restrictive criteria than those applicable under Section 223(d) of the Social Security Act."

This definition of "total disability" is applicable to both Parts B and C of Title IV of the Act. The Secretary of Health, Education and Welfare has published the definition of "total disability" in 20 C.F.R. § 410.412 (1973).

A "miner" is defined in Section 402(d) of the Act as "any individual who is or was employed in a coal mine." This definition is applicable to both Parts B and C of Title IV of the Act.

An "operator" is defined in Section 3(d) of the Act, 30 U.S.C. § 802(d), as "any owner, lessee, or other person who operates, controls, or supervises a coal mine," and a "coal mine" is defined in Section 3(h) of the Act as "an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from, the work or extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means of method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities."

These definitions are applicable to all of Title IV of the Act.

Pursuant to Sections 3(d), 422(a) and 426 of the Act, the Secretary of Labor promulgated regulations further defining the term "operator," to state that ". . . general and independent contractors, whose employees may be considered miners as defined in Section 402(d) of Title IV of the Act by virtue of the fact that such employees are employed in a coal mine as defined in Section 3(h) of the Act, may be considered operators for purposes of Sections 415, 422, and 423 of Title IV of the Act with respect to such employees. 20 C.F.R. § 725. 302, 38 Fed. Reg. 26053 (1973)."

D. Responsible operators

6. Section 422(h) of the Act authorizes the Secretary of Labor to establish standards, "which may include appropriate presumptions, for determining whether pneumoconiosis arose out of employment in a particular mine or mines." He may also establish regulations for the apportionment of liability among "more than one operator, where such apportionment is appropriate."

7. Section 423 of the Act, 30 U.S.C. § 933, provides that as long as a State is not included on the Secretary's list of approved States under Section 421 of the Act, 30 U.S.C. § 931, each operator in that State must secure his liability for benefits under Section 422 by either "qualifying as a self-insurer in accordance with regulations prescribed by the Secretary of Labor," or insuring with a private insurer or a State fund that is "authorized under the laws of any State to insure workmen's compensation."

8. Under Section 424 of the Act, 30 U.S.C. § 934, in the event an operator has failed to insure the payment of benefits pursuant to Section 423 or fails to pay any benefits due within a reasonable time, the Secretary of Labor shall pay any claims otherwise payable by such an operator, who shall, in turn, "be liable to the United States in a civil action" for the amounts paid by the Secretary. The Secretary of Labor must also pay the benefits where "there is no operator who was required to secure the payment of such benefits."

9. Section 426(a) of the Act, 30 U.S.C. § 936 (a) authorizes the Secretaries of Labor and Health, Education and Welfare "to issue such regulations as each deems appropriate to

carry out the provisions" of Title IV of the Act. Pursuant to Sections 422(a), 422(c), 422(h) and 426, the Secretary of Labor promulgated regulations, designated 20 C.F.R. § 725.311, 38 Fed. Reg. 26054 (1973), and incorporated into 20 C.F.R. § 720.112, 38 Fed. Reg. 16968 (1973), which establish criteria for identifying the operator deemed liable for payment of benefits. These regulations provide, among other things, that the operator with whom the miner (on whose disability or death the claim is based) has "the most recent periods of cumulative employment of not less than one year" will be designated the "responsible operator." There then arises a presumption that "the miner's work-related pneumoconiosis arose in whole or in part sufficiently to occasion liability, out of his employment with such operator during the period or periods when he was employed in a mine or mines operatod by such operator."

E. Medical benefits

10. Medical benefits for miners are provided for under Section 422(a) of the Act by the incorporation of Section 7 of the Longshoremen's and Harbor Workers' Compensation Act, *as amended*, 33 U.S.C. § 901 *et seq.* Section 412 of the Act contains no such incorporation.

11. Pursuant to Sections 422(a) and 426 of the Act, the Secretary of Labor has issued regulations which permit a coal miner who is receiving benefits on account of total disability due to pneumoconiosis from the United States Department of Health, Education, and Welfare, to file a new claim under Section 422. If the Secretary of Labor determines that such a miner is entitled to benefits under Section 422, he will continue to receive his benefits from the Department of Health, Education, and Welfare, and will, in addition, be eligible for medical treatment benefits provided under Section 422. Such medical treatment benefits will be payable by the operator deem liable, or the Secretary of Labor under the provisions of Sections 415 or 424. 20 C.F.R. § 725.102, 38 Fed. Reg. 26045 (1973).

12. Sections 422(a) and (b) of Part C of Title IV of the Act, 30 U.S.C. § 932, provide that where a claim for benefits is filed after December 31, 1973, in cases where a State is not included on the list of States approved by the Secretary of Labor as providing adequate coverage for pneumoconiosis, coal mine operators "shall be liable for and shall secure the payment of benefits" with respect to "death or total disability due to pneumoconiosis arising out of employment in a coal mine." Except as otherwise provided by regulation, the provisions of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et seq., as amended,* with certain exceptions enumerated in Section 422 (a) of the Act, are applicable under that section. The Secretary of Labor is authorized to promulgate by regulation "such additional provisions . . . as he deems necessary to provide for the payment of benefits by [an] operator. . . ." Part C of Title IV of the Act was enacted in recognition of the ultimate responsibility of the coal mining industry to compensate its employees for disablement or death due to a disease (penumoconiosis) which arose as an incident of the miner's employment in that industry.

F. Medical presumptions

13. Under Section 411(c)(2) of the Act, "if a deceased miner was employed for ten years or more in one or more coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis." Similarly, under Section 411(c)(4), "if a miner was employed for fifteen years or more in one or more underground coal mines, and if there is a chest roentgenogram submitted in connection with such miner's, his widow's, his child's, his parent's, his brother's, his sister's, or his dependent's claim under (Title IV) and it is interpreted as negative with respect to the requirements of paragraph (3) of this subsection, and if other evidence demonstrates the existence of a totally disabling respiratory or pulmonary impairment, then there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis."

Under Section 422(h) of the Act, the Secretary of Labor has adopted for the purposes of Section 422 operator liability the regulations promulgated pursuant to Section 411 on government liability.

14. Pursuant to Sections 402(f), 411 and 426 of the Act, the Secretary of Health, Education and Welfare promulgated 20 C.F.R. Part 410, Subpart D (1973), that set forth standards for determining total disability and standards which otherwise deal with eligibility for benefits based upon the provisions of Section 411.

15. Pursuant to Section 422(h), the Secretary of Labor adopted 20 C.F.R. Part 410, Subpart D (except § 410.490) into his regulations published as 20 C.F.R. Part 718, 38 Fed. Reg. 16965–66 (1973).

G. Medical evidence

16. Pursuant to Section 413(b) of the Act, 30 U.S.C. § 923(b), no claims for benefits under Part B shall be denied solely on the basis of the results of a chest roentgenogram (X-ray).

17. Under Section 430 of the Act, 30 U.S.C. § 940, the 1972 amendments of Part B of the Act on government liability shall be applicable to Part C of the Act on operator liability. The Secretary of Labor promulgated 20 C.F.R. Part 718 (1973) which implements the 1972 amendments to Part B of the Act as applicable to Part C.

18. Under 20 C.F.R. § 725.445, 38 Fed. Reg. 26060 (1973), any party, including an operator, may, upon request, retrieve documents, including medical evidence, from the administrative file for introduction as evidence at the formal hearing.

H. Retroactivity

19. Section 422(c) of the Act states that coal miner operators must pay benefits to the same categories of persons who are entitled to benefits under Section 412(a) of the Act, 30 U.S.C. § 922(a), as those persons are defined in regulations of the Secretaries of Labor and Health, Education and Welfare. Section 412(a) imposes no restrictions relating to the miners' dates of employment on the government's liability under Part B of the Act.

20. Section 415 of the Act, 30 U.S.C. § 925, provides that the Secretary of Labor shall determine claims and pay benefits with respect to claims which are filed under that section from July 1, 1973, to December 31, 1973. Operators are participants in claims-determination proceedings under this section, are bound by those determinations, and become "liable to pay benefits to the claimant under Part C of [Title IV] for any month after December 31, 1973." The Secretary of Labor is authorized, upon consultation with the Secretary of Health, Education and Welfare, to "issue such regulations as are necessary or appropriate to carry out the purpose of this section."

Section 415 imposes no restrictions relating to miners' dates of employment on the government's liability under Part B of the Act.

21. Under Section 422(e), no operator shall be required to make any payment of benefits "for any period prior to January 1, 1974."

Under Section 422(f), claims for benefits must be filed within three years of the discovery of total disability or the date of death, due to pneumoconiosis. This subsection also provides that where a claimant under Section 422 filed for benefits based upon the "fifteen year presumption" contained in Section 411(c)(4) of the Act, 30 U.S.C. § 921 (c)(4), his claim, if he is a miner, must be filed within three years "from the date of last exposed employment in a coal mine," or, if he is a surviving dependent, must be filed within 15 years "from the date of last exposed employment in a coal mine."

22. In 20 C.F.R. § 726.203, 38 Fed. Reg. 12498 (1973), the Secretary of Labor has promulgated an interpretative regulatory provision, which states that the Secretary of Labor is bound, "within the framework and intent of Title IV of the Act [to] find in appropriate cases that an operator is liable for the payment of benefits for some period after December 31, 1973, even though the employment upon which an operator's liability is based occurred prior to . . . the effective date of the Act or the effective date of any amendments thereto."

H. Special findings as to bituminous contractors

23. In addition to building and constructing coal mines, most members of plaintiff Association of Bituminous Contractors engage in construction projects which are not related to the coal mining industry. Employees are used interchangably on coal mine and noncoal mine construction projects.

For the last dues paying year the members of the Association reported the following as manhours worked in coal mine construction:

Less than 3,000 manhours	129
3,000–10,000	40
10,000–35,000	37
35,000–50,000	11
50,000–100,000	14
100,000–200,000	10
Over 200,000	9

24. The individually named plaintiff-contractors are mostly small and medium size companies which generally employ from two to three employees up to about two-hundred and fifty employees.

25. The individually named plaintiff-contractors and other members of the Association do employ, as construction employees, persons who have worked for companies which engage in the mining and processing of coal.

26. The coal mine construction industry is a specialized segment of the construction industry. The designation "coal mine construction" refers to the end use to which the facilities constructed are to be put.

27. Coal mine construction as such does not involve the mining, processing or extracting of coal, and there is no showing that the plaintiff-contractors engage in the mining, processing or extracting of coal.

28. The vast bulk of coal mine construction work performed by members of the Association must be performed before any coal may be mined or processed at any given site.

29. Most repair work performed by coal mine construction companies is performed while the mine is not in operation.

30. Coal mine construction workers are not exposed to the same health or safety hazards as are workers engaged in the mining and processing of coal.

31. For purposes of determining responsibility for benefit payments beginning January 1, 1974, the Secretary has taken the position, by the promulgation of 20 C.F.R. § 725.302, that plaintiff-contractors and other companies which likewise engage in the building and constructing of coal mines, are coal mine operators. Pursuant to his determination, the Secretary has declared his intention to hold plaintiffs and other coal mine construction companies responsible for payment of benefits under Part C of Title IV of the Act.

32. In order for a company to be a coal mine operator within the meaning of the Act, it must be engaged in the mining, processing or extracting of coal.

33. Until a coal mine is constructed, there is no operator of the coal mine.

CONCLUSIONS OF LAW

A. Jurisdiction

1. The Court has jurisdiction over the subject matter of and the parties to these actions.

2. Congress had the constitutional power to enact Title IV of the Act.

3. The Secretary of Labor is charged by law with the responsibilities of administering Section 415 and Part C of Title IV of the Act.

B. C.A. 1711–73

(i) *Liability*

4. Each of the plantiffs in C.A. 1711–73 who either is or has been owner or operator of a coal mine or coal processing facility is an "operator" as that term is defined in the Act and the regulations promulgated by the Secretary of Labor pursuant to the Act, and is subject to the provisions of Section 415 and Part C of Title IV of the Act.

(ii) *Total Disability*

5. Pursuant to Section 402(f) of the Act, the Secretary of Health, Education and Welfare properly promulgated regulations, 20 C.F.R. § 410.412 (1973), defining "total disability." This definition adds only one phrase, "in the immediate area of his residence," to the language of Section 402(f). This addition was within the Secretary's discretion since Section 402(f) specifically authorizes the Secretary to define "total disability."

Pursuant to Section 422(h) of the Act, the Secretary of Labor properly adopted 20 C.F.R. Part 410, Subpart D (except § 410.490) into his regulations published as 20 C.F.R. Part 718. The adoption of 20 C.F.R. Part 410, as it relates to medical criteria, definitions and standards, is required by Section 422(h).

(iii) *Responsible Operator*

6. Pursuant to Sections 422(a), 422(c), 422(h) and 426 of the Act, the Secretary of Labor properly promulgated regulations, designed 20 C.F.R. § 725.311, and incorporated into 20 C.F.R. § 720.112, which establish criteria for identifying the operator deemed liable for the payment of benefits. These regulations conform with the mandates of the pertinent provisions of the Act.

In promulgating his regulations which establish criteria for identifying a "responsible operator" and which establish a presumption of liability with regard to such operator, defendant has followed the mandate of the statute and has not exceeded his regulatory authority under the Act, and the provisions of the Act pursuant to which defendant's regulations were promulgated do not and will not deprive plaintiffs of their property without due process of law or deny them equal protection of the law in violation of the Fifth Amendment.

The Secretary's regulation establishing criteria for identifying a responsible operator, 20 C.F.R. § 725.31, was within his discretion because Section 422(h) permits, but does not require, the Secretary to apportion liability among more than one operator.

Furthermore, it does not violate due process of law to place full liability on one of several operators responsible for the pneumoconiosis. Also, it is consonant with due process to presume that an operator for whom a miner worked for one year contributed to the miner's pneumoconiosis since there is a rational connection between the fact proven—the one-year employment—and the fact presumed—the contribution to the development of the disease.

(iv) *Medical Benefits*

7. Pursuant to Section 422(a) and 426 of the Act, the Secretary of Labor properly issued regulations which permit a miner who is receiving benefits on account of total disability due to pneumoconiosis from the Department of Health, Education and Welfare, to file a new claim under Section 422 for medical treatment benefits. Such medical treatment benefits will be payable by the operator deemed liable, or the Secretary of Labor under the provisions of Sections 415 or 424. These benefits are essential to an effective benefits program and the "refiling" mechanism is not prohibited by the Act and indeed comports with its intent and policy.

(v) *Medical Presumptions*

8. Pursuant to Sections 422(h) and 422(f)(2) of the Act, the Secretary of Labor properly promulgated regulations applying the Section 411 presumptions to Section 422 operator liability. Therefore, the statutory provisions pursuant to which the Secretary's regulations were promulgated do not and will not deprive the plaintiffs in No. 1711–73 of their property without due process of law or deny them equal protection of the law.

(vi) *Medical Evidence*

9. Pursuant to Section 430 of the Act, the Secretary properly promulgated regulations applying the 1972 amendments to Part B of the Act on government liability to Part C of the Act on operator liability. Moreover, Section 413(b) of the Act does not preclude the consideration of negative X-rays as matrial and competent evidence or even, as long as other evidence supports the X-rays, as the most persuasive evidence. Therefore, Section 413(b) of the Act is a valid exercise of legislative power and does not offend due process of law.

(vii) *Retroactivity*

10. In promulgating his regulations which reflects the intent of Congress to make operators liable for the payment of benefits for periods beginning January 1, 1974, in cases where a miner, on whose disability or death a claim is based, died or became totally disabled prior to December 31, 1969, defendant has followed the mandate of the statute and has not exceeded his regulatory authority under the Act, and the retroactive operation of the Act does not deprive plaintiffs of their property without due process of law or deny them equal protection of the law in violation of the Fifth Amendment.

Section 422(e) of the Act limits only the periods for which benefits can be collected; it does not limit the eligibility of miners whose period of employment terminated prior to January 1, 1974.

In 20 C.F.R. § 726.203, the Secretary of Labor has properly promulgated an interpretative regulatory provision, which states that the Secretary of Labor is bound, "within the framework and intent of Title IV of the Act [to] find in appropriate cases that an operator is liable for the payment of benefits for some period after December 31, 1973, even though the employment upon which an operator's liability is based occurred prior to . . . the effective date of the Act or the effective date of any amendments thereto."

The statute itself, as well as the legislative history, clearly indicates congressional intent that benefits be available under Section 422 where a claimant meets the filing requirements of that section, regardless of the termination of employment of the miner on whose death or disability the claim is based. It is clear that Congress intended to provide full protection to older, retired miners who have only recently discovered the disease or in whom the disease is still latent.

11. The plaintiffs in No. 1711–73 are not entitled to injunctive relief against the defendant Secretary of Labor.

C. C.A. 2054–73

12. The determination by the Secretary, set forth by regulation as 20 C.F.R. § 725.302, that all coal mine construction companies, whether or not they engage in the extraction of coal, are operators within the meaning of the Act exceeds and is inconsistent with the definition of operator stated at Section 3(d) of the Act.

13. The determination by the Secretary, set forth by regulation as 20 C.F.R. § 725.302, that such coal mine construction companies are operators within the meaning of the Act contravenes the legislative intent, scheme, and purpose of Title IV. Coal mine construction companies are not operators within the meaning of the Act.

14. The Act was not intended by Congress to be applied to coal mine construction companies who do not actually engage in coal extraction operations. The reference in the statutory definition of a coal mine, Section 3(h) of the Act, to equipment, structures and property "to be used in" a coal mine was meant by Congress to refer solely to the extracting of coal. There is nothing in the legislative history of the Act which suggests Congress meant that the statutory definition should be applied so expansively as to include those companies which construct coal mines but do not extract coal from them.

15. Injunctive relief, as requested by plaintiffs in C.A. 2054–73, is appropriate.

Accordingly, it is this 21st day of February, 1974,

Ordered that the permanent injuction prayed for in C.A. 1711–73 be, and the same is hereby, denied, and summary judgment in said action be, and the same is hereby, granted, in favor of defendant; and it is

Further ordered that, in C.A. 2054–73, the Secretary of Labor be, and he is hereby, permanently enjoined from enforcing and applying any regulation or otherwise determining that general and independent contractors who do not actually engage in coal extraction operations are coal mine operators for purposes of Title IV of the Federal Coal Mine Health and Safety Act of 1969, *as amended* by the Black Lung Benefits Act of 1972, and summary judgment in said action be, and the same is hereby, granted in favor of plaintiff.

THE MAKING OF THE PRESIDENT, 1972

Mr. McGOVERN. Mr. President, one of the best books it has been my privilege to read was Theodore White's book "The Making of the President, 1960." One of the worst books I have ever read is Mr. White's "The Making of the President, 1972."

Frank Mankiewicz who was involved, as I was, in both campaigns has given us an analysis of why the 1960 book was so good and why Mr. White failed so miserably in 1972. Mr. Mankiewicz' review appears in Psychology Today, January 1974.

When I first read Mr. White's book on the 1972 campaign, I could scarcely believe the uneven character of the book. Some portions of the story including my successful bid for the Democratic Presidential nomination were well told. But the analysis of the Nixon character and the problems that beset my campaign after the Miami convention are both ridiculous and woefully misleading.

Mr. White is totally off base, for example, in his account of my role in selecting a new national chairman at the Miami convention. He is equally off base in his account of the Eagleton matter. And he tops off a series of false accounts about me by quoting a labor leader's unfounded accusation about my veracity.

Some day a good historian will tell the full story of how the American people were misled in 1972. Mr. White has been among those who have temporarily observed that story.

Mr. Mankiewicz' review will help to correct some of the errors. I ask unanimous consent that the review be printed in the RECORD.

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

"THE MAKING OF THE PRESIDENT 1972"
REVIEWED BY FRANK MANKIEWICZ

TEDDY TAKES A TUMBLE

Coverage by the American press of the 1972 Presidential campaign has not wanted for criticism. There have been two generally excellent books on the subject: *Us and them*, by James Perry of the *National Observer* and *The Boys on the Bus* by Tim Crouse of *Rolling Stone*. There will undoubtedly be others and the general question of why American political reporters failed, by so wide a margin, to give their readers the *real* picture of what was happening will undoubtedly engage us all for some time. Never, it can be safely said, have so many failed so badly.

It struck many at the time that the problem was Theodore H. White. Put simply, White's *The Making of the President*, particularly the 1960 volume, had revitalized American political reporting. That book illuminated, in one great flare, the inadequacies of political reporting until that time. While the reporters were rewriting the campaign speeches and reporting what the candidates were doing—and before how many people—and chewing over the public issues, Teddy White was finding out what was going on *inside*.

It was White, in that marvelous 1960 book, who first reported, in a systematic way, on the arcane doings of our politicians. He told us how the Kennedy people operated—how they lined up delegates and delegations, how advance men and scheduling functioned, the techniques of fund-raising and polls, how the mayors and county chairmen were wooed and even what were the frictions and disputes which had to be arbitrated and how.

Political reporting was never the same again. By 1972, almost every reporter assigned to the McGovern/Nixon campaign wanted to write Theodore White's book every morning. The result was intense coverage of all the inside stuff, to the point that McGovern could note, with some asperity, that when he met the voters, the questions would involve—naturally enough—the war, taxes, welfare, crime and all the other things that were on people's minds. But when he met with the press—which he did regularly on the theory that a campaign should be as open as possible—the questions all had to do with how the money raising was going, where he stood in the polls, when he was going to get the support of major labor leaders or governors, and the tension of the feuds, real or imagined, among his supporters and advisors.

THE GREAT GRAIN ROBBERY

The Teddy White syndrome was strong. On the day that McGovern broke the story that was later to be known as "the great grain robbery," the major concern in the traveling press party was whether the Mayor of Chicago would meet the candidate on one day in Springfield or on the next day in Chicago and, if the latter, would this not construe a snub of some sort? There were probably, McGovern replied, more people on his press plane who cared about that answer than there were in the rest of the country.

The result, of course, was that Watergate—except for the efforts of Bob Woodward and Carl Bernstein of *The Washington Post*—hardly got covered at all, nor did the larger story of Nixon Administration corruption—the scandals in grain, insurance, carpets and milk, the secret cash donations, IT&T and all the others. When McGovern did document his charge that this was the "most corrupt Administration in our history," the press reply would be to note the "excessive rhetoric" and inquire whether it was true that Gordon Weil had been reassigned to Washington and, if so, why?

But, back at the ranch, White himself was restless. Just as the rest of the political press was catching on to what made *his* reporting so satisfying, White made one of those countercyclical shifts we see from time to time in which the leader finds new goals just as the followers are beginning to understand the old ones.

A BADLY FLAWED BOOK

White decided in 1972 to cover the *outside* campaign and it is this decision that, ultimately, makes *The Making of the President 1972* a badly flawed book. Unable to get at what was really happening inside the White House (the Nixon men who lied to the country were only too willing to lie to White), White took Nixon at face value—always a grave error. He reported the Nixon campaign as though there *were* a Nixon program, a Nixon ideology, a Nixon "God-save-the-mark" philosophy and he gives them to us in just the words Nixon and his men would—and did—use. Now, one year later, it all seems quite clear that there never *was* a Nixon program and all that effort was devoted not, as White thought, to seeing that "they" learned about Nixon "out there," but that "they" did not. The Richard Nixon who has not made a move in a 25-year political career which was not designed either to gain him political victory or personal enrichment, comes off in White's account as a thoughtful, conservative patriot, a ludicrous notion now that the facts are in.

White even goes so far as to pose a sort of press "war," in which the Eastern dailies who are hostile to Nixon, are somehow more stealthy and less honorable than the overwhelming mass of press support "out there." "Fairly and cleanly" is the way he describes Nixon treatment in the press once you get out of those dens of establishmentarianism such as New York and Boston. We expect that kind of analysis from Pat Buchanan, but not from Teddy White.

SCRATCHING THE SCAB

The serious Nixon is everywhere. Even on the busing issue, where the intervention to rip off a healing scab and make Americans think in racist terms again was perhaps the most shameful (for the country) strategy that Nixon used. White sees a master plan and a "local school" and neighborhood ideology. Nonsense. There never was an ideology behind Nixon's busing (or antibusing) program. There was instead a cold recognition—which other politicians shared but retained the decency not to exploit—that there are voters, lots of voters, in the Northern cities of the country who would dare to holler "nigger" in a slightly more genteel way. So Nixon did it, and he was right; the votes were there. But to say that this was the result of some "American" philosophy is to miss the essential difference between Nixon and other politicians—Republican, Democrat, left, right and center—the man has no moral boundaries. And it is this point which White, by taking Nixon, as it were, seriously, obscures.

Watergate must have been a blow to White and his publisher. Tied to a deadline, he went back to work in the spring of 1973 in an attempt to repair the damage. There are some Watergate-related sections and analyses. But it is impossible to write an account of 1972 without Watergate and then go back and fold one in. It is as though David Halberstam on the verge of publication of *The Best and the Brightest* had suddenly discovered that Dean Rusk was secretly financing the House Armed Services Committee with funds embezzled from the Saigon treasury. White, to avoid the catastrophe of an entire rewrite, was thus forced to defend the proposition that Nixon would have won anyway, even if the facts had been known, when every bit of polling data says the opposite.

A CASUALTY OF WATERGATE

The book is a casualty of Watergate and it's a shame. Because in all the "ordinary" ways, it is first-rate. The story of how George McGovern won the Democratic nomination has not been and will not be better told than White tells it, not even by the participants. In short, if 1972 had been a free election, this would have been a clear, accurate, technical account of it.

One exception, however, must be noted. White's account of the "Thomas F. Eagleton affair" is woefully one-sided; he consulted only with Eagleton and quoted only his notes and recollections of those days and those meetings. Teddy White wishes he had had the time to check Eagleton's version with McGovern; so do I.

GUIDE TO FEDERAL EDUCATION FUNDS

Mr. CRANSTON. Mr. President, the March 1974 issue of American Education, published by the U.S. Office of Education, contains a very helpful guide to OE-administered programs for fiscal year 1974, including the dollar amounts appropriated by the Congress.

I believe it would be of benefit to Senators and their constituents to have this table printed in the RECORD, and I ask unanimous consent that it be printed at this point.

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

FEDERAL FUNDS

The Federal Government is a major source of financial support and technical assistance to the Nation's schools and colleges, chiefly through the U.S. Office of Education (OE). As a major component of the Education Division of the U.S. Department of Health, Education, and Welfare, OE administers programs covering virtually every level and aspect of education. These programs and the Fiscal Year 1974 funds appropriated by Congress in support of them are listed on the following pages.

For easy reference, the programs are presented in categories or groupings that indicate whether they serve individuals or institutions and the nature of their support, for example, research or construction. Since the several phases of one program or activity may serve more than one category, a given program may be listed more than once.

It is important to note that under special provisions of the HEW Appropriations Bill, the President is authorized to withhold from obligation and expenditure up to $400 million of the total, with the reservation that funds appropriated for no one program, activity, or project may be reduced by more than five percent. With that withholding option taken into account, the Office of Education's funding level for Fiscal Year 1974 comes to $5,936,944,000. This sum does not include the FY 1974 appropriation of $75 million for the National Institute of Education, the other major component of the HEW Education Division.

It should also be noted that distribution of OE funds for Title I of the Elementary and Secondary Education Act is subject to a special "hold harmless" provision. Under this provision allocations will be made in such a manner that no State will receive less than 100 percent and no more than 120 percent of the amounts it received in FY 1973. Within each State, no local education agency will receive less than 90 percent of the amount it received in FY 1973, with no stated ceiling on amounts above that level.

Reprints of the "Guide to OE-Administered Programs, Fiscal Year 1974" are available. A single copy may be obtained free on request to American Education, P.O. Box 9000, Alexandria, VA 22304. Multiple copies may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 at 25 cents each (25 percent discount on orders over 100). When ordering, please specify OE–74–01016.

GROUP I: TO INSTITUTIONS, AGENCIES, AND ORGANIZATIONS

Type of assistance	Authorizing legislation	Purpose	Appropriation (dollars)	Who may apply	Where to apply
PT. A—FOR ELEMENTARY AND SECONDARY EDUCATION PROGRAMS					
1. Bilingual education	Elementary and Secondary Education Act, title VII.	To develop and operate programs for children aged 3–18 who have limited English-speaking ability.	50,350,000	Local education agencies or institutions of higher education applying jointly with local education agencies.	OE Grant Application Control Center.
2. Comprehensive planning and evaluation.	Elementary and Secondary Education Act title V-C.	To improve State and local comprehensive planning and evaluation of education programs.	4,750,000	State and local education agencies.	OE Division of State Assistance.
3. Follow Through	Economic Opportunity Act of 1964 (amended by Public Law 90–222).	To extend into primary grades the educational gains made by deprived children in Head Start or similar preschool programs.	41,000,000	Local education or other agencies nominated by State education agencies in accordance with OE and OEO criteria.	OE Division of Follow Through.
4. Incentive grants	Elementary and Secondary Education Act, title I, pt. B (amended by Public Law 91–230).	To encourage greater State and local expenditures for education.	17,855,000	State education agencies that exceed the national effort index.	OE Division of Compensatory Education.
5. Innovative and exemplary programs—supplementary centers.	Elementary and Secondary Education Act, title III.	To support innovative and exemplary projects.	146,168,000	Local education agencies	State education agencies, or OE Division of Supplementary Centers and Services.
6. Indian education	Indian Education Act (Public Law 92–318) title IV, pt. A.	To aid local education agencies and Indian controlled schools on or near reservations meet the special educational needs of Indian children.	25,000,000	Local education agencies and Indian controlled schools on or near reservations.	OE Office of Indian Education.
7. Programs for children in State institutions for the neglected and delinquent.	Elementary and Secondary Education Act, title I (amended by Public Law 89–750).	To improve the education of delinquent and neglected children in State institutions.	25,449,000	State parent agencies	State education agencies.
8. Programs for disadvantaged children.	Elementary and Secondary Education Act, title I (amended by Public Law 89–750).	To meet educational needs of deprived children.	1,446,338,000	Local school districts	State education agencies.
9. Programs for Indian children	Elementary and Secondary Education Act, title I (amended by Public Law 89–750).	To provide additional educational assistance to Indian children in federally operated schools.	15,809,936	Bureau of Indian Affairs schools	Bureau of Indian Affairs, Department of Interior.
10. Programs for migratory children.	Elementary and Secondary Education Act, title I (amended by Public Law 89–750).	To meet educational needs of children of migratory farmworkers.	98,351,000	Local school districts	State education agencies.
11. School library resources and instructional materials.	Elementary and Secondary Education Act, title II.	To help provide school library resources, textbooks, and other instructional materials.	90,250,000	Local education agencies	OE Division of Library programs.
12. Special grants to urban and rural school districts with high concentrations of poor children.	Elementary and Secondary Education Act, title IV, pt. C (amended by Public Law 91–230).	To improve education of disadvantaged children.	47,701,000	Local school districts	State education agencies.
13. Special projects in Indian education.	Indian Education Act (Public Law 92–318), title IV, pts. B and C.	To support planning, pilot, and demonstration projects for the improvement of educational opportunties for Indian children and to develop training programs for educational personnel.	15,000,000	Indian tribes, organizations, and institutions; State and local education agencies and federally supported elementary and secondary schools for Indian children.	OE Office of Indian Education.
14. State administration of ESEA Title I programs.	Elementary and Secondary Education Act, title I (amended by Public Law 89–750).	To strengthen administration of ESEA, title I.	18,048,000	State education agencies	OE Division of Compensatory Education.
15. Strengthening State education agencies.	Elementary and Secondary Education Act, title V-A.	To improve leadership resources of State education agencies.	34,675,000	State education agencies, combinations thereof, and public regional interstate commissions.	OE Division of State Assistance.
PT. B—FOR STRENGTHENING ORGANIZATIONAL RESOURCES					
16. Library services	Library Services and Construction Act, title I.	To extend and improve public library services, institutional library services, and library services to ph sically handicapped persons.	44,019,000	State library administrative agencies.	OE Division of Library programs
17. Interlibrary cooperation	Library Services and Construction Act, title III.	To establish and operate cooperative networks of libraries.	2,730,000	State library administrative agencies.	OE Division of Library programs.
18. State administration (of NDEA programs).	National Defense Education Act, title III.	To strengthen administration in in State education agencies for supervisory and related services to elementary and secondary schools.	2,000,000	State education agencies	OE Division of Library programs.
19. Instruction in nonpublic schools.	National Defense Education Act, title III, sec. 305.	To provide interest bearing loans to private schools to improve instruction of academic subjects.	250,000	Nonprofit private elementary and secondary schools.	OE Division of Library programs.
20. Instruction in public schools	National Defense Education Act, title III.	To strengthen instruction of academic subjects in public schools.	26,250,000	State education agencies	OE Division of Library programs.
21. Educational personnel training and development.	Education Professions Development Act (Public Law 90–35).	To support, broaden and strengthen training of teachers and other educational personnel.	26,179,000	State and local education agencies, colleges, and universities.	OE Division of Educational Systems Development.
22. Teacher Corps	Education Professions Development Act, pt. B-1.	To improve educational opportunities for children of low income families and to improve the quality of programs of teacher education for noncertified and inexperienced teacher interns.	37,500,000	Institutions of higher education, local education agencies and State education agencies.	OE Teacher Corps Office.
23. Special programs serving schools in low-income areas.	Education Professions Development Act (Public Law 90–35).	To train or retrain persons for career ladder positions or for staff positions in urban and rural poverty schools; to introduce change in the ways in which teachers are trained and utilized.	46,229,000	State and local education agencies, colleges, and universities.	OE Division of Educational Systems Development.
24. Educational broadcasting facilities.	Public Broadcasting Act of 1967, as amended.	To aid in the acquisition and installation of broadcast equipment for educational radio and TV.	15,675,000	Nonprofit agencies, public colleges, State broadcast agencies and education agencies.	OE Division of Technology and Environmental Education.
25. Sesame Street—Electric Company.	Cooperative Research Act	To fund children's public television programs.	3,000,000	Children's Television Workshop (only).	OE Division of Technology and Environmental Education.
26. Projects in environmental education.	Environmental Education Act of 1970 (Public Law 91–516).	To develop environmental and ecological awareness and problem-solving skills through education programs conducted by formal and nonformal educational organizations and institutions.	1,900,000	Colleges and universities, postsecondary schools, local and State education agencies and other public and private nonprofit agencies, institutions, and organizations.	OE Division of Technology and Environmental Education.

GROUP I: TO INSTITUTIONS, AGENCIES, AND ORGANIZATIONS—Continued

Type of assistance	Authorizing legislation	Purpose	Appropriation (dollars)	Who may apply	Where to apply
PT. B—FOR STRENGTHENING ORGANIZATIONAL RESOURCES—Continued					
27. Drug abuse education and related programs and activities.	Drug Abuse Education Act of 1970 (Public Law 91-527).	To organize and train drug education leadership teams at State and local levels; to provide technical assistance to these teams; to develop programs and leadership to combat causes of drug abuse.	5,700,000	Institutions of higher education; state and local education agencies; public and private education or research agencies; institutions and organizations (sec. 3); public or private nonprofit agencies, organizations, and institutions (sec. 4).	OE Division of Drug Education, Nutrition, and Health programs.
PT. C—FOR POSTSECONDARY EDUCATION PROGRAMS					
28. Advanced institutional development.	Higher Education Act of 1965, title III, as amended.	To assist selected developing institutions enter the mainstream of higher education.	99,992,000	Developing institutions with demonstrated progress.	OE Division of Institutional Support.
29. College Library Resources	Higher Education Act of 1965, title II-A.	To strengthen library resources of junior colleges, colleges, universities, and postsecondary vocational schools.	9,975,000	Postsecondary institutions	OE Division of Library programs.
30. College Work-Study	Higher Education Act of 1965, title IV-C, as amended.	To stimulate and promote the part-time employment of postsecondary students of great financial need.	270,200,000	Colleges, universities, vocational, and proprietary schools.	OE Office of Student Assistance, Division of Student Support and Special programs.
31. Cooperative education programs.	Higher Education Act of 1965, title IV-D, as amended.	To support the planning and implementation of cooperative education institutions.	10,750,000	Colleges and universities	OE Division of Institutional Support.
32. National Direct Student Loan program.	Higher Education Act of 1965, title IV-E, as amended.	To assist in setting up funds at institutions of higher education for the purpose of making low-interest loans to graduate and undergraduate students attending at least half-time.	293,000,000	College and universities	OE Office of Student Assistance, Division of Student Support and Special programs.
33. Cuban student loans	Migration and Refugee Assistance Act.	To provide a loan fund to aid Cuban refugee students.	2,600,000	Colleges and universities	OE Office of Student Assistance, Division of Student Support and Special programs.
34. Endowments to agriculture mechanic arts colleges.	Bankhead-Jones and Morrill-Acts.	To support instruction in agriculture and mechanic arts in land-grant colleges.	12,200,000	The 69 land-grant colleges	OE Division of Institutional Support.
35. State student incentive grants.	Higher Education Act, title IV	To encourage States to increase their appropriations for grants to needy students or to develop such grant programs where they do not exist (Grants are on a matching 50-50 basis).	19,000,000	State education agencies	OE Office of Student Assistance.
36. Higher education innovation reform.	Education Amendments of 1972	To aid higher education in generating reforms in curriculum development, teaching, and administration.	10,000,000	Postsecondary institutions and related organizations.	Fund for the Improvement of Postsecondary Education (ASE).
37. National teaching fellowships and professors emeriti.[2]	Higher Education Act of 1965	To strengthen the teaching resources of developing institutions.	(see 1, 28)	Developing institutions nominating prospective fellows from established institutions and retired scholars.	OE Division of Institutional Support.
38. State Administration of Higher Education Act, titles VI-A and VII-A programs.	Higher Education Act, title XII	To help States administer programs under title VI and VII of Higher Education Act.	3,000,000	State commissions that administer academic facilities instructional equipment programs.	OE Division of Training and Facilities.
39. University community service programs.	Higher Education Act of 1965, title I, as amended.	To strengthen higher education capabilities in helping communities solve their problems.	14,250,000	Colleges and universities	State agencies or institutions designated to administer State plans (information from OE Office of Institutional Support and International Programs).
40. Strengthening developing institutions.	Higher Education Act of 1965, title III.	To provide partial support for cooperative arrangements between developing and established institutions.	(see 1, 28)	Accredited colleges and universities in existence at least 5 years.	OE Division of Institutional Support.
41. Student Special Services	Higher Education Amendments of 1968, title I-A	To assist low income and handicapped students to complete postsecondary education.	23,000,000	Accredited institutions of higher learning or consortiums.	HEW Regional Offices.
42. Veterans cost-of-instruction	Higher Education Act, title X	To encourage recruitment and counseling of veterans by postsecondary education institutions.	23,753,000	Postsecondary education institutions.	OE Veterans Program Unit.
43. Supplemental Educational Opportunity Grants.	Education Amendments of 1972	To assist students of exceptional financial need to pursue a postsecondary education.	210,300,000	Participating educational institutions.	OE Division of Student Support and Special Programs.
44. Talent Search	Higher Education Act of 1965, title IV-A, as amended.	To assist in identifying and encouraging promising students to complete high school and pursue postsecondary education.		Institutions of higher education and combinations of such institutions, public and private nonprofit agencies, and public and private organizations.	HEW Regional Offices.
45. Undergraduate instructional equipment.	Higher Education Act of 1965, title VI-A.	To improve undergraduate instruction.	11,875,000	Institutions of higher education, including vocational and technical schools and hospital schools of nursing.	Division of Institutional Support.
46. Upward Bound	Higher Education Act of 1965, title IV-A, as amended.	To generate skills and motivation for young people with low-income backgrounds and inadequate high school preparation.	38,331,000	Accredited institutions of higher education and secondary or postsecondary schools capable of providing residential facilities.	HEW Regional Offices.
47. Fellowships for higher education personnel.	Education Professions Development Act, pt. E.	To train persons to serve as teachers, administrators, or education specialists in higher education.	2,100,000	Institutions of higher education with graduate programs.	OE Division of Training and facilities.

Type of assistance	Authorizing legislation	Purpose	Appropriation (dollars)	Who may apply	Where to apply
PT. D—FOR THE EDUCATION OF THE HANDICAPPED					
48. Deaf-blind centers	Education of the Handicapped Act, title VI-C (Public Law 91-230).	To develop centers and services for deaf-blind children and their parents.	14,055,000	State education agencies, universities, medical centers, public or nonprofit agencies.	OE Bureau of Programs for Handicapped, Division of Educational Services.
49. Early education for handicapped children.	Education of the Handicapped Act, title VI-C (Public Law 91-230).	To develop model preschool and early education programs for handicapped children.	12,000,000	Public agencies and private nonprofit agencies.	OE Bureau of Programs for Handicapped, Division of Educational Services.
50. Information and recruitment for handicapped.	Education of the Handicapped Act, title VI-D (Public Law 91-230).	To improve the recruitment of educational personnel and the dissemination of information on educational opportunities for the handicapped.	500,000	Public agencies and private nonprofit agencies and organizations.	OE Bureau of Programs for Handicapped, Division of Educational Services.
51. Media services and captioned film loan program (films).	Education of the Handicapped Act, title VI-F (Public Law 91-230).	To advance the handicapped through film and other media, including a captioned film loan service for cultural and educational enrichment of the deaf.	13,000,000	State or local public agencies, schools, and organizations which serve the handicapped, their parents, employers, or potential employers.	OE Bureau of Programs for Handicapped, Div sion of Educational Services.
52. Media services and captioned film loan program (centers).	(As above)	To establish and operate a national center on educational media for the dandicapped.	(included in 51 above)	Institutions of higher education	OE Bureau of Programs for Handicapped, Division of Educational Services.
53. Media services and captioned film loan program (research).	(As above)	To contract for research in the use of educational and training films and other educational media for the handicapped and for their production and distribution.	(included in 51 above)	By invitation	OE Bureau of Programs for Handicapped, Division of Educational Services.
54. Media services and captioned film loan program (training).	(As above)	To contract for training persons in the use of educational media for the handicapped.	(included in 51 above)	Public or other nonprofit institutions of higher education for teachers, trainees, or other specialists.	OE Bureau of Programs for Handicapped, Division of Educational Services.
55. Programs for children with specific learning disabilities.	Education of the Handicapped Act, title VI-G (Public Law 91-230).	To provide for research, training of personnel and to establish model centers for the improvement of education of children with learning disabilities.	3,250,000	Institutions of higher education, State and local educational agencies, and other public and private nonprofit agencies.	OE Bureau of Programs for Handicapped, Division of Educational Services.
56. Programs for the handicapped (aid to States).	Education of the Handicapped Act, title VI-B (Public Law 91-230).	To strengthen educational and related services for handicapped children.	47,500,000	State education agencies	OE Bureau of Programs for Handicapped, Division of Educational Services.
57. Programs for the Handicapped in State-supported schools.	Elementary and Secondary Education Act, title I (Public Law 89-313, as amended).	To strengthen programs for children in State-supported schools.	85,778,000	Eligible State agencies	OE Bureau of Programs for Handicapped, Division of Educational Services.
58. Personnel training for the education of the handicapped.	Education of the Handicapped Act, title VI-D (Public Law 91-230).	To prepare and inform teachers and others who educate handicapped children.	39,615,000	State education agencies, colleges, universities, and other appropriate nonprofit agencies.	OE Bureau of Programs for Handicapped, Division of Training Programs.
59. Training of physical education and recreation personnel for handicapped children.	Education of the Handicapped Act, title VI-D (Public Law 91-230).	To train physical education and recreation personnel for the handicapped.	(included in 58 above)	Institutions of higher education	OE Bureau of Programs for the Handicapped, Division of Training Programs.
PT. E—FOR THE SUPPORT OF OVERSEAS EDUCATIONAL PROGRAMS					
60. Consultant services of foreign curriculum specialists.	Mutual Educational and Cultural Exchange Act and Agricultural Trade Development and Assistance Act (Public Law 83-480) (in excess foreign currency countries).	To support visits by foreign consultants to improve and develop resources for foreign language and area studies.	160,000	Colleges, consortiums local and State education agencies, nonprofit education organizations.	OE Division of International Education.
61. Group projects abroad for language and area studies in non-Western areas.	Mutual Educational and Cultural Exchange Act and Public Law 83-40 (in excess foreign currency countries).	To promote development of international studies.	[8] 2,300,000	Colleges, universities, consortiums, local and State education agencies, nonprofit education organizations.	OE Divisions of International Education.
62. Institutional cooperative research abroad for comparative and cross-cultural studies.	Agricultural Trade Development and Assistance Act of 1954 (Public Law 83-480).	To promote research on educational problems of mutual concern to American and foreign educators.	(included in 61 above)	Colleges, universities consortiums, local and Stated education agencies, nonprofit education organizations.	OE Division of International Education.
PT. F—FOR OCCUPATIONAL, ADULT AND VOCATIONAL EDUCATION					
63. Adult education	Adult Education Act of 1966, as amended.	To provide literacy programs for adults.	63,485,000	State education agencies	OE Division of Adult Education.
64. Occupational training an retraining.	Manpower Development and Training Act of 1962, as amended.	To train persons for work in fields where personnel shortages exist.	145,000,000	Local school authorities (public, private, nonprofit).	State vocational education agency (information from OE Division of Manpower Development and Training).
65. Vocational programs	Vocational Education Act of 1963, as amended.	To maintain, extend, and improve vocational education programs; to develop programs in new occupations.	[8] 494,227,000	Public schools	State boards of vocational education (information from OE Division of Vocational and Technical Education).
PT. G—FOR DESEGREGATION ASSISTANCE AND IMPACT AID					
66. Cuban refugee education	Migration and Refugee Assistance Act.	To help school systems meet the financial impact of Cuban refugee education.	10,000,000 (est.)	School districts with significant numbers of Cuban refugee school-age children.	OE Division of School Assistance in Federally Affected Areas.
67. Desegregation assistance to local education agencies. [9]	Civil Rights Act of 1964, title I	To aid shcool districts in hiring advisory specialists to train employees and provide technical assistance in matters related to desegregation.	[4] 21,700,000	School districts	OE Office of School Desegregation Programs.
68. Desegregation assistance to teacher institutes.	Civil Rights Act of 1964, title IV	To improve ability of school personnel to deal with school desegregation problems.	(included in 67 above)	Colleges and universities	OE Office of School Desegregation Programs.
69. Desegregation assistance to general assistance centers and Stateeducation agencies.	Civil Rights Act of 1964, title IV	To provide technical assistance for school desegregation activities.	(included in 67 above)	Colleges, universities, and State education agencies.	OE Office of School Desegregation Programs.
70. Desegregation assistance (nonprofit organizations).	Emergency School Aid Act, title VII (Public Law 92-318).	To give aid to community based efforts in support of school district E.S.A.A. programs.	19,915,000	Nonprofit organizations and groups of organizations (public or private).	HEW Regional Offices.
71. Desegregation assistance (basic grants).	Emergency School Aid Act, title VII (Public Law 92-318).	To aid school districts to eliminate or reduce minority group isolation.	146,875,000	Local public school districts	HEW Regional Offices.

Footnotes at end of table.

GROUP I: TO INSTITUTIONS, AGENCIES, AND ORGANIZATIONS—Continued

Type of assistance	Authorizing legislation	Purpose	Appropriation (dollars)	Who may apply	Where to apply
PT. G—FOR DESEGREGATION ASSISTANCE AND IMPACT AID—Continued					
72. Desegregation assistance (pilot projects).	Emergency School Aid Act, title VII (Public Law 92-318).	To help school districts provide special educational assistance in minority group isolated schools.	37,341,000	Local public school districts	HEW Regional Offices.
73. Desegregation assistance (bilingual-bicultural programs).	Emergency School Aid Act, title VII (Public Law 92-318).	To help school districts provide bilingual programs to reduce isolation of minority language groups.	9,958,000	Local public school districts	HEW Regional Offices.
74. Desegregation assistance (educational TV).	Emergency School Aid Act, title VII (Public Law 92-318).	To develop and produce multiethnic TV presentations supporting educational improvements.	7,468,000	Nonprofit organizations, public or private.	OE Office of School Desegregation Programs.
75. Desegregation assistance (special programs).	Emergency School Aid Act, title VII (Public Law 92-318).	To support efforts serving E.S.A.A. aims in areas not included in specified programs.	12,447,000	School districts in U.S. jurisdictions other than States; and nonprofit organizations, public and private.	OE Office of School Desegregation Programs.
76. School maintenance and operation.	School Aid to Federally Impacted and Major Disaster Areas (Public Law 874).	To aid school districts on which Federal activities or major disasters have placed a financial burden.	225,820,000	Local school districts	OE Division of School Assistance in Federally Affected Areas.
GROUP II: INDIVIDUALS—FOR TEACHER AND OTHER PROFESSIONAL TRAINING, AND STUDENT ASSISTANCE					
1. Basic Educational Opportunity Grants.	Education Amendments of 1972	To provide financial assistance to postsecondary students at the undergraduate level.	475,000,000	Postsecondary education students	P.O. Box G, Iowa City, IA 52240.
2. College Work Study	Higher Education Act of 1965, title IV-C, as amended.	To stimulate and promote the part-time employment of postsecondary students of great financial need.	(see I, 30)	Graduate, undergraduate, and vocational students enrolled at least half-time in approved educational institutions.	Participating institutions (information from OE Office of Student Assistance).
3. Cuban student loans	Migration and Refugee Assistance Act.	To provide a loan fund to aid Cuban refugee students.	(see I, 33)	Cubans who became refugees after Jan. 1, 1959.	Participating institutions (information from OE Office of Student Assistance).
4. Direct student loans	Higher Education Act of 1965, as amended, title IV-E.	To provide low interest loans to postsecondary students.	(see I, 32)	Graduate and undergraduate students enrolled on at least a half-time basis.	Participating institutions (information from OE Office of Student Assistance).
5. Educational development (for educators from other countries).	Mutual Education and Cultural Exchange Act.	To provide opportunity for educators to observe U.S. methods, curriculum, and organization on elementary, secondary, and education levels.	350,000	Educators from abroad (including administrators, teacher trainers, education ministry officials).	OE Division of International Education.
6. Fellowships abroad for doctoral dissertation research in foreign language and area studies.	Mutual Educational and Cultural Exchange Act.	To promote instruction in international studies through commercial lenders.	750,000	Prospective teachers of language and area studies.	Participating institutions (information from OE Division of International Education).
7. Fellowships for higher education personnel.	Education Professions Development Act, pt. E.	To train persons to serve as teachers, administrators, or education specialists in higher education.	(see I, 47)	Individuals who qualify	Participating institutions (information from OE Office of Institutional Support and International Programs, Division of Training and Facilities).
8. Fellowship opportunities abroad.	Mutual Educational and Cultural Exchange Act, and Public Law 83-480 (in excess foreign currency countries).	To promote instruction in international studies through grants for graduate and faculty projects.	[5] (see I, 60)	Faculty in foreign languages and area studies.	Institutions of higher education at which applicants are enrolled or employed (information from OE Division of International Education).
9. Guaranteed Student Loan program.	Higher Education Act of 1965, title IV-B, as amended.	To encourage private commercial institutions and organizations to make loans for educational purposes to postsecondary students.	([6])	Students accepted for enrollment on at least a half-time basis in an eligible postsecondary educational institution.	Private lenders.
10. Interest benefits for higher education loans.	Higher Education Act of 1965, title IV-B, as amended.	To provide interest benefits for student loans through commercial lenders.	310,000,000	Students enrolled in eligible institutions of higher and vocational education.	Participating lenders (information from OE Office of Student Assistance).
11. Media services and captioned films training grants.	Education of the Handicapped Act, title VI-F (Public Law 91-230).	To improve quality of instruction available to deaf persons.	[7] (see I, 51-54)	Persons who will use captioned film equipment.	OE Bureau of Programs for Handicapped, Division of Educational Services.
12. National teaching fellowships and professors emeriti.	Higher Education Act of 1965, title III.	To strengthen the teaching resources of developing institutions.	[8] (see I, 37)	Highly qualified graduate students or junior faculty members from established institutions and retired scholars.	Participating institutions (information from OE Division of Institutional Support).
13. Personnel training for the education of the handicapped.	Education of the Handicapped Act, title VI-D (Public Law 91-230).	To prepare and inform teachers and others who educate handicapped children.	(see I, 58)	Qualified individuals	Participating institutions (information from OE Bureau of Programs for Handicapped, Division of Training Programs).
14. State student incentive grants.	Higher Education Act, title IV	To encourage States to increase their appropriations for student grants to needy students or to develop such grant programs where they do not exist—grants are on a 50-50, matching funds basis.	(see I, 35)	Postsecondary education students.	State education agencies.
15. Supplemental Educational Opportunity Grants.	Education Amendments of 1972	To assist students of exceptional financial need.	(see I, 43)	Postsecondary students	Participating educational institutions (information from OE Office of Student Assistance).
16. Teacher exchange	Mutual Education and Cultural Exchange Act.	To promote international understanding and professional competence by exchange of teachers between the United States and foreign nations.	[9] 1,320,000	Elementary and secondary school teachers, college instructors, and assistant professors.	OE Division of International Education.
17. Training of physical education and recreation personnel for handicapped children.	Education of the Handicapped Act, title VI-D.	To train physical education and recreation personnel for the handicapped.	(see I, 59)	Qualified individuals	Participating institutions (information from OE Bureau of Programs for the Handicapped, Division of Training Programs).
18. Teacher Corps project grants.	Education Professions Development Act, pt. B-1.	To improve educational opportunities for children of low income families and improve the quality of programs of teacher education for both certified and inexperienced teacher interns.	(see I, 22)	Institutions of higher education, local education agencies, and State education agencies.	OE Teacher Corps Office (individuals apply to appropriate institution).

Footnotes at end of table.

Type of assistance	Authorizing legislation	Purpose	Appropriation (dollars)	Who may apply	Where to apply
19. Ellender Fellowships	Public Law 92-506	To assist the Close Up Foundation of Washington, D.C., to carry out its program of increasing the understanding of the Federal Government among secondary school students, and the communities they represent.	500,000	Economically disadvantaged secondary school students and secondary school teachers.	The Close Up Foundation, 1660 L St. N.W., Washington, D.C. 20036.
20. College teacher fellowships	Higher Education Act, title IX	To increase the number of well qualified college teachers.	5,806,000	Prospective college teachers working toward doctoral degrees.	Participating institutions (information from OE Office of Institutional Support and International Programs, Division of Training and Facilities)
21. Librarian training	Higher Education Act, title II-B	To increase opportunities for training in librarianship.	2,850,000	Prospective and/or experienced librarians and information specialists.	Participating institutions (information from OE Division of Library Programs).
GROUP III: FOR RESEARCH					
1. Handicapped research and related activities.	Education of the Handicapped Act, title VI-E (Public Law 91-230).	To promote new knowledge and teaching techniques applicable to the education of the handicapped.	9,566,000	State or local education agencies and private educational organizations or research groups.	OE's Bureau of Programs for Handicapped. Division of Innovation and Development.
2. Physical education and recreation for the handicapped.	Education of the Handicapped Act, title VI-E (Public Law 91-230).	To perform research in areas of physical education and recreation for handicapped children.	350,000	State or local education agencies, public or nonprofit private educational or research agencies and organizations.	OE Bureau of Programs for Innovation and Development.
3. Vocational education curriculum development.	Vocational Education Act of 1963, as amended in pt. "I".	To develop standards for curriculum development in all occupational fields and promote the development and dissemination of materials for use in teaching occupational subjects.	4,000,000	State and local education agencies, private institutions and organizations.	OE Application Control Center, Office of Adult, Vocational, Technical and Manpower Education.
4. Vocational education research (developing new careers and occupations).	Vocational Education Act of 1963, as amended, part C.	To develop new vocational education careers and to disseminate information about them.	9,000,000	Education agencies, private institutions and organizations.	OE Application Control Center, Office of Adult, Vocational, Technical, and Manpower Education.
5. Vocational education research (innovative projects).	Vocational Education Act of 1963, as amended, pt. D.	To develop, establish and operate exemplary and innovative projects to serve as models for vocational education programs.	3,000,000	State boards of education	OE Office of Adult, Vocational, Technical and Manpower Education, Division of Research and Demonstration.
6. Vocational education research (meeting vocational needs of youth).	Vocational Education Act of 1963, as amended, pt. C.	To develop programs that meet the special vocational needs of youths with academic and socioeconomic handicaps.	9,000,000	Education agencies, private institutions, and organizations.	State boards of education.
7. Vocational education research (relating school curriculums to careers).	Vocational Education Act of 1963, as amended, pt. D.	To stimulate the development of new methods for relating school work to occupational fields and public education to manpower agencies.	8,000,000	State boards of education, local education agencies.	DHEW regional offices.
8. Library demonstrations	Higher Education Act, title II-B	To promote library and information science research and demonstrations.	1,425,000	Institutions of higher education and other public or private nonprofit agencies, institutions and organizations.	OE Division of Library Programs.
GROUP IV: FOR CONSTRUCTION					
1. Public schools	School Aid to Federally Impacted and Major Disaster Areas (Public Law 815).	Aid school districts in providing minimum school facilities in federally impacted and disaster areas.	19,000,000	Local school districts	DHEW regional offices.
2. Vocational facilities	Appalachian Regional Development Act of 1965.	Construct area vocational education facilities in the Appalachian region.	24,000,000	State education agencies in Appalachian region.	OE Division of Vocational and Technical Education.

[1] OE (Office of Education).
[2] Includes $2,000,000 in appropriated excess foreign currencies, $300,000 from the Bureau of Postsecondary Education.
[3] At least 10 percent for handicapped.
[4] Represents total funding figure for title IV of Civil Rights Act.
[5] Taken from a total $3,000,000 in appropriated excess foreign currencies.
[6] Private capital is used for these loans.
[7] Programs that include educational personnel training.
[8] Appropriated in previous years.
[9] Includes funds contributed by foreign governments on a cost-sharing basis.

DISCRIMINATION PROHIBITED

Title VI of the Civil Rights Act of 1964 states: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, or be so treated on the basis of sex under most education programs or activities receiving Federal assistance." All programs cited in this article, like every other program or activity receiving financial assistance from the Department of Health, Education, and Welfare, operate in compliance with this law.

THE INDIAN SELF-DETERMINATION AND EDUCATIONAL REFORM ACT, S. 1017

Mr. KENNEDY. Mr. President, I would like to refer briefly to the statement and materials I placed in the RECORD last Friday regarding the Indian Self-Determination and Educational Reform Act, S. 1017. During the next few weeks, the Interior Committee, the full Senate, and the Indian community will be continuing their discussion of this bill. I, thus, believe it would be helpful to make available additional relevant materials which should prove useful in this discussion.

First, I would like to place in the RECORD an analysis of title II, part A of S. 1017, written by Myron Jones, Director of Indian Education Training, Inc. Second, at the request of the Director of the National Advisory Council on Indian Education, I submit a paper written for NACIE by Adrian Parmeter, former staff director of the Senate Special Subcommittee on Indian Education, giving an overview of some of the problems and conflicts in current Indian education programing.

Finally, I want to call to the attention of my colleagues the inadvertent inclusion of section 223 in the staff draft amendment to S. 1017, appearing on page 5929 of the CONGRESSIONAL RECORD of March 8. It is my personal opinion that greater coordination between the Department of Health, Education, and Welfare and the Department of the Interior in their administration of Indian education programs is necessary and that the National Advisory Council might be utilized to that end. However, this particular section was not approved by the Interior Committee staff and should not have been included in the reprinted amendment.

I ask unanimous consent that the materials referred to above be printed in the RECORD.

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

ANALYSIS OF S. 1017, TITLE II, PART A
(By Myron Jones)

This section of the Act would eliminate Johnson O'Malley at a point in history when Indian communities are beginning both to understand and gain increasing control over Johnson O'Malley funds. To give the Bill the benefit of several doubts, it is an honest attempt at reform. It does not reform anything. Not only does it throw out the proverbial baby with the bath water, it replaces both with dirtier water.

(1) At a time when the States and the courts are wrestling with questions of school equalization formulas, this Act attempts to arrive at one Federal solution for Indians only in 21 separate States. This equalization attempt totally ignores the existence of the Citizenship Act of 1924. Indians and districts containing Indians are not excluded from all of the free public education provisions found in every State constitution. As such, equalization of funds is a State responsibility. The various State formulas will certainly try to take *non-categorical* Federal funding into account, but the equalization formula is the responsibility of the States, not the Federal government. Furthermore, if one is to believe the language of this Act, an Indian district is any district that contains at least one Federally recognized Indian, and that one Indian makes the entire district a Federal responsibility. Let me use a real example. The Albuquerque, New Mexico, school district now has 285 eligible, reservation Johnson O'Malley students. The total school district population is 83,000. Should Johnson O'Malley type funds or a replacement program be used to equalize funding for 83,000 students because of the presence of 285 Indian students? It's absurd, of course, but the language of the Bill would require that the funds be used to equalize such a school district.

(2) The Bill eliminates reform Johnson O'Malley measures that have now been undertaken in many JOM States. New Mexico, Nevada, California, Wisconsin, Montana, Oklahoma (with the exception of non-P.L. 874 districts) and Wyoming all have Statewide Johnson O'Malley programs that require that all JOM funds be used for supplementary programs. The new Bill would eliminate JOM type funding in many districts because of school financial questions either partially or totally unrelated to the presence of Indian students. It would also eliminate all the gains of these aforementioned States because the new Act doesn't call for any supplementary funding. It calls for 20% of the programs to be used for "special programs." Present experience tells us that this is a virtual invitation for school districts to use the funds for special programs that either serve to meet minimum standards between Indian and non-Indian schools. All history of Federal education funds tells us clearly that unless the word "supplementary" is both used and defined, Federal funds will be used to supplant.

It is important to point out that more than 65% of the Johnson O'Malley districts in the country have Indian student percentages below 25%. This means that factors such as amount of State funding and local tax effort, *over which the Indians in the district have no control,* will determine whether or not Indian students receive funding. This assumes a fantasy world in which a large non-Indian majority will increase its taxes to benefit the Indian minority within the school district. The reality is that school districts have lately been in revolt against voting higher taxes for their *own* kids. This legislation assumes an altruism, which, if real, would eliminate the need for any Federal legislation. Section 203(a)(1) requires a tax rate equal to that of five comparable (by size) districts. As stated above, this is impossible to enforce and simply will not work. It is also startlingly naive to attempt to consider tax rates independent of the amount of taxable property, assessed valuations, amount of industry, and all the other factors that affect income every bit as much as tax rates.

Section 203(a)(2) says that P.L. 874 will be considered as local income for purposes of this Act—no problem in itself, but Section 203(a)(3) says that local and State per pupil payments must be equal to that of five comparable districts, and that is a serious problem. Example: The State of New Mexico uses the presence of Public Law 874 funds in determining supplementary distribution. This means that every large Indian district in the State, because of substantial P.L. 874 funds, receives less State money per pupil under the State equalization plan than five comparable districts, and that these large Indian districts are, therefore, ineligible for S. 1017 funding. Specifically, Gallup-McKinley, the largest Indian district in the country with more than 8,000 Indian students would be ineligible under this section. Kirtland Central, with more than 3,000 Indian students would be ineligible under section (a) because they have the lowest tax rate in the State. In short, the most superficial homework shows that this Act would remove eligibility for the two largest Indian districts in the country.

I don't believe for a minute that this was the intent behind the legislation. I mention this only to illustrate that the consequences of this legislation have not been considered carefully or realistically.

On the contrary, the legislation represents myopic intervention into fundamental public school questions that are clearly outside the expertise of the Department of the Interior. Section 203 alone makes this self-evident.

No one in New Mexico in a position to know or with administrative responsibility has been asked what effect these funding requirements would have, and the result is that the overwhelming majority of present JOM students would be eliminated from eligibility. A quick check has indicated that of all JOM States, only Arizona has been asked what the effect would be. Since Arizona is notoriously the most unreformed JOM State in the country, this one place survey has produced predictable results.

(3) The follow-up section (4) with recommendations for programs is demeaning both to Indian education committees and to local school boards. One cannot honestly recommend legislation that would "provide one counselor for every 50 students" and still pretend to believe in any kind of local education control. Obviously the parents are capable of deciding whether or not they want counselors, and if so, how many. They do it now under Johnson O'Malley all over a growing number of States.

In summary, this Bill has several serious defects:

(1) It eliminates the familiar (Johnson O'Malley) in the name of new legislation (the effect of which has neither been properly studied or planned)

(2) It intervenes in basic questions of public school finance without proper expertise, investigation or documentation

(3) It sets up eligibility criteria wholly unrelated to Indian students' needs

(4) It diminishes parental control by 1) eliminating some now eligible school districts, including the two largest; 2) reducing available funds for many other districts; 3) diluting protective provisions that committees now have through the language of their State Plan.

THE FEDERAL GOVERNMENT AND INDIAN STUDENTS IN PUBLIC SCHOOLS

(An analysis of the rationale and purpose of the Indian Education Act and its relationship to other Federal Subsidy Programs for Indian Students in Public Schools.)

(By Adrian L. Parmeter)

I. INTRODUCTION

The purpose of this policy position paper is to examine the four federal programs which seek to provide effective educational programs for Indian children in public schools. Two principal issues to be examined are:

(1) The basic deficiencies and relative effectiveness of these programs;

(2) The extent to which there is unnecessary or undesirable duplication of effort between them.

The paper will conclude with a set of legislative and policy recommendations designed to enhance the effectiveness of these programs in achieving their common goal.

II. THE QUESTION OF NATIONAL POLICY

According to the latest available figures from the Office of Education, there are approximately 250,000 Indian students in public schools. In addition, there are approximately 55,000 Indian children served by the BIA Federal School System. Thus five out of every six Indian students can be found in a public school. On Federal Indian reservations, three out of every four Indian students are in a public school. Thus the predominant responsibility for effective Indian education programs lies in the public school sector.

The policy of the Federal Government, starting in the 1920's, has been to transfer the responsibility for Indian education from BIA or Federal schools to public school districts. The two-fold rationale for this policy has been that education is the responsibility of the states and that Indian children wherever possible should be educated in an "integrated" setting. In fact, a careful review of the historical evidence (see Appendix I—Final Report of Senate Subcommittee on Indian Education and Chapter I—"Failure of National Policy") indicates that a dominant reason for this transfer policy has been a desire to cut back and terminate direct Federal services for Indians and to force assimilation at whatever cost. One other important factor has been the failure of the Federal Government to provide effective alternatives to public school education in the Federal school system including any attempt to develop quality or superior educational programs.

It is beyond the scope of this paper to examine in any depth this two-fold policy rationale, but it is clearly open to serious challenge. The historical fact remains that whereas 80% of enrolled Indian students were in Federal schools in the early 1920's this situation has been completely reversed in the last fifty years. To accomplish this reversal has required three predominant Federal practices.

First, it has been necessary to provide substantial Federal subsidies to entice public school districts to enroll Indian students. In the course of the extensive hearings held by the Senate Subcommittee on Indian Education, these Federal subsidies were often referred to by Indian witnesses as "bribe money" or "a price on the head of Indian children". The clear implication is that many of the school districts are primarily interested in the money and have relatively little interest in the unique and special educational needs of the children. This leads to the second predominant Federal practice.

Because of the principle of "local control" there has been hardly any accountability on

the part of the school districts for how the money is expended and even if it is used to benefit Indian students at all. There is now available from various studies substantial evidence of the abuse and misuse of these funds by public school districts.

This failure to provide for any accountability in these Federal subsidy programs, has led to a third aspect of Federal practice. There has been a general unwillingness or non-recognition of the fact that many of these public school districts that Indian children have been pushed or gerrymandered into, have failed to provide anything even approaching an effective educational program for them. Again, there is ample documentation of this fact, from a number of recent thorough studies. A number of school districts can be found where there has been a conscious effort to exclude or neglect Indian students, and where the rankest kinds of discriminatory attitudes and practices prevail.

The Subcommittee on Indian Education found a number of school districts where, although there had been substantial Indian enrollment over a period of several decades, no Indian student had ever graduated, and in some instances where school administrators were even proud of the fact. The State of Oklahoma has more school districts receiving Federal Johnson O'Malley funds than any other state. Within the last year an audit conducted by the Interior Department found that more than one-third of the money had not been used by the districts for the benefit of their Indian students at all. Another compelling example is the Gallup-McKinley county school system, in New Mexico, which has a larger Indian enrollment and receives more Federal funds as a result of that Indian enrollment than any other school district in the country. A comprehensive record of their purposeful misallocation of resources and malfeasance in regard to their Indian students is now part of a recent trial record in the Federal District Court serving New Mexico.

One of the important reasons for the misallocation of funds within districts and general neglect of Indian students is the fact that Indian students can largely be found in the poorest, most marginal, most backward, most poorly staffed and financed school districts in the U.S. Recent Office of Education data reveals that 35% of all public school Indian students are in school districts where per pupil expenditure is below $425, or less than 50% of the national average. Seventy-five percent of all public school Indian students are in districts that expend less than $624 per pupil. It is highly questionable whether any child can receive an effective education under these financial constraints, let alone a highly disadvantaged child from a dramatically unique cultural and language background.

A serious question could be raised given the financial status of many of these school districts whether or not they should be in existence at all. A substantial number of these school districts, where the largest concentration of Indian students can be found, certainly could not continue to exist without the Federal subsidies. They exist as a result of our long-standing national policy that Indian children should be educated in public schools regardless of the consequences. This probably accounts for part of the Federal practice of benign neglect, or non-recognition of school district failure. The implicit rationalization is who could possibly be successful under these circumstances.

In summary, we now have substantial national data which indicates that public school education for a variety of reasons, both conscious and unconscious, has grossly failed Indian children, and the Federal government is a party to this failure, through its past policies and Federal subsidies which continue to underwrite a national tragedy.

III. FEDERAL SUBSIDIES FOR INDIAN STUDENTS IN PUBLIC SCHOOLS [1]

The triad of Federal programs which have provided the basic subsidies for Indian students in public school districts are the Johnson O'Malley Act (1934), P.L. 874 as amended in 1958, and Title I of the Elementary and Secondary Education Act of 1965. An historical examination of the accumulative interrelationships between these three Acts reveals that there is a substantial duplication problem which emerges in 1958 with the amendments to P.L. 874 and is exacerbated by the passage of Title ESEA in 1965. From the standpoint of Federal policy and administration, this constitutes the original and primary duplication problem.

In terms of providing effective educational programs for Indian students in public schools they share a common failure but for somewhat different reasons. Because of their deficiencies, they have all been superseded by P.L. 92-318 Title IV but continue to operate along their original paths. The passage and funding of P.L. 92-318 has now forced the issue into the open and a coherent set of policy and legislative decisions needs to be made to resolve the overlapping areas of responsibility.

Johnson O'Malley Act

When the Indian Citizenship Act of 1924 automatically made all Indians citizens of the States in which they resided and established a clear State responsibility under existing education laws, one might have assumed that this would suffice to bring about a wholesale change from BIA to public schools. In practice, however, it quickly became apparent that States and local public school districts would not assume this responsibility without Federal financial support.

The initial transfer of Indian students from Bureau schools to public schools in the 1920's came not primarily as a result of Bureau policy, but as a simple question of expediency. Increasing numbers of Indian students, particularly in California, found that, whereas Bureau schools were inaccessible to them, public schools were relatively close by. This was handled through a tuition system where the Bureau would compensate public schools directly on a per pupil basis.

By 1934, there were enough Indian students in public schools to justify new legislation and adaptation of a Bureau policy which would enable an increasing transfer of Indian students from Bureau schools to public schools. In most cases, the students and tribes affected were not receiving adequate Bureau services in any case, and Johnson O'Malley simply represented a formalization of a growing procedure. It did, however, specifically enable the Bureau of Indian Affairs to deal with States instead of negotiating with individual school districts. (It also extended this existing practice in education to apply to health and welfare services.)

In 1935, Johnson O'Malley contracts were first negotiated in the States of California and Washington. Of these contracts, the BIA said, "The amount to be paid under the terms of the contract in each case was the same as total tuition payments to the public school districts of the State during 1934." During appropriations hearings in 1936, Dr. Carson Ryan, Director of Education for the Bureau of Indian Affairs, said: "The chief argument for paying Federal tuition for the Indian children is that the existence of the untaxed Indian land deprives the school district of part of its taxable resources . . . If there is no untaxable Indian land, it is a little difficult to justify payment of a Federal subsidy." In 1937, the Bureau offered this explanation of California and Washington contracts:

"These contracts provide for the education of the Indian children; and where required and the extent to which funds are available under the contracts, for their transportation to and from school, for noon day lunches, textbooks, school supplies, school medical and dental services; also, so far as practicable for special courses desirable for Indian children."

Johnson O'Malley and Public Law 874

In 1958, Public Law 874 (Federal Impact Aid) was amended to include Indian children living on Federal land. This obviously affected the financial situation of school districts and was reflected in Bureau of Indian Affairs Code of Federal Regulations:

I. Existing Regulations: 33.4—Contracts with public schools

a. Contracts may be entered into under the provisions of the Act of April 16, 1934 (48 Stat. 596) as amended by the Act of June 4, 1936 (49 Stat. 1458, 25 U.S.C. 452-456) with the authorities of any State for the education of Indian children of one-fourth or more degree Indian blood, unless excepted by law, and to expend under such contract monies appropriated by Congress for such purposes and to permit the use of existing federal Indian school facilities and equipment by the local school authorities under such terms as may be agreed upon.

b. The program will be administered to accommodate unmet financial needs of school districts related to the presence of large blocks of non-taxable Indian-owned property in the district and relatively large numbers of Indian children which create situations which local funds are inadequate to meet. This Federal assistance program shall be based on the need of the district for supplemental funds to maintain an adequate school after evidence of reasonable tax effort and receipt of all other aids to the district without reflection on the status of Indian children.

c. When school districts educating Indian children are eligible for Federal aid under Public Law 874, 81st Congress (64 Stat. 1100), as amended, supplemental aid under the Act of April 16, 1934, supra, will be limited to meeting educational problems under extraordinary or exceptional circumstances. (22 F.R. 10533, December 24, 1957, as amended at 23 F.R. 7106, September 13, 1958)

It's clear from these regulations that at this point the Bureau is operating with some contradictions. On the one hand, paragraph "b" implies that Johnson O'Malley funds are to be used only as financial reimbursement for school districts' needs directly related to Federal non-taxable land. On the other hand, section "c" acknowledges that these financial needs will generally be taken care of by Public Law 874, and that Johnson O'Malley "will, therefore, be limited to meeting educational problems under extraordinary or exceptional circumstances".

The problem with this, of course, is that there is no definition for educational problems or extraordinary or exceptional circumstances. In a 1961 Senate hearing, BIA Chief of Education, Hildegard Thompson, attempted to define the type of district that would still be eligible for Johnson O'Malley funds: "Where there is no tax resource or practically no tax resource in the district, and the only financial resource the district has is a State aid program, plus what they get from 874, and the two together would not put them at all where they could operate an adequate program." Again, the difficulty here is that the Bureau then had no way to define what they meant by "an adequate program." Twelve years later, they still have no way to define "an adequate program."

The actual policy in relation to Johnson O'Malley use depends not on the Bureau but

[1] I want to acknowledge my indebtedness to Myron Jones for most of the substantive material in this section.

on individual States. For example: The State of New Mexico Johnson O'Malley Plan defines an adequate school as one that meets State Minimum Standards, and specifically provides that all Johnson O'Malley funds must be used for special, supplementary programs above and beyond the Minimum Standards. In a Federal district court decision last winter, involving the Gallup New Mexico school district, Judge Eratton carried this principle one step further and ruled that Johnson O'Malley funds should be used to provide special Indian programs only after school districts had demonstrated comparability in relation to their use of other funds. In New Mexico, the amount of taxable property and the tax rate, however low, is not considered a factor in Johnson O'Malley distribution. In fact, one district with the lowest tax levy in the State has consistently received Johnson O'Malley funds while at the same time, having an unbudgeted surplus that far exceeds their Johnson O'Malley program requested.

On the other hand, the neighboring State of Arizona has a Johnson O'Malley State Plan that rests almost exclusively on financial questions and ignores program questions. They take a tax levy mean average of all Johnson O'Malley districts. All districts above the average receive funding; all districts below the average receive no funding. There are no requirements on how the money can, or should be, used, and according to the State of Arizona's own report, in fiscal 1972, of $3.8 million received, only $10,000 was used for special programs. In effect, you could say that in some States, the existence of Public Law 874 and its funding factor has been acknowledged and Johnson O'Malley is meant to be used as an Indian Title I program; in other States, they are still pretending that 874 doesn't exist.

There are, of course, other factors that should be taken into account but are not. In many of the Western school districts, improvements (gas and oil leases, industrial development) on Indian land have progressed to the point where taxes from Indian land contribute far more to the school district than non-Indian taxes. For example, in the Bloomfield, New Mexico school district, which is less than 25% Indian, 60% of all local taxes are paid by the El Paso Natural Gas Company off Navajo land, and on Navajo land alone, in both Arizona and New Mexico, El Paso Natural Gas pays slightly more than $2 million a year in school taxes. This sometimes large factor of taxable improvements probably could not have been anticipated either in the 30's when Johnson O'Malley was passed or in the 50's when the regulations were written, but that is not the problem. The difficulty now is that neither the Bureau of Indian Affairs as part of a national policy, nor individual States, takes into account this factor, and no distinction is made in the distribution of funds between districts that have a considerable tax base and districts that have virtually none.

Johnson O'Malley, Public Law 874, and Title I

If Public Law 874 removed the argument for use of Johnson O'Malley as in lieu of tax payments, Title I threatened to eliminate the need for Johnson O'Malley on special programs since Title I was meant to serve all eligible pupils, including Indian pupils. This meant in theory, that if Indian students represented the most educationally disadvantaged in a school district, they would become the target group for Title I funding and Johnson O'Malley would function as a duplication. One reading of Bureau regulations after the passage of Public Law 874 would indicate that Johnson O'Malley had anticipated Title I and had become an Indian Title I program. Ironically, however, the fact that it had not become one formed a pressure base to retain Johnson O'Malley from those very schools which had abused it most. Those school districts were not about to let lovable, old, never-say-"no" Johnson O'Malley drop in favor of a Title I program with strict guidelines that were at least theoretically enforceable. Within the national community there was also great pressure to keep Johnson O'Malley, not only because it was familiar, but because it was viewed at least in its intention, as a specifically Indian program, and Title I, of course, was not.

The Title I Act and accompanying regulations are an implicit and sometimes explicit declaration that the Federal government does not trust local school districts to program compensatory Federal program funds toward the greatest needs of their least succesful pupils. The history of Johnson O'Malley demonstrates the validity of OE's assumption. However, it is precisely this potential for enforcement that the local school districts exploit with Indian people: "Who knows local needs best? Us, or the Feds?" Unless the local community is sophisticated enough and bold enough to say, "Who's the us?", this argument frequently works.

In the past, the argument has worked with Office of Education programs in a way that is not possible with Bureau of Indian Affairs programs. This is partially because the Bureau is not only more "local" than the Office of Education, they are more local than the public school administrators. Agency staff members and even Area staff are invited to and participate in far more tribal council and inter-tribal meetings than do school officials of any rank. Another factor is that the Bureau of Indian Affairs and the Indian community have now passed two golden anniversaries in a tenuous and miserable marriage, but a marriage in which the threat of Federal divorce can override all other questions. Hostility toward the Federal government can be directed more safely away from the Bureau of Indian Affairs, and both the Bureau and the public schools have sometimes exploited this situation. (NOTE: I refer throughout to Title I, rather han ESEA because the other Titles have been a relatively small factor in Indian communities.)

The Office of Education keeps two sets of figures on Title I: (1) total number of eligible students; (2) actual program participants—actual Indian participation depends on the school models and involves previous use of Johnson O'Malley.

Category 1: Major Impact—districts that are over 75% Indian and receive substantial ($400 per pupil or more non-categorical JOM funding).

Arizona, Alaska, the Dakotas would contain most of these districts. In these districts, JOM funds are used for what the school administration (and an occasional active school board member) considers "meat and potato" needs, and Title I supplies the dessert (usually pre-packaged). If there are JOM funds left over, they may be used for non-classroom supportive services (school supplies, P.E. equipment, extra-curricular transportation, etc.). Title I will be used exclusively for supplementary classroom needs, usually more of what hasn't worked in the basic school program.

Category 2: Major Impact—categorical districts.

This would include districts in New Mexico, Montana, and Washington where the State Plans require that JOM be used only for supplemental and categorical programs. Generally speaking, these districts use JOM and Title I in similar types of programs, primarily remedial. Most staff people can be moved back and forth from one to another without knowing the difference.

Category 3: Districts with sizable numbers (more than 200) of Indian Students but comprising less than 60% of the school district and with a competing Title I group.

All Johnson O'Malley States have some of these school districts. If the State Plans do not limit the use of JOM to special programs, the Indian students will participate in the Title I programs although these programs pretend in no way to be specifically based on Indian educational needs. If they are designed in relation to any specific needs, they will be primarily geared toward the other Title I group, e.g., Spanish/English as a second language program. If, however, the States require JOM to be used for supplemental programs, JOM becomes Title I, and the regular Title I programs become overwhelmingly non-Indian. Until last year, a Title I director in one of these kinds of school districts believed that Indian students were meant to be excluded from Title I funds to the "non-Indian" schools.

Category 4: Districts with fewer than 200 Indian students comprising less than 20% of the school population.

These districts have usually received very low JOM funding. There were, for example, 12 such districts in the State of Arizona in fiscal 1972.

They split $84,324 amongst themselves. This averaged out to $30.04 per pupil, compared with a State average of $337. An additional 14 "minor" impact districts received no JOM funding at all in fiscal 1972.

Indian students may or may not participate in Title I programs but they certainly do not form a Title I pressure group. In the rare instances in which these districts have been able to secure substantial JOM program funds, the Indian students do not participate in the Title I programs; not necessarily because they would be excluded from participation, but because all community energy is taken up with planning Johnson O'Malley funds.

In many of these smaller districts, Title I funds might be three times as big as JOM, but they tend to be ignored because: (1) they are newer; (2) Title I regulations and guidelines are far more complicated; (3) they are not exclusively Indian. Several recent studies reveal that less than one-third of the Indian children that qualify under Title I actually receive any program benefits at the school district level.

IV. BASIC DEFICIENCIES IN FEDERAL SUBSIDY PROGRAMS FOR INDIAN STUDENTS IN PUBLIC SCHOOLS

The purpose of this section is to summarize the basic deficiencies in the triad of Federal programs which underwrite public school education for Indian students. There is a wealth of data available from a number of recent studies the most important of which are the findings and records of the Senate Subcommittee on Indian Education, the NAACP Legal Defense Fund study *An Even Chance*, the O.E. funded national survey of Indian education by Robert Havinghurst et al, and the Bureau of Social Science Research, Inc., publication entitled "Federal Funding of Indian Education: A Bureaucratic Enigma". In addition there are several important GAO reports and a JOM survey report by the Department of Interior. It is not my intention to cite individual sources but I have drawn upon all of them in preparing this summary.

1. The first and foremost fact is that the failure rate of Indian students in public schools is a national scandal. Although some improvement can be detected in some school districts, there is hardly any evidence to support the proposition that 25 years of subsidies under the Johnson O'Malley Act, 15 years of subsidies under P.L. 872, and 8 years of subsidies under ESEA Title I have made any significant difference in terms of the academic performance of Indian students in public schools. Even assuming that there has been some minimum impact the current performance statistics are a national disgrace.

2. There is conclusive evidence that substantial amounts of money which go to pub-

lic school districts are not used for the benefit of Indian students in those school districts. Although there are a variety of ways by which public school districts accomplish this objective, and these vary somewhat between the three Federal subsidy programs, it can be said without qualification that this is an equality serious deficiency of Johnson O'Malley (e.g., recent audit in Oklahoma), P.L. 874 (e.g., recent court decision regarding Gallup-McKinley County School district), and ESEA Title I (e.g., see BSSR report and OE 1970 survey).

3. There is relatively little accountability on the part of the public school districts for how the money is spent. Under the largest program, P.L. 874, there is no accountability. Under the second largest program, Johnson O'Malley, there is almost no accountability in actual practice despite the pretense of state plans. To cite one particularly gross example recently presented in Senate hearings, $2.8 million in JOM funds in the State of Alaska were neither expended nor accounted for and the BIA accepted a report of that fact from the State without asking for any additional information. Under ESEA Title I there are some accountability requirements but in practice this is meaningless because there is very little if any enforcement. A recent report by the Bureau of Social Science Research states: "So far as we could ascertain, in neither the USOE or BIA is there one official with a comprehensive grasp of the distribution of Indian education funds or the policies which govern this distribution" . . . "much of the information on the allocation of funds is incomplete and misleading." This problem is so blatant and severe that the Senate Subcommittee on Administrative Practice and Procedure has undertaken a special investigation and public hearings on this matter.

4. Indian parents and communities have little control over the expenditures of monies under these three basic subsidy programs. Under P.L. 874, they have no control or involvement at all. The monies go directly into the general budget to be used in any way the school district sees fit. A large majority of the JOM dollars also go directly into the school district budget never to be identified again. A substantial amount of the funds go for non-educational purposes such as school lunch, transportation and parental support. Although there are Indian advisory committees these committees are only advisory and usually either dictated to or manipulated by the school administrations who appoint them. In recognition of this fact, a recent trend has been to contract these funds directly to Indian tribes or organizations. This is a highly desirable change and will be considered again in the recommendations section of this paper. It should also be noted that these monies are not necessarily used to support public school districts at all, and if they are it is an Indian subsidy rather than a direct Federal subsidy.

Under ESEA Title I, although there are general requirements for program involvement, in fact Indian involvement has been negligible. In many instances the funds are never even applied for or are expended on other students. Projects actually planned by Indian parents and administered by Indian staff are practically nonexistent.

5. None of the triad of Federal subsidies for Indian students in public school districts provide a strategy or systematic approach to the development of new or alternative or more effective educational approaches or programs for Indian students. Given the past record of traditional educational programs for these students, more of the same is, at best, questionable and, in general, a guarantee of continuing failure.

6. As the following charts indicate, no more than one-third of the Indian students in public schools are even potentially being reached by the triad of Federal subsidy programs. P.L. 874 and JOM monies are restricted to Indian children connected with Federal reservation or trust land. These two programs serve essentially the same Indian students and exclude two-thirds of the Indian students in public schools. According to the BSSC study, only one-third of the public school Indian students who qualify under ESEA Title I are being reached because of the way the program is administered.

Numerous studies have demonstrated that the failure of public schools is a national phenomena and in no way restricted to reservation populations. This was extensively documented in the findings and reports of the Senate Subcommittee on Indian Education and is corroborated by other research reports. Thus, one must conclude that only a small percentage of the real need is being met and this only in a partial and generally ineffective way.

A second major question regarding need is the question of depth of need of individual Indian students and to what extent the Federal subsidies are in any way adequate for the Indian students they do potentially reach. Based on recent Office of Education data and a three-part classification of need the charts indicate that 46% of the Indian students with unmet basic educational needs (defined in terms of a minimum per pupil expenditure in a school district) are presently not being reached by the Federal subsidies; that 64% of the students with compensatory or remedial educational needs are presently not being reached by the Federal subsidies; and that the Federal subsidies fail to reach 100% of the need for special educational needs (defined as cultural enhancement—Indian tribal history, culture, government, etc.). Whereas the present Federal subsidies do have some impact at the Basic educational need level, they have only a minor impact at the compensatory education level and practically none at the special educational need level.

In summary, the present Federal subsidies are gravely deficient in terms of meeting both the breadth and depth of need.

CHART I.—NUMBER OF PUBLIC SCHOOL INDIAN STUDENTS SERVED BY THE THREE BASIC FEDERAL SUBSIDY PROGRAMS

Category of need	Number of students	Public Law 874	JOM	ESEA
Basic needs	[2] 200,000	[3] 85,000	[3] 50,000	0
Compensatory needs	[4] 240,000	0	[3] 35,000	[3] 80,000
Special needs	250,000	0	0	0

[1] Total number of public school Indian students, based on OE figures, is 250,000.
[2] This figure is based on OE data which indicates that 80 percent of Indian students are in public school districts with a per pupil expenditure significantly under the national average.
[3] Same.
[4] This figure excludes 10,000 Indian students for which it is assumed that compensatory programs might not be required.

CHART II

TOTAL NUMBER AND PERCENT OF PUBLIC SCHOOL INDIAN STUDENTS WHOSE EDUCATIONAL NEEDS ARE NOT BEING SERVED BY FEDERAL SUBSIDY PROGRAMS

	At all		Inadequately	
	Number	Percent	Number	Percent
Total number of Indian students whose minimum basic educational needs are not being met	115,000	46	200,000	80
Total number of Indian students whose minimum compensatory educational needs are not being met	160,000	64	240,000	96
Total number of Indian students whose minimum special educational needs are not being met	250,000	100	250,000	100

V. THE INDIAN EDUCATION ACT: P.L. 92-318, TITLE IV

The final report of the Senate Subcommittee on Indian Education was published in November of 1969. This report was based on two years of public hearings and extensive staff field investigation which covered the U.S. from Alaska to Florida and from California to Maine. More than one hundred Indian organizations and individuals had testified that Federal policy, law, and programs relating to Indian education were grossly deficient, that the consequences were a national tragedy, and that a new, comprehensive, Indian Education Act was absolutely essential. All of the fundamental deficiencies in existing Federal programs summarized in the preceding sections of this paper, had been identified by Indian witnesses and documented by Subcommittee staff. The need for a radical departure from past practice was overwhelmingly apparent.

The conceptualization, planning, development, drafting, review, perfection, and passage of the Indian Education Act would require an additional two years, and the dominant element in this whole process was extensive Indian participation and involvement. American Indians have never played so large a role or exercised so much control over the shaping of major Indian legislation. The extensive, documented record of the Subcommittee and the extensive participation of American Indians in the work of the Subcommittee, and the development of the legislation was respected by Congress when the Act was passed with broad bi-partisan support and without a dissenting vote. It would be difficult to conceive of a greater Congressional mandate of support and demand for action. The significance of the Act in the minds of American Indians was perhaps best stated by the National Advisory Council on Indian Education in a letter to the President: "no other law has greater potential for solving Indian problems, contributing to Indian welfare and permitting Indians to exercise real control over the education of their children." It is difficult for me to comprehend how any administration which truly cares about the welfare of the American Indian and believes in the principle of Indian self-determination can oppose the full funding and effective implementation of this Act.

The Indian Education Act is not designed to reject or duplicate previous legislation. In fact, its substantive provisions are all in the form of corrective or perfecting amendments to existing legislation. Part A of the Act is in the form of a perfecting amendment to P.L. 874. Part B of the Act is in the form of a perfecting amendment to Title VII of the Elementary Secondary Education Act. Part C is in the form of a perfecting amendment to the Adult Basic Education Act and Part E is in the form of a perfecting amendment to the Higher Education Act.

Part D of the Act is new and fundamental. It provides for *fifteen* Indian Presidential appointees to serve on a National Advisory Board on Indian Education. The most important basic principle which permeates this Act—effective Indian control and self-determination—is given shape and form and substance in the National Adivsory Council. This is not to say that Indian control at the bottom—parent, child, and community—is not essential. It certainly is, and Parts A, B, C, and E of this legislation fully provide for it. But this is the first legislation to provide for Indian control at the top as well. The ultimate responsibility for the successful implementation of the Indian Education Act lies with the Indians who serve on this Council.

Indian control in past practice has often been a hollow term, all form and no substance. That is definitely not true in this case. This Council has far broader powers and responsibilities than the usual Federal Advisory Councils, and these powers are clearly delineated in the legislation. This

Council has substantial control over the selection of the Deputy Commissioner who will direct the Administration of the Indian Education Act. The Council has the responsibility for reporting to Congress on an annual basis on the expenditures, results, progress, and recommendations for changes in the Act.

The Council has substantial control over policy and rules and regulations used in implementing the Act. The Council has major input into planning and direct involvement in field review and evaluation. The Council has final authority over discretionary funding provisions in the Act. Some would say that the powers of the Council are too broad and encroach too much on the prerogatives of the Administration. It could more forcefully be argued that this Council is one of the most important efforts yet undertaken to bring life and force to President Nixon's call for Indian control and self-determination in the field of education.

The Indian Education Act in toto was carefully designed to overcome the fundamental deficiencies of the triad of Federal laws which have served the Indian student in public schools so poorly in the past. The suggestion that it duplicates these laws is patently absurd. The fact is that it has superceded these laws, thus raising the constructive question of whether or not the previous legislation should be rescinded, redirected, or administratively absorbed into the Indian Education Act which has now become the major vehicle for providing an effective education for Indian children in public schools. Before moving on to this important remaining question, it would probably be worthwhile to examine how Part A of the Indian Education Act provides an effective remedy for these deficiencies.

Last spring in a brief hearing (at which no Indian or Indian organization had a chance to testify) before the Senate Appropriations Subcommittee on Interior and Insular Affairs, the Commissioner of the Office of Education contended that Part A of the Indian Education Act was a duplication of P.L. 874. If Indian witnesses had testified, or if the Commissioner had consulted with Indians before testifying, they would have pointed out the following facts. Under Part A of the Indian Education Act, Indian parents and communities have complete control over the money in terms of planning, program execution, evaluation, and expenditures. Under P.L. 874, they have no control at all. Under Part A of the Indian Education Act the money can only be spent on educational programs for Indian students. Under P.L. 874 the money is spent for the benefit of all students at best and often very disproportionately on the non-Indian students. Under Part A of the Indian Education Act, tribally controlled schools, as alternatives to public schools, can be directly funded (e.g., the famous Rough Rock School on Navajo reservation). This is impossible under P.L. 874. Under Part A of the Indian Education Act, the full educational needs of 250,000 public school Indian students can be reached. Under P.L. 874 more than two-thirds of these students are excluded. Under Part A of the Indian Education Act there are provisions for full accountability over the expenditure of funds. Under P.L. 874 there is no accountability. Under Part A of the Indian Education Act new and innovative alternative approaches can be generated either within public school systems or in tribally controlled schools. Under P.L. 874 traditional practices which fail or discriminate against Indian students will prevail.

I don't believe it would serve any useful purpose to repeat a similar litany of comparison between the Indian Education Act and ESEA Title I. The duplication argument is essentially a false issue. Perhaps the best evidence is the fact that the testimony completely fails to mention the *real* duplication problem existing between the Johnson O'Malley program, P.L. 874, and ESEA Title I. The testimony also fails to address the real issue—the serious deficiencies in existing law which permit the Federal government to continue to subsidize a national disgrace without alleviating the problem. Similar to subsidizing slum housing, we have subsidized slum education.

It should also be noted that there is a gross overstatement of the amount of money expended by the Office of Education under various programs which allegedly serve Indians. I have talked with the program officers in OE who have attempted to compile reliable figures and they all agree that the data is not available within the Office of Education to arrive at any kind of a reliable total. They also agree that the figure used in the testimony is highly exaggerated. This is just another example of the failure of the Office of Education to realize its own deficiencies and to face up to the real problems.

The Commissioner's testimony was more or less superseded by the testimony of the Undersecretary of HEW before the Senate Interior Committee in June. In pointing out the shortcomings of S. 1017, the Undersecretary essentially supported the various provisions of the Indian Education Act by explaining their purpose, rationale, and potential. He did not reiterate any of the previous duplication arguments. In the interim period Indians had made their voices heard both within the Department and in the Federal Courts.

On October 30, 1973, the Secretary of HEW addressed the annual convention of the National Congress of American Indians. He pointed out that "education is the key to self-determination and education will receive heavy HEW emphasis as we move down the road that leads to full self-determination." He also stated that HEW was actively cooperating with the National Advisory Council on Indian Education in the selection of the first Deputy Commissioner for Indian Education, and that HEW would fully release and expend the $40 million which Congress had appropriated for the Indian Education Act for the coming fiscal year.

In addition, "the Office of Education will continue to provide additional funds under the more traditional Impact Aid Program and Title I of ESEA. . . ." The new Deputy Commissioner would have the responsibility for seeing that these two programs mesh effectively with the Indian Education Act and that all OE programs better serve Indian children.

Thus, the Administration seems to have reversed its own position and the duplication argument has suffered a still birth.

What remains to be seen is whether or not this HEW position of support for the Indian Education Act can survive the onslaught of budget cutting in the Office of Management and Budget and be fully reflected in the President's new Budget Message to Congress in January, 1975. If the Indian Education Act is not a part of the President's new budget request this will indeed reflect badly on the President's policy of Indian self-determination and Secretary Weinberger's speech to the National Congress of American Indians. It will be another example of "don't listen to what we say, watch what we do". American Indians are only too familiar with this form of hypocrisy and the consequences are not just the betrayal of Indian children, but an increase in the cynicism and despair of Indian communities which undermines the effectiveness of all Federal Indian programs.

Equally important, to exclude the Indian Education Act from the President's budget is essentially self-defeating. There is strong bi-partisan support in Congress for the Indian Education Act. Despite Administration opposition in the past, they have appropriated first $18 million in a Supplemental Appropriation Act and $40 million for FY '74. I have spoken with the staff and members of the two responsible Appropriations Subcommittees and it is clear that whether or not the Indian Education Act is a part of the President's budget request, a minimum of $60 million and quite possible $80 million will be appropriated by Congress for FY '75. Could it be that the Congress believes more strongly in the President's Indian policy than the President himself?

In my opinion the real price to be paid is not the loss of badly needed funds for Indian education because Congress will not permit that to happen. The real loss is to tarnish and debase the President's policy of Indian self-determination and his eloquent and unique contribution to Indian Affairs, the Special Message to Congress of July, 1970. This would be a tragic loss and should not be permitted to happen.

VI. RECOMMENDATIONS

The Indian Education Act was carefully designed to overcome the gross deficiencies of the triad of Federal laws which have served the Indian student in public schools so poorly in the past. The contention that it duplicates previous law has been carefully analyzed in this paper and shown to be a false issue. The fact is that it has superceded these laws and has now become the major Federal vehicle for achieving an effective education for Indian students in public schools. The question remains as to what shall be done about the overlap and duplication between Johnson O'Malley, P.L. 874, and ESEA Title I.

A second question of increasing importance as the size of the appropriations for the Indian Education Act rapidly increase (in the first full year of funding, FY '74 the funding level of $40 million is already greater than any of the other programs) and fair and effective displacement of previous ineffective programs becomes feasible without adverse impact at the school district level, what should be done regarding the traid of Federal subsidy programs which continue along their original paths. Should these programs be rescinded, redirected, or administratively absorbed into the Indian Education Act? This section of the paper will address these questions and provide a preliminary set of recommendations directed toward their resolution.

Recommendation I—Johnson O'Malley

As I stated in an earlier section of this paper, a recent trend in the Johnson O'Malley program has been to contract directly with Indian tribes and organizations. There are now four states where JOM funds are administered, not by the States, but by Inter-Tribal groups. Under at least one of these contracts, parental costs are not given to school districts at all, but are administered through the Indian community. This approach has proven to be feasible and effective and enthusiastically received by Indian communities. I would recommend that all Johnson O'Malley monies be contracted directly with Indian Tribes and organizations and administered by the respective Indian communities. The Indian communities could subsidize innovative educational programs of their own specifications in public school districts if they choose to, or they could develop important alternative or supplementary educational programs of their own. Such an approach provides real community control, provides a real stimulus for effective planning and enhances Indian community development and self-respect. In short, this approach is the essence of Indian self-determination and was specifically recommended in the President's Special Message to Congress of July, 1970.

There are two bills pending in the Senate Interior and Insular Affairs Committee which relate to this recommendation. S. 1342 is an administration bill which would clarify and strengthen the Indian contract-

ing authority under the Johnson O'Malley Act. In my judgment, this bill is right in its intention and policy but essentially superfluous. Adequate authority presently exists under the 1936 amendment to the Johnson O'Malley Act to fully implement this policy. What is needed is a clear policy decision and effective implementation.

S. 1017, sponsored by Senator Jackson and others, is also being marked-up in Committee. This bill is good in its intentions but essentially bad legislation. There are many serious deficiencies in this bill which deserve full discussion in a separate paper. But the two gravest deficiencies are its subsidizing of school district approach and its implied dictation of what educational programs Indians should have. The public school district approach has been a failure in the past and will continue to fail regardless of what language is written into the bill. Also, to predetermine the educational needs of Indian students and communities is a violation of the principle of self-determination. In addition, the proposed law would be a massive duplication under the Interior Department of the Indian Education Act under the Office of Education. It would serve to undermine the effectiveness of the Indian Education Act and to thoroughly confuse Indian communities. S. 1017 in its present form is definitely not the right answer. The right answer is contracting all JOM monies directly to Indian Tribes and organizations and this requires only a policy decision, not new law.

Recommendation II—ESEA Title I

There are two recommendations regarding the Elementary Secondary Education Act which I feel have considerable merit. The first addresses the need for very close coordination between the Administration of ESEA Title I and Part A of the Indian Education Act. I would recommend that the full entitlement of money for Indian students under Title I ESEA be integrated with the Administration of Part A of the Indian Education Act and become subject to the same set of rules and regulations. The first organizational step in this direction can be taken immediately by the Commissioner of the Office of Education. The second step, bringing Title I monies under the same set of rules and regulations as Part A of the Indian Education Act will require an amendment to ESEA. This act is presently approaching final mark-up in the Senate Labor and Public Welfare Committee and such an amendment should be included.

The net result of this recommendation is to substantially enhance the effectiveness of the monies expendable under Title I and will guarantee that they actually are used to benefit Indian children. The merger will also enhance Part A of the Indian Education Act by substantially increasing its size and critical program mass at the local school district level. In addition, integrating the administration of the two programs will alleviate any duplication which might otherwise occur, eliminate confusion at the school district level, and concentrate the force and authority of Indian parent advisory committees.

Recommendation III—ESEA

This recommendation concerns all of ESEA and was conceived by Dillon Platero, director of the Education Division for the Navajo Tribe and one of the leading Indian educators in the country. The recommendation is in the form of an amendment to the Elementary and Secondary Education Act which is stated in toto in draft form on the following page. The purpose of the amendment is to provide for the establishment of tribal educational agencies on Federally recognized Indian reservations, that would qualify directly for grants and programs under all appropriate Titles and sections of ESEA. Thus in effect, the Tribal government if it so chooses can elect to serve as the "state educational agency" and Tribal schools or school board can serve as "local educational agencies".

It should be stressed that this would not be mandated by the amendment but rather would be an option that could be exercised by any recognized Tribe that was ready and so desired. Appropriate qualification standards would be established by the Secretary of HEW for all Tribes who elected to file for this status.

This amendment provides an incentive and a mechanism for full Tribal control and self-determination of all programs funded under the Elementary and Secondary Education Act. It would stimulate effective Tribal educational planning (such as Mr. Patero has already done on the Navajo Reservation), it would provide an additional strong thrust in the direction of Tribally controlled schools, it would enhance Tribal sovereignty and it would provide an additional strong stimulus to innovative new programs and effective educational alternatives on Indian reservations.

This proposed amendment should be carefully studied, revised as necessary, and incorporated into the ESEA by the Senate Labor and Public Welfare Committee.

Proposed draft amendment to ESEA

To provide for the establishment of tribal educational agencies by recognized Indian tribes.

Be it enacted by the Senate and House Representatives of the United States of America in Congress assembled, That Section 801(f) of the Elementary and Secondary Education Act of 1965 (relating to the definition of "local educational agency") is amended by adding at the end thereof the following:

"Such term also includes any Indian tribal school board or other tribal authority established by a recognized Indian tribe which performs substantial governmental functions within an Indian reservation and has authorized such board or authority to have administrative control and direction of an elementary or secondary school for Indian children within its reservation."

SEC. 2. Section 801(k) of the Elementary and Secondary Education Act of 1965 (relating to the definition of "State educational agency") is further amended by adding at the end thereof the following:

"Provided, however, that any recognized Indian tribe which performs substantial governmental functions within an Indian reservation shall be entitled to elect to serve as the "State educational agency" for such reservation, and the term "State educational agency" shall include any such tribe which has filed such an election with the Secretary."

Recommendation IV—Public Law 874

The lack of relevant data regarding the Indian entitlement under P.L. 874 makes it impossible to arrive at any comprehensive recommendation regarding this program at this time. During the hearings on the Indian Education Act, it became apparent that Part A of the Indian Education Act would not serve as a satisfactory substitute for basic Indian entitlements under P.L. 874. Too many school districts with large Indian enrollment, were so dependent on P.L. 874 funds for general operating revenues that they probably could not continue to exist without them. The general rationale that was arrived at in those hearings and Committee mark-up was that P.L. 874 should continue as a basic support program and that Part A of the Indian Education Act would serve to meet the compensatory and special educational needs of Indian students.

This is still a sound rationale in my judgment, but as the level of funding for Part A substantially increases, this matter deserves further analysis and consideration. The real question, however, is not duplication, but rather whether or not at certain levels of funding Part A can become an equitable replacement and more effective funding agent than the "in lieu of taxes" approach of P.L. 874.

In the meantime, one procedural recommendation deserves immediate implementation by the Office of Education. Sufficient evidence exists of substantial abuses in the allocation of resources by P.L. 874 districts, and remedy by litigation which was the approach utilized by Indians in Gallup-McKinley County, New Mexico is far too costly and time consuming a burden to be borne by Indian communities. The Office of Education should establish procedures which would enable the Administration of P.L. 874 to determine whether Indian children share equally in the allocation of Impact Aid funds and to require local school districts to distribute these funds equally. If the Office of Education will not take this step of its own volition, it should be mandated by Congress.

Recommendation V—Indian Education Act

Part A of the Indian Education Act has great promise and is far superior in its provisions than previous law. However, it is not an automatic panacea to the problem of widespread abuses at the local school district level. Prejudice, ignorance and discrimination are deepseated problems and it is only prudent to assume that many public school districts will continue to attempt to misuse Indian Education Act moneys in the same fashion they have grown accustomed to under previous law.

I recommend that the Office of Education develop a strong and substantial program audit and technical assistance program built around a core of well trained Indian program auditors and technical assistance specialists. These Indian auditors can serve three important functions. First, they will serve as technical assistance and training advisors for parent advisory committees at the local school district level. Second, they will serve as independent program auditors for the Office of Education and the National Advisory Council on Indian Education. Third, they can serve as third party trouble-shooters for those projects that are in trouble or not living up to the rules and regulations.

The advantages of this program are as evident as the necessity for it. The program will provide an infrastructure of trained Indian professionals to maximize the potential and effectiveness of the parent advisory committees, to substantially increase the quality of programs under Part A, to minimize, arbitrate and remedy school district abuses of Part A programs, and to provide the Indian community, the Indian Education Act administration and the National Advisory Council with the kinds of information necessary for policy decisions and full accountability.

I would also recommend that the requirement for independent program auditors should be made a part of the Indian Education Act and be incorporated into the rules and regulations under which the Indian Education Act is administered. The present approach, being developed under contract for the Office of Education, of developing a management information system, supplemented by field questionnaires is not satisfactory. It will not provide the information needed for policy decisions or full accountability, it will not really serve to strengthen the parent advisory committees, it will not develop a new cadre of trained Indian professionals and it will not serve to effectively overcome abuses by public school districts.

Recommendation VI—An exemplary federal school system for Indian students

The Federal government, under the Bureau of Indian Affairs, administers an extensive Federal School System for Indian students. An analysis of this program is beyond the scope of this paper but one thing is clear. This Federal School System should provide

exemplary models and leadership for the development of effective educational programs for Indian students in public shcools.

Beginning with President Johnson's Special Message to Congress on Indian Affairs in 1968 and strongly reinforced and delineated by the recommendations of the Senate Subcommittee on Indian Education, the need and desirability of an exemplary Federal School System for Indian students has been well established. Yet little has been accomplished.

Congress should request the Bureau of Indian Affairs working in conjunction with the Office of Education and the National Advisory Council on Indian Education, to prepare a detailed set of specifications for such an exemplary system and a blueprint for how it can be achieved. This report should be extensively discussed and considered in public hearings conducted by the appropriate committees of the House and Senate. On the basis of these hearings legislation should be drafted and passed providing for an Exemplary Federal School System for Indian Children.

The time has come when it must be recognized that without a plan, without focused public hearings and without the mandate of new law, an exemplary program is only a pipedream. And all Indian children will continue to suffer the adverse consequences.

CATTLE PRICES AND BEEF PRICES

Mr. McGOVERN. Mr. President, today the Subcommittee of Agricultural Production, Marketing and Stabilization of Prices, of the Committee on Agriculture and Forestry, held the first of 2 days of hearings into the price of cattle at the farm level, and the price of beef in the supermarket.

Our cattle ranchers and feeders are taking the worst financial beatings of their lives. At today's hearing, the first vice president of the American National Cattlemen's Association, Mr. Wray Finney of Fort Cobb, Okla., and C. W. McMillan, executive vice president of the American National Cattlemen's Association, presented a most enlightening statement which detailed the predicament which has caught up the cattle industry in the early part of 1974.

Mr. President, I ask unanimous consent that the statement of the American National Cattlemen's Association, together with my remarks at the opening of the hearing, be printed in the RECORD.

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

STATEMENT OF THE AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION

(By Wray Finney)

My name is Wray Finney. I operate a cattle ranch at Ft. Cobb, Oklahoma and I also feed cattle. I am first vice president of the American National Cattlemen's Association, the national beef cattle trade association representing 150,000 cattlemen.

Our industry is made up of two basic groups: (1) The ranchers and farmers with beef cow herds or stocker operations producing feeder cattle; and (2) the cattle feeders and feedlot operators who purchase the feeder cattle and finish them out for market on grain rations. It is the consumer demand for this quality, choice beef which has brought continued growth of the cattle industry and a continued increase in per capita consumption of beef.

For almost a year—ever since imposition of the government's beef price freeze on March 29, 1973—the beef cattle industry has been in a state of economic chaos. As we predicted when it was imposed, the price freeze has had detrimental effects which will be felt for years to come.

A year ago, cattle feeders were making a profit. Today they are sustaining the largest losses in history, and many have been, or are on the verge of being, forced to go out of business or cut back sharply on their operations. With feed and other costs at record high levels, breakeven prices on slaughter cattle are $10 or more per hundredweight higher than slaughter cattle prices. Feeders are currently losing more than $100 per head on cattle marketed. Feeders have sustained losses continuously since September, 1973. This is shown in Table I.

The losses in the feedlot industry have reduced demand for the feeder cattle produced by ranchers and farmers. Feeder cattle prices are down sharply from their 1973 highs. The over-all price problem threatens the future health of the total beef cattle industry and thus the available consumer beef supply in the future.

SLAUGHTER CATTLE AND WHOLESALE BEEF PRICES

In a free market business like cattle and beef, the price is set by supply and demand at the time of the transaction. There always are price fluctuations from day to day or week to week. However, the fluctuations as illustrated in Table II, have been extremely wide since April, 1973. This is because of the disruptive effects of the economic stabilization program.

Average weekly cattle prices reached their high points during late July, August and early September. This was the time when retailers were having cattle custom-killed in order to obtain supplies. After removal of the retail beef price freeze in September, cattle prices tumbled to less than $40 per hundredweight—the largest price decrease in history. The decline reflected an increase in availability and slaughter of cattle not moved during the freeze period.

The strengthening cattle price trend in December resulted from a partial clean-up of "over-done" cattle; increased retail featuring of beef; and light slaughter as a result of holiday interruptions.

Cattle prices declined again in February and March. This was because the industry never got current in its sale of market-ready cattle. Then the truck strike caused a further back-up of cattle in the country.

While wholesale beef prices rose to new highs because of shortages brought on by the truck shut-down, the limited market for live cattle caused prices to feeders to decline. Also, consumer demand has been sluggish for weeks. This has been attributed to a slow-down in the economy, inflationary pressures on consumer buying power, retail prices averaging as high as or higher than at any time in the past, and less than normal amounts of retail featuring of beef due to the price ceilings of last year and margin controls still in effect by the Cost of Living Council.

GRAIN AND FEEDER CATTLE PRICES

Feed grains now cost twice as much as a year ago. As shown in Table IV, corn prices jumped from $1.65 per bushel last April to $3.00 today. With world demand for grain continuing strong, feed prices likely will remain high in the months ahead.

Feeder cattle prices, reflecting trends in fed cattle prices, rose to new highs in the summer of 1973. Weekly average prices at Oklahoma City reached a high of more than $68 last August. Subsequently, as prospects for profits from feeding dimmed, feeder cattle prices declined, and by the latter part of February, the average was down to $49 per hundredweight.

Along with the earlier rise in costs of feeder cattle, the continuing increases in feed costs brought a constant uptrend in cattle feeding costs, while slaughter cattle prices were declining.

CATTLE FEEDING PROFIT OR LOSS

Table I, referred to earlier, shows estimated breakeven prices, actual slaughter cattle prices and cattle feeders' profit or loss since last April. During the first part of the period, costs and slaughter cattle prices were such that feeders were making a profit. Beginning in September, cattle feeders went into a loss situation which has continued for six months. For the entire industry, losses since September total approximately $1 billion.

The cost of a pound of gain in the feedlot was 27¢ back in October, 1972. Today, reflecting much higher feed costs, the average cost of putting a pound of gain on a steer is approximately 51¢, and it is projected to increase to 55¢ by summer. To these costs must be added interest charges of about 3¢ per pound of gain.

Another major problem for the cattle feeder during the past year was the government's ban on use of diethylstilbestrol (DES) for cattle. Use of this growth stimulant has been shown to increase feed efficiency by at least 10%, in addition to shortening the period on feed and thereby reducing costs. Even though alternate substances have been used, had stilbestrol continued to be available, many feeders could have lowered their costs of gain by as much as 3¢ or 4¢ per pound. This would have minimized their losses or given them a profit on some cattle.

Barring periods such as the early 1960's when much of the industry went bankrupt, the current losses are much more severe than ever before. At this point, a large portion of the equity of feeders (both individuals and investor feeders) has been lost. And, based on projected breakeven levels, it seems unlikely that feeders will be in a profit position prior to the middle of 1974, if by then. Furthermore, financial institutions are expressing concern about the reduced or lost equity of cattle feeders, and the survival of many feeding operations is threatened.

FEEDLOT PLACEMENTS

Monthly placements of cattle on feed have continued below a year earlier since last April. The reductions have been caused by the 1973 boycotts and price freeze, which reduced the incentive to feed cattle, and by financial losses, high costs of gain and general uncertainties about the future. Numbers of cattle available to be placed in feedlots were up 5% in 1973, but actual placements were down 8%. The reduction in cattle placed on feed totaled 2.7 million head, which represents a tremendous amount of beef.

As a result of the reductions in placements in feedlots, numbers of cattle on feed dropped below a year earlier by late in 1973. Only because 1973 slaughter levels were below 1972 did numbers of cattle on feed remain ahead of the preceding year until November.

At this time, there continues to be more cattle available for placement in feedlots than a year ago. However, the current state of the feeding industry restricts interest in purchasing feeder cattle. Generally, cattle placed in feedlots are marketed as slaughter cattle about 180 days later. Therefore, if placements continue to lag, supplies of slaughter cattle will be down later in 1974.

CURRENT SITUATION AND OUTLOOK

At present there are large supplies of cattle in feedlots which are or will be ready for market. The back-up of cattle was caused by marketing disruptions from price controls, the recent truck strike, and economic conditions in the industry, including lagging demand.

All of this means that cattle feeding can provide cattle in large amounts—supporting a weekly federally inspected slaughter of 620,000 to 640,000 head of cattle—for the next

two or three months, and possibly even longer.

To move the dressed beef in the volume necessary, however, there must be adequate transportation. The current speed limits have greatly reduced the effective carrying capacity of refrigerated trucks. That is why it is important that Congress adopt legislation permitting heavier and longer trucks on the interstate highways.

If the cattle industry is to recover soon from its current depressed condition, it is necessary to move the present burdensome supplies quickly. Therefore, stepped up featuring of beef by retailers is imperative, in order to increase consumer demand, and then there must be transportation available to take the product to market. Also, there must be action to help forestall any more truck stoppages.

Meanwhile, looking further ahead, the current crisis in cattle feeding threatens the future of the basic cow herd. If feeder cattle prices continue to decline, there may be liquidations of basic herds. An indication of a cutback is seen in an increase of 16% in the size of cow slaughter in January, as compared with a year earlier. Producers who have the alternative of converting pasture acres to crops (in order to return more dollars) may switch away from the production of feeder cattle. Up to this time, the basic beef cow herd has been increasing in size, but the outlook will change if the cattle industry cannot soon see prospects for adequate returns in the years ahead.

Feeding costs are likely to continue high for some time. Export of grain in order to insure a favorable balance of international payments the fertilizer shortage and small grain reserves all add up to prospects for high grain prices. At the same time, there is a limit on how high beef and cattle prices can go in the marketplace.

If feed costs cannot come down and if slaughter cattle and beef prices can go only so high, there is more pressure on the one remaining area which determines feeding profit or loss—and that is the price of the feeder cattle. It is the nature of the cow man to continue producing feeder cattle. But, if he cannot see a profit in his future, he has no choice but to get out.

Thus, we see that the survival and stability of both segments of the beef cattle industry—the cow-calf operators and also the cattle feeders—hinge on early relief from the present disastrous price situation.

CORRECTIVE ACTION

The American National Cattlemen's Association recommends the following actions in order to help improve the beef cattle industry situation and thereby to help assure adequate supplies of beef to consumers:

1. The Administration should immediately end the economic stabilization program on food, rather than wait for expiration of the ill-conceived Economic Stabilization Act on April 30, 1974. Termination of the program will help restore the total industry, from producer to retailer, to the normal free, competitive market system. In a commodity business geared to the law of supply and demand, only a free market system will bring more favorable supplies and prices. Cattle producers and feeders will have more confidence in the future, and stability will be added to the total industry. Thus, the consumer will also receive the benefits.

Also, the present Economic Stabilization Act should be permitted to expire. If stand-by control authority is maintained, the temptation of political expediency will be forever present.

2. The Congress should enact emergency legislation to permit additional weight per axle and longer truck lengths. This is necessary to help offset the reductions in cattle and beef carrying capacity resulting from the 55 mile per hour speed limit.

3. Both the Congress and the Administration must recognize the vital importance of modern production tools—such as feed additives which improve feeding efficiency—in helping to reduce production costs and provide adequate supplies of beef at reasonable prices. Government must avoid laws and regulations which unnecessarily restrict use of modern technology. Stepped up production research also should be authorized and funded.

4. Government agencies which purchase beef should take advantage of the current large supplies and low wholesale prices and increase their purchases. This can result in economies to the government and can help move the present burdensome supplies to beef on the hoof.

TABLE I.—CATTLE FEEDING PROFIT OR LOSS SITUATION, MONTHLY FOR CATTLE SOLD BETWEEN APRIL 1973 AND FEBRUARY 1974 [1]

Month sold	Estimated breakeven price per hundredweight	Actual price choice steers, Omaha, hundredweight	Profit or (loss) per head	Cattle marketed 7 States (1,000 head)	Total profit or (loss)
1973:					
April	$37.94	$44.90	$73.08	1,440	$105,035,200
May	38.66	45.96	76.65	1,688	129,385,200
June	40.06	46.99	72.77	1,557	113,302,890
July	42.49	47.93	57.12	1,498	85,565,760
August	46.19	53.45	76.23	1,410	107,484,300
September	49.75	45.46	45.05	1,490	67,124,500
October	48.93	41.82	74.66	1,753	130,878,980
November	50.69	39.88	113.51	1,642	186,383,420
December	57.50	38.82	133.14	1,560	207,698,400
1974:					
January	$53.91	$46.92	$73.40	1,521	$111,641,400
February	58.85	46.01	134.82	[2] 1,500	202,230,000
Total, September 1973–February 1974					905,956,700
March	55.30				
April	53.94				
May	54.19				
June	52.60				
July	55.14				
August	54.51				

[1] Breakeven-prices are based on average prices paid for feeder cattle and estimated average costs of gain, with actual costs higher or lower in different areas. The figures are based on steers entering the feedlot at 600 lb, being fed for 180 days and then marketed at a weight of 1,050 lb. The total industry profits or losses are estimated on the basis of total fed cattle marketed from the 7 principal feeding States, which account for 70 percent of cattle on feed in the United States. These 7 States are Arizona, California, Colorado, Iowa, Kansas, Nebraska, Texas.

[2] Estimated.

TABLE II

Week ended	Price choice steers, Omaha	Feeder cattle, 500–600 lbs, Oklahoma City	Wholesale beef choice, Midwest, 600–700 lbs	Corn prices, Chicago, per bushel	Retail price, ERS data
Apr. 7	$44.67	$52.40	$69.55	$1.65 for April	$1.36 for April.
14	44.72	52.35	70.69		
21	45.26	54.82	69.60		
28	44.94	56.90	67.60		
May 5	45.16	57.20	68.15	$2.01 for May	$1.36 for May.
12	45.55	55.85	68.95		
19	45.91	55.62	68.45		
26	46.36	55.82	68.38		
June 2	46.82	54.00	69.25	$2.42 for June	$1.355 for June.
9	47.02	55.80	NA		
16	47.13	55.50	70.95		
23	46.92	55.50	70.19		
30	46.90	55.70	70.85		
July 7	47.06	55.75	70.94	$2.52 for July	$1.363 for July.
14	47.24	57.60	70.80		
21	48.24	59.40	71.00		
28	49.19	63.60	[1]		
Aug. 4	51.45	67.10	[1]	$2.91 for August	$1.442 for August.
11	54.51	68.60	[1]		
18	56.55	68.20	[1]		
25	53.48	66.60	[1]		
Sept. 1	51.25	64.40	[1]	$2.47 for September	$1.449 for September.
8	49.61	64.00	75.88		
15	48.47	62.00	75.40		
22	$45.15	$59.50	$69.40		
29	38.62	54.60	63.69		
Oct. 6	42.11	57.50	65.00	$2.37 for October	$1.360 for October.
13	42.05	57.50	65.00		
20	42.00	56.30	61.56		
27	41.85	54.70	64.19		
Nov. 3	41.09	54.70	64.95	$2.50 for November	$1.349 for November.
10	40.27	53.50	63.81		
17	40.26	53.60	59.25		
24	39.79	55.25	60.58		
Dec. 1	39.20	55.00	61.80	$2.68 for December	$1.344 for December.
8	37.03	50.20	61.13		
15	37.32	49.30	66.00		
22	39.80	50.20	66.20		
29	41.14	50.50	67.75		
Jan. 5	42.66	50.75	58.56	$2.90 for January	$1.430 for January.
12	47.88	53.45	75.00		
19	47.74	54.50	77.50		
26	48.22	53.30	74.45		
Feb. 2	48.10	53.00	76.20	$3 (estimate)	
9	48.18	52.80	84.94		
16	46.51	51.40	74.25		
23	43.34	49.25	69.94		

[1] Period of custom killing.

TABLE III.—MONTHLY AVERAGE FEEDER CATTLE AND CORN PRICES

Month	Feeder steers (500–600 lb) Oklahoma City hundredweight	Corn price, Chicago (monthly average) bushel
April 1973	$54.12	$1.65
May 1973	55.70	2.01
June 1973	55.63	2.42
July 1973	59.09	2.52
August 1973	66.98	2.91
September 1973	60.03	2.47
October 1973	56.14	2.37
November 1973	54.34	2.50
December 1973	50.05	2.68
January 1974	53.00	2.90
February 1974	51.15	[1] 3.00

[1] Estimated.

STATEMENT OF SENATOR GEORGE MCGOVERN

Mr. Chairman, the subject of these hearings—the wide spread between the farm price and the retail price of beef, and the disastrous pinch in which our cattle growers and feeders are caught—is a most timely one, and I commend you for calling these hearings.

I think it is important that the Subcommittee examine the precise nature of the situation confronting our meat industry, determine how we got into the present predicament, and look for ways to get out of it.

To find out how we got here, let us go back a year ago this month. The television news programs in March of 1973 were carrying almost daily stories about the consumer beef boycotts, the high price of beef, and quoting our Secretary of Agriculture as saying that anybody who would freeze the price of meat was "a damn fool."

Yet, before the month was over, some damn fool did freeze the price of meat, and we've been living with the consequences ever since. I am sure that every member of the Committee, and a large majority of the Congress, agrees with me that meat price controls were the largest single mistake that this Administration has made under the Economic Stabilization authority which Congress has granted.

Livestock is important to my State. Last year, the sale of livestock and livestock products accounted for $1.23 billion in cash income in South Dakota. No other industry, or other segment of agriculture, comes close to that. We are dealing with the real backbone of my State's economy.

Today, the cattle ranchers and feeders in my State, as well as those in the rest of the Nation, are taking the worst financial beating of their lives. And that financial squeeze has dangerous implications, not only from the cattlemen and the South Dakota economy, but in the long run for every consumer.

Let's look at the factors which created this situation:

First, the fat cattle now moving out of the feedlots into the market were bought as calves or feeder cattle last fall at relatively high prices—some as high as 60 to 80 cents a pound.

Second, fattening these cattle to slaughter weight cost the feeder somewhere in the area of 50 cents a pound, sometimes more. Some feeders estimate the cost of gain, per pound, as high as 56 cents.

Third, there has been a sharp drop in market prices. Slaughter cattle are getting, at best, 42 to 43 cents per pound. So every fed steer or fed heifer sold today results in heavy financial loss to the feeder—somewhere between $100 and $200 a head.

Faced with losses of that magnitude, cattle feeders are not inclined to buy feeder cattle to replace those they just sold. And that reduced demand means lower prices to the cattle rancher who produces the feeder cattle.

Over the long haul, it also means sharply reduced meat supply—like the shortages in the supermarkets of last fall—and sharply higher retail prices.

Without any question, the critical situation we find today has part of its origin right here in Washington. Since the price freeze, the problem has been compounded by the complete removal of restrictions against imported beef, by the Administration's refusal to buy more beef for the school lunch program, and by its refusal to head off a trucker strike which caused additional disruptions.

Because much of the problem has its roots in Federal mistakes, we have an obligation to come up with some solutions. So I would like to offer four recommendations—two short-term, two long-term—which might help.

First, the Administration should immediately restore quotas to stop the heavy shipments of imported beef into this country. Last year, the U.S. imported 1,989,000,000 pounds of beef—almost 10 per cent of our total 1973 beef consumption of 22,788,000,000 pounds.

It is clear from the White House statement, when the lid came off beef imports, that they feel imports have a direct effect on prices. Press Secretary Warren said last month that more imports will increase supplies and thus have an impact on prices.

This Administration should look for a way to have an impact to increase prices to the cattle producer, not drive them down.

Second, the Agriculture Department should buy much more beef for the school lunch and commodity distribution programs, and the Defense Department should buy more for the military services. Last month, USDA stopped buying beef for school lunches after buying only 45 million pounds—less than half of what it bought in 1970.

Each of these actions would have, at the very least, a good psychological impact on the cattle market. And in the case of imports, which account for nearly 10 per cent of supply, the impact can be greater than just psychological.

Third, the Federal Trade Commission should attach the highest priority to its investigation of the wide spread between the farm price and the supermarket price of beef.

There is no reason for retail beef prices to continue at or near their high levels of last year, when the farm price has dropped by one-third or more.

This week, we are beginning to see some break in retail prices—no doubt as a result of the public pressure from a number of us in the Congress, spokesmen for the cattle industry, and one or two lonely voices in the Administration.

Let us now hope that those retailers who promoted hard last year to sell substitutes for beef now promote equally hard to stimulate a return to beef.

Fourth, we should sharply increase our efforts to export beef and other livestock products. This Nation has done an outstanding job developing markets for wheat and feed grains. Last year's beef exports showed a significant increase—80 million pounds, compared with 50 million pounds a year earlier. Any Nation that can develop export markets for three-fourths of its wheat certainly can find markets for its beef in foreign capitals where retail beef prices are now $5 and $10 per pound.

Members of the Committee on Agriculture and Forestry are unanimous, I believe, in wanting a fair break for our cattle ranchers and feeders. Let us urge the Administration to join us.

Cattlemen are not asking for a Federal subsidy—the livestock industry traditionally has avoided that. But what they want is a chance to make a fair living, without the Government interference that comes from a price freeze or unlimited imports. It is a fair request, and one which I hope the Administration will grant.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. ABOUREZK). Is there further morning business? If not, morning business is concluded.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider a nomination on the Executive Calendar.

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

The PRESIDING OFFICER. The nomination on the Executive Calendar will be stated.

DEPARTMENT OF THE INTERIOR

The second assistant legislative clerk read the nomination of Royston C. Hughes, of Maryland, to be an Assistant Secretary of the Interior.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be notified of the confirmation of this nomination.

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

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate resume the consideration of legislative business.

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

CAPITAL PUNISHMENT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume the consideration of the unfinished business, S. 1401, which the clerk will state.

The second assistant legislative clerk read as follows:

S. 1401, to establish a rational criteria for the mandatory imposition of the sentence of death, and for other purposes.

The Senate resumed the consideration of the bill.

SENATOR KENNEDY COMMENDED FOR AMENDED REMARKS

Mr. HELMS. Mr. President, I rise to commend the distinguished Senator from Massachusetts (Mr. KENNEDY) for removing from the RECORD some extemporaneous and, I am sure, some unintended remarks made by him yesterday afternoon in this Chamber concerning my State and, by implication, the judicial system of North Carolina.

His amended remarks, as published in the RECORD, are quite satisfactory to me; and I do not find them offensive in the slightest. However, as the distinguished Senator from Massachusetts and a few other Senators who were on the floor of the Senate at the time are aware, I did question some oral statements on the floor yesterday.

Mr. President, it so happens that I was presiding at the time, just before 5 p.m. At 5 p.m., I was succeeded in the chair by the distinguished Senator from Ohio (Mr. METZENBAUM). The comments by the distinguished Senator from Massachusetts, which I questioned, were made shortly before I left the chair. Immediately thereafter, I made inquiry of Senator KENNEDY as to the basis of his comments concerning my State.

As Senator KENNEDY will recall, he orally referred implicitly to "systematic" exclusion of blacks from the jury in the North Carolina case which he was discussing. He rather strongly suggested that the victim of the rape may have consented to sexual intercourse with the man convicted of raping her. There were other statements which, altogether, seemed to me to portray my State and its judicial system in a rather bad light.

I am comforted, Mr. President, by the fact that the distinguished Senator from Massachusetts perhaps had second thoughts about these suggestions. In any case, the comments by him which I questioned yesterday do not appear in the RECORD of March 12. I thank the distinguished Senator for the decision to exclude them from the RECORD.

AMENDMENT NO. 1019

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado (Mr. HASKELL) No. 1019.

Mr. HASKELL. Mr. President, I ask unanimous consent that Balvino S. Martinez Chaves of my staff be accorded the privilege of the floor during debate and the vote on this amendment and on final passage of S. 1401.

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

Mr. HASKELL. Mr. President, my amendment is very simple. It would merely substitute the word "may" for "shall" on page 15, line 3, and on page 16, line 2.

The bill, without my amendment, would make mandatory the imposition of a death sentence. I will give one example of what I would consider to be an unintended effect. I call the Chair's attention to line 14 on page 16 where the offense is destruction of Government property by explosives which, incidentally, if a death is inadvertently caused, would require the death penalty.

Now that line on that particular page of the bill is an aggravating circumstance under which a judge would have no alternative but to impose the death sentence.

Take, for example, a situation where—this is absurd, I admit, but I am using the absurdity to illustrate my point—a picnic table in a national park is destroyed by an explosive and someone is unwittingly killed. Under the reading of this statute, the death sentence would have to be imposed.

Now I recognize that on page 14, line 20, there is a possible mitigating circumstance which a jury might find. The jury might find that the offending person could not reasonably have foreseen that his action would result in death.

But suppose a jury did not make such a finding, juries have been known to err. Then the judge has absolutely no discretion. This man must be put to death.

My amendment would provide that if aggravating circumstances are present, the judge has discretion whether to impose the death penalty.

Now let us come to the decision in the Furman case by the Supreme Court of the United States. I think, first, I should like to call the attention of the Chair to a comment of the Chief Justice in that case, on page 403, where the Chief Justice says:

> Since there is no majority of the Court on the ultimate issue presented—in these cases—

That is the constitutional issue—

> The future of capital punishment in this country has been left in an uncertain limbo. Rather than providing a final and unambiguous answer on the basic constitutional question, the collective impact of the majority's ruling is to demand an undetermined measure of change from the various State legislatures and the Congress.

Now of the majority of five Justices in that case, three found the death penalty unconstitutional, and two were concerned not with the constitutionality of capital punishment per se but placed special emphasis on the fact that the judges had broad discretion.

I would call the Chair's attention to the fact that with my amendment, the bill has standards. There are certain cases where the court and the jury may not, under any circumstances, impose the death penalty. There are certain cases where, the standards being spelled out, a court may impose the death penalty. Therefore, I have concluded—one should never be absolutely certain, Mr. President, of anything—beyond any shadow of a doubt that the proposed statute, with my amendment, satisfies the standards implied in the court's opinion, yet prevents the unintended result of putting a man to death under the circumstances I have related.

Let me say in conclusion that it is all very well to have a mechanical result in a tax statute because then all a person can lose is his money, but to have a mechanical test in a statute where a man can lose his life, that is certainly something we in this body do not want to pass.

Mr. President, that concludes my presentation.

I ask for the yeas and nays on my amendment.

There was not a sufficient second.

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

Mr. McCLELLAN. Mr. President, will the Senator withhold that request for a moment?

Mr. HASKELL. I withhold my request.

Mr. McCLELLAN. Mr. President, I want to expedite the matter of disposing of this amendment and other amendments today, to the end that we may finish the bill sometime this afternoon at a reasonable hour, so that we can accommodate the wishes of many Members of this body, including myself to try to get this bill out of the way as expeditiously as possible.

I certainly shall support the request for a rollcall vote, Mr. President. I do want to make a few remarks, and I will withhold my remarks pending the quorum call and until we can get the yeas and nays. I hope the Sergeant at Arms will help us to get the required number of Senators in the Chamber to provide the proper second to the request, so that we may move expeditiously.

Mr. HASKELL. I thank the Senator from Arkansas.

Mr. President, I suggest the absence of a quorum, and in the meantime the Sergeant at Arms might see whether we can get the requisite quorum.

The PRESIDING OFFICER. The Sergeant at Arms is requested to do so.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

DETERMINING TONNAGE ON VESSELS USED FOR WASTE MATERIALS

Mr. ROBERT C. BYRD. Mr. President, it is my understanding that the measure I am about to call up has been cleared on both sides of the aisle.

I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 706, S. 1353.

The PRESIDING OFFICER (Mr. ABOUREZK). The bill will be stated by title.

The second assistant legislative clerk read as follows:

> A bill (S. 1353) to deduct from gross tonnage in determining net tonnage those spaces on board vessels used for waste materials.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce with amendments on page 1, line 5, after the word "new", strike out "paragraph" and insert "subsection"; in line 7, after the word "clarify", strike out "or"; in the same line, after the word "purify", insert "or process"; in line 8, after the word "mixture", strike out "or"; in the same line, after the word "residue", insert "bilge residue,"; in line 9, after the word "sewage", insert "garbage, galley wastes, or trash"; in line 10, after the word "tank", strike out "or"; in the same line, after the word "tanks", insert "or collection area"; and, in line 11, after the word "carriage", insert "or collection"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4153 of the Revised Statutes (46 U.S.C. 77) is amended by inserting following subsection (d) the following new subsection:

"(e) Space occupied by machinery used exclusively to separate, clarify, purify, or process, a ship's own slop oil mixture, tank-

cleaning residue, bilge residue, or other waste materials, including sewage, garbage, galley wastes, or trash and space occupied by any tank, tanks, or collection area used exclusively for the carriage or collection of such slop oil mixture, tank-cleaning residue, or other waste materials, but not to exceed a maximum space deduction established by regulations hereunder. The Secretary of the department in which the Coast Guard is operating in consultation with the Administrator of the Environmental Protection Agency, shall issue regulations to define the slop oil mixtures, cleaning residue, and waste materials, establish the maximum deductions which may be made, define the manner in which the spaces shall be used and marked, and as necessary otherwise to carry out the provisions of this subsection."

SEC. 2. Section 4153 of the Revised Statutes (46 U.S.C. 77) is further amended by redesignating existing subsections (e) through (i) as (f) through (j).

The amendments were agreed to.

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

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

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.

REPORT OF ARMS CONTROL AND DISARMAMENT AGENCY—MESSAGE FROM THE PRESIDENT

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

To the Congress of the United States:

Technology in the Nuclear Age has become capable of virtually global devastation. We are thus called upon as never before in the history of American diplomacy—both by our traditions and by unprecedented responsibilities—to assume a role of leadership in seeking international arms restraints. This is a most important element of that structure of peace which is the broader goal of our foreign policy.

The coordinating instrument for this effort within our Government is the U.S. Arms Control and Disarmament Agency, now entering its fourteenth year. It has been the policy of my Administration to strengthen this Agency and to equip it for the essential role it must play in promoting our national security.

The year 1973 was a time of sustained effort and continued progress in arms control, building upon earlier achievements and laying the ground for future agreements which will be of utmost importance for our security and well-being.

It is with deep satisfaction in our continuing progress that I transmit to the Congress this thirteenth annual report of the U.S. Arms Control and Disarmament Agency.

RICHARD NIXON.

THE WHITE HOUSE, *March 13, 1974.*

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, I ask unanimous consent that the yeas and nays be ordered on the pending amendment.

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

The question is on agreeing to the amendment of the Senator from Colorado (Mr. HASKELL). The Senator from Arkansas is recognized.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield for just 1 minute?

Mr. McCLELLAN. I yield.

Mr. ROBERT C. BYRD. Mr. President, I hesitate to ask that the yeas and nays be ordered by unanimous consent but I am also reluctant to see the Senate tied up for 30, 40, or 60 minutes waiting for seven additional Senators to get to the floor to order the yeas and nays. I also am reluctant to interrupt committee hearings by asking for a live quorum.

I thank the Senator for yielding.

Mr. McCLELLAN. I wish to express my appreciation to the acting majority leader for having taken this action in an effort to expedite further consideration of the measure.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. McCLELLAN. Mr. President, I have carefully considered the amendments proposed by the distinguished Senator from Colorado (Mr. HASKELL). Last night, after the Senate recessed, I once again read the opinions of Justices Stewart and White in the Furman case, as well as the opinion of Chief Justice Burger, which the Senator cited in support of his amendment.

Parenthetically, I would like to say that personally I would like to be able to support the amendment in order to provide discretion to the jury or judge trying these cases. But that is the very defect in the present system that brings this legislation to the floor today. That is the very defect that caused the reversal in the Furman case. That is the defect this bill seeks to correct.

I am persuaded that if this amendment were agreed to and the word "may" inserted where the word "shall" now appears, we would be engaging in an effort in futility. For it is the discretion that has heretofore been reposed in the courts and juries that the Supreme Court condemned in the Furman decision. It is this discretion that the Court found permitted the wanton and freakish application of the death penalty which Justices Stewart and White so vigorously protested.

This is a bill to try to make the death penalty mandatory under standards of the highest order that we can conceive, taking into account the right of society to be protected from murder. There are five mitigating circumstances, any one of which, if present, requires that the death penalty not be imposed.

There are eight aggravating circumstances. If one or more of these is present and none of the mitigating circumstances is present, then the death sentence is required.

I, too, would much prefer from my personal standpoint a constitutional law that permitted at least a measure of the discretion which the Senator seeks. Unfortunately, Furman does not allow that. But the standards included in this bill are certainly the highest I can conceive of and the highest that the committee has been able to work out. They require the death penalty to be imposed only in the most atrocious cases of murder.

As I started to say before having again read the opinions of Justices Stewart and White, I must oppose this amendment. I do so, as I just stated, because I sincerely believe that if they are adopted, the bill would be subject to the same objections that led Justice Stewart and Justice White to join with Justice Brennan, Justice Marshall, and Justice Douglas in declaring the death penalty unconstitutional in the Furman case.

One who does not believe in the death penalty under any circumstances might find some refuge in the Senator's amendment, but I do not subscribe to that view.

As I have said repeatedly, there are such atrocious crimes that those who commit them should forfeit their right to live. They constitute a continuing danger to society. Even if incarcerated under guard, they may still have the opportunity to repeat the crime. Care must be taken to at least try to enact a constitutional law.

With the amendment, a judge could ignore the standards in the bill and nothing could be done about it. Once we give him the power, the discretion, to decide the final word is with him. That is what the Justices objected to—that the law ought to say the final word, not a jury or judge. Under this bill, once a jury makes a specific finding of fact that none of these mitigating circumstances exist and at least one aggravating circumstance exists, then the death penalty applies. On the other hand, if one mitigating circumstance, as reflected in this bill, is present, no judge may impose death. It works both ways. The law makes the decision, not the judge, not the jury.

The amendment proposed by the Senator from Colorado would vitiate this objective. Once again the imposition of the death sentence would be left to "unfettered discretion." The discretion of the judge or jury would not be limited in any way. The judge would not be required to impose the penalty no matter how many of the aggravating factors existed—not even if all eight aggravating factors—were present and none of the mitigating factors. To paraphrase the

very words of Justice White, the legislative will would not be frustrated if the penalty were never imposed. Likewise, there would be nothing to prevent the wanton and freakish results deplored by Justice Stewart from recurring.

The Senator from Colorado cites the opinion of Chief Justice Burger in support of his amendments. In that opinion the Chief Justice also stated:

> There is little reason to believe that sentencing standards in any form will substantially alter the discretionary character of the prevailing system of sentencing in capital cases.

He therefore has some doubts that even the standards in the bill as drafted will relieve or eliminate the problems of Furman, a fortiori, the amendments proposed by the Senator from Colorado would do nothing to remedy the situation.

I recognize that the Senator from Colorado is genuinely concerned. I have talked with him personally about this, and I certainly respect his interest, his concern, his purpose, and his motive.

There is no question that we are dealing here with a problem that is of grave concern to everybody in this Nation. If there is to be a death penalty, then we must set up the guidelines, the standards, to be applied in a manner reasonably certain to be constitutional. We are trying to make application of the law as uniform as possible. Of course, if one believes that under no circumstances should the death penalty be imposed, then he should favor this amendment.

Yesterday the Senator from Colorado cited the example of a violation of one of the explosive offenses where death resulted—but where that death was not foreseeable by the bomber.

I have no sympathy at all for bombers I assure you. But even that case is clearly covered by the mitigating factors in this bill. Under the fifth mitigating factor, if the resulting death was not foreseeable, the death penalty could not be imposed.

I will read that fifth factor, Mr. President:

> He could not reasonably have foressen that his conduct in the course of the commission of a murder or other offense resulting in death for which he was convicted would cause or would create a grave risk of causing death to a person.

If a defendant had no reason to believe that he would cause death, that is a mitigating factor. Though he was responsible for the death, if he could not foresee it, he could not be given the death penalty.

Mr. President, I recognize that there are those who are concerned that a bill that requires that the death penalty be imposed in certain cases may result in unjust executions.

That is exactly what the Supreme Court also complains about. Where there is discretion, it may often result in unjust executions.

To those who are thus concerned, I would urge that they carefully examine the listed "mitigating" factors—the existence of any one of which will prevent that punishment from being imposed. I am confident that they will find that they can conceive of no instance where the death penalty would be unjustly imposed.

I cannot think of any other mitigating factor that should be written into this law that is required to do justice if there is to be any death penalty.

I sincerely believe that the effect of the amendments proposed by the Senator from Colorado would be to perpetuate a defect identified by Justices Stewart and White as controlling their decision in Furman and thereby render this bill unconstitutional.

I believe they would do irreparable violence to this bill. If such amendments were adopted, there could be no legal death penalty imposed hereafter. For that reason, though I respect his motives and his sincerity, I must oppose them.

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

Mr. McCLELLAN. I have the floor. I am ready to yield the floor or yield to the Senator.

The Senator from Colorado has offered an amendment. If he would prefer to go first, I will yield the floor.

Mr. HASKELL. That will be all right, Mr. President.

Mr. McCLELLAN. Mr. President, I yield to the Senator from Nebraska.

Mr. HRUSKA. Mr. President, I have another matter to attend to. I would like to ask a question at this time.

Mr. McCLELLAN. Mr. President, I yield to the Senator from Nebraska.

Mr. HRUSKA. Mr. President, did the Senator cite the two cases decided by the Supreme Court of Delaware and the Supreme Court of North Carolina on this precise point?

Mr. McCLELLAN. I did not cite any cases other than refer to the comments of the judges in the Furman case.

Mr. HRUSKA. There are two cases that have been decided, one by the Supreme Court of Delaware and the other by the Supreme Court of North Carolina on this subject. One was decided in Delaware on November 1, 1972. The other was decided in North Carolina on January 18, 1973. They are reported in 12 Criminal Law Reporter at pages 2125 and 2307 respectively.

Both courts considered the constitutionality of statutes that created standards much like those in S. 1401 but permitted the judge or jury to exercise discretion in determining whether the death penalty should be imposed. In short, both statutes were much the same as this statute would be if the amendment under discussion were approved. In both cases, the courts held that this type of statute was unconstitutional in light of Furman against Georgia. To render the statutes constitutional, the courts severed the discretionary aspect leaving the States with mandatory death penalties for certain specified crimes, which is what S. 1401, as now drafted, proposes.

Yesterday, the Senator from Colorado referred to S. 1 saying that it imposed discretionary standards. The Senator is correct. But the committee rejected that approach in favor of the S. 1401 approach which was considered to be based upon a firm constitutional footing. And as my citation to the decisions by the North Carolina and Delaware courts illustrates, it appears that the S. 1 approach is indeed unconstitutional.

Aside from the constitutional issue, I believe that there is another defect in the amendment. Under this amendment, a jury could find that one or more aggravating factors exist and no mitigating factors exist. Yet, the court could, in its discretion, refuse to impose the death penalty. But what are the standards to guide this discretion? There are none. A judge could punish as he willed despite the findings of the jury. If he did not like the death penalty as a form of punishment, he could refuse to impose it for that very reason alone thereby frustrating the will of the jury. In short, his discretion would be unfettered. As a result, the penalty could be imposed in the same "wantonly and freakishly" manner that the Supreme Court held violated the Eighth Amendment. Evenhanded justice could not be attained. In my mind, such a provision is not only unconstitutional but also unwise.

Finally, let me suggest that the basic concern of the distinguished Senator from Colorado, namely that the death penalty will not be imposed upon a defendant who accidentally killed another or who could not reasonably foresee that death would actually result from his conduct—is already satisfied by a mitigating factor found in the bill. Under S. 1401, the death penalty cannot be imposed if the defendant, and I quote mitigating factor 5, "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."

In sum, I believe that the basic concern of the Senator from Colorado—namely, that the penalty not be imposed unjustly—is met by S. 1401 as now drafted. I ask my colleagues not to amend the bill in such a way that it calls into question the constitutionality of the bill, as the proposed amendment would.

I would suggest that we take cognizance of these two Supreme Court decisions and reject the amendment.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the previous order for the yeas and nays on the amendment be vacated.

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

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays on the pending amendment.

The PRESIDING OFFICER. Is there a sufficient second (putting the question)?

The yeas and nays were ordered.

Mr. HASKELL. Mr. President, just briefly I believe that there is a difference of opinion between the distinguished Senator from Arkansas, the distinguished Senator from Nebraska and me. I personally feel that the death penalty is something that should be retained as a deterrent factor in our law.

I do not read the Furman decision the way the distinguished Senator from Arkansas does. Of course, we can go back and forth from interpretation to interpretation.

I read that decision as saying that the

unfettered discretion of a judge or jury is unconstitutional. I would again point to my earlier remarks. By granting this small element of discretion, we can prevent terrible injustices.

With my amendment I can vote for the bill. Without my amendment, I, unfortunately, cannot, at this time, consider voting for it. We could run into the type of terrible injustices that have happened previously.

With that statement I yield the flood.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

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

Mr. HRUSKA. Mr. President, I yield to the Senator from Michigan.

Mr. HART. Mr. President, I ask unanimous consent that Mr. Burton Wides of my staff be permitted access to the floor during the debate of the pending legislation.

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

Mr. HRUSKA. Mr. President, I ask unanimous consent that the text of the two opinions to which I have referred in the Delaware and North Carolina cases be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HRUSKA. Mr. President, aside from the constitutional issue, I believe there is another defect in the amendment proposed by the Senator from Colorado.

Under this amendment, the jury could find that one or more aggravating factors exist and that no mitigating factors exist. Yet, the court could, in its own discretion, refuse to impose the death penalty.

What are the standards to guide this discretion? There are none. The judge could punish as he will despite the findings of the jury. If he did not like the death penalty as a form of punishment, he could refuse to invoke it. For that very reason alone, he can thereby frustrate the will and the findings of the jury.

I again suggest that such a measure would not only be unwise but also unconstitutional in the light of the Supreme Court's decision in Furman against Georgia.

I urge the Senate to reject the amendment.

EXHIBIT 1

[Supreme Court of Delaware, Nov. 1, 1972]

STATE OF DELAWARE, PLAINTIFF

v.

RANDOLPH DICKERSON, DEFENDANT

Rehearing Denied Nov. 21, 1972, Supplemental Opinion Jan. 22, 1973

Before Wolcott, C. J., and Carey and Herrmann, J. J.

Herrmann, Justice (for the Majority of the Court):

This certification presents the question of the constitutionality of capital punishment under our First Degree Murder Statute (11 Del.C. § 571)[1] and our Recommendation of Mercy Statute (11 Del.C. § 3901),[2] in the light of the recent decision of the United States Supreme Court in Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972), dealing with capital punishment as "cruel and unusual" punishment under the Eighth and Fourteenth Amendments.

I

The defendant is awaiting trial on the charge of murder in the first degree in violation of 11 Del.C. § 571.

Stating that an early determination thereof by his Court is necessary as guidance in the proper trial of this case and other first degree murder cases now pending, the Superior Court has sought and obtained certification of the following questions of law:

1. Are the discretionary mercy provisions of 11 Del.C. § 3901 unconstitutional under Furman v. Georgia?

2. If the answer to Question 1 is yes, is the mandatory death penalty prescribed in 11 Del.C. § 571 constitutional?

II

The threshold problem is an accurate understanding of the precise holding of the *Furman* case which has become the law of the land binding upon this Court. This presents some difficulty, in view of the fact that each of the nine justices wrote a separate opinion setting forth a different rationale, while a tenth *per curiam* opinion represents the decision of the Court in its 5–4 division. Dissenting members of the Court, themselves, expressed doubt as to the precise scope and meaning of the majority decision in *Furman*.[3]

It is easier at the outset to state what *Furman* did not decide: The United States Supreme Court has not ruled in *Furman* that capital punishment, *per se*, is violative of the Eighth and Fourteenth Amendments[4] ban on cruel and unusual punishment; nor has it ruled that the death penalty is barred for any particular class or classes of crimes. Only 2 of the 5 concurring justices, Justices Brennan and Marshall, concluded that the Eighth Amendment prohibits capital punishment for all crimes and under all circumstances; the third concurring member of the Court, Justice Douglas, refrained from reaching that ultimate question, deciding the cases on an equal protection of the laws basis; and the other 2 members of the majority, Justices Stewart and White, did not reach the ultimate question because they concluded that the death sentences before the Court must be set aside on the ground that the sentencing practices followed violated the Eighth Amendment.[5]

The sum and substance of the decision that ultimately earned the support of a majority of the Court in *Furman* was expressed in the *per curiam* opinion as follows: (92 S.Ct. at 2727)

"The Court holds that the imposition and carrying out of the death penalty in these cases constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. The judgment in each case is therefore reversed insofar as it leaves undisturbed the death sentence imposed, and the cases are remanded for further proceedings."

Otherwise stated, the decision of the United States Supreme Court in *Furman* was limited to the holding that the death sentences, as imposed in the cases then before it, constituted "cruel and unusual" punishment within the ban of the Eighth Amendment.

For the clearest understanding of the limited decision of the United States Supreme Court in *Furman*, we must look to the concurring opinions of Justice Douglas, Stewart, and White:

Mr. Justice Douglas based his decision (92 S.Ct. at 2727) on the belief that capital punishment statutes, which leave the decision of life or death in the uncontrolled discretion of judge or jury, are being applied in a way that discriminates against minorities and the poor; and that such "discrimination is * * * not compatible with the idea of equal protection of the laws that is implicit in the ban on 'cruel and unusual' punishments."

Mr. Justice Stewart pointed out (92 S. Ct. at 2760) that the constitutionality of capital punishment in the abstract was not before the Court in *Furman*. He stated that death sentences which are left to the uncontrolled discretion of judge or jury are being applied on such random and capricious basis that the imposition thereof has become cruel and unusual; that the states do not apply capital punishment uniformly or automatically; that few defendants actually incur the death penalty; that those who do "are among a capriciously selected random handful upon whom the sentence of death has in fact been imposed."

Further: "These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual." Concluding: "* * * the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed."

Mr. Justice White wrote (92 S.Ct. at 2763) that, although he does not decide that the death penalty is unconstitutional *per se*, he does believe that the death penalty is now so infrequently imposed that it no longer satisfies "any existing general need for retribution" or has any deterrent value; that "there is no meaningful basis for distinguishing the few cases in which [the death penalty] is imposed from the many cases in which it is not"; that, therefore, the Eighth and Fourteenth Amendments were violated by the death sentences imposed.

Manifestly, therefore, the effect of *Furman* is to invalidate the uncontrolled discretionary imposition of the death penalty by jury or judge. The *Furman* decision goes that far, but no farther.

III

[1] As thus analyzed, the fatal effect of the *Furman* decision upon our Recommendation of Mercy Statute (hereinafter "Mercy Statute") is clear. That Statute delegates to jury and judge uncontrolled discretion in the imposition of the death penalty. Under the Mercy Statute, there is room for that caprice, whim, and discrimination in the imposition of the death penalty that now stands condemned by the United States Supreme Court in *Furman*.

The fatal effect of the *Furman* decision upon the Mercy Statute is conclusively demonstrated by the mandates, arising out of *Furman*, received by this Court from the United States Supreme Court in certain first degree murder cases which had been tried under the combined Murder Statute and Mercy Statute, in which convictions were had and death sentences imposed, and appeals then taken to the United States Supreme Court. In each of those Delaware cases, the United States Supreme court implemented *Furman* by vacating the judgment of conviction "insofar as it leaves undisturbed the death penalty imposed" and by remanding each cause to this Court for "further proceedings".

It follows that the Mercy Statute must fall under the *Furman* decision as being violative of the Eighth Amendment. All parties concur in that conclusion.

IV

The question then arises as to whether our First Degree Murder Statute (hereinafter "Murder Statute"), and the mandatory death penalty contained therein, stands alone or whether it falls with the Mercy Statute under the *Furman* decision.

[2] It is argued that the penalty provision of the Murder Statute may not stand alone because, together with the invalid Mercy Statute, it is a constituent and inherent part of a statutory scheme; that, therefore, the two Statutes are unseverable. In support and in opposition to this contention, both

Footnotes at end of article.

sides rely upon the legislative history of the two Statutes[6] in their efforts to demonstrate legislative intent upon the question of severability. Legislative intent, of course, governs the issue of severability if it may be ascertained with reasonable certainty. State v. Ayers, Del. Supr., 260 A.2d 162 (1969). Unfortunately, we have no recitals, minutes, reports, or other indicia of legislative intent to aid in resolving the question. Compare Sincock v. Gately, 262 F.Supp. 739, 745 (D. Del. 1967). We are left to supposition.

The defendant and the *amicus* contend that the trend of capital punishment throughout the nation in 1961 does not permit the conclusion that the Legislature intended to regress by going from the total abolition of the death sentence to the other extreme of the mandatory death sentence which, by then, had disappeared in practically every other State.[7] The State contends that the basic legislative intent in 1961 was clear: to restore the death penalty; that the Mercy Statute was a secondary consideration; and that the passage of the Murder Statute and the Mercy Statute in separate enactments[8] indicated severability in the absence of an express provision to the contrary.

[3] We find it unnecessary to engage in such conjecture as to legislative intent regarding severability. The question is governed by 1 Del.C § 308.[9] It is there provided that if any provision of the Code or the application thereof is held invalid, "such invalidity shall not affect the provisions or application of this Code * * * that can be given effect without the invalid provisions or application, and to this end the provisions of this Code * * * are declared to be severable."

The question then becomes this: may the Murder Statute be "given effect" without the "invalid provisions of application" of the Mercy Statute, and thus be severable under § 308?

The Murder Statute passes the severability test prescribed by § 308: It "can be given effect without the invalid provisions or application" of the Mercy Statute. On its face, the Murder Statute is complete and whole in all respects. It may stand alone and be "given effect" alone. It is not in any way dependent upon the Mercy Statute for viability. We have been shown no deficiencies which would bar its being "given effect" standing alone; and we see none.

As has been stated, the defendant and the *amicus* argue that the Murder Statute, standing alone, may not be "given effect" because that conclusion would mean regression to the mandatory death penalty; and, they contend, the General Assembly could not have intended such regression. This is a strong argument; but it falls short of demonstrating the "manifest" intent of the General Assembly.

It is the search for a "manifest" legislative intent with which we are confronted in this aspect of this case. By 1 Del.C. § 310,[10] it is provided that the "rules of construction * * * set forth in this chapter [including § 308] shall be observed in the construction of this Code and all other statutes, unless such construction would be inconsistent with the *manifest* intent of the Legislature, * * *." (Emphasis supplied)

By definition, the word "manifest" includes the concept of being "obvious", "apparent", or "beyond doubt or question". While reasonable men may differ as to whether, in 1961, the General Assembly would have enacted the Murder Statute without the Mercy Statute, or would have permitted the first to stand alone without the second if it had to elect, we do not think it can be said that the matter is "beyond doubt or question". All we have to go on, in pursuit of the ethereal legislative intent regarding severability, is the chronological history of the two Statutes and speculation. That is not enough to enable us to ascertain that the severability of the Murder Statute from the Mercy Statute is "inconsistent with the manifest intent of the Legislature" as is required by § 301 in order to override the rule of severability prescribed by § 308.[11]

Accordingly, we hold, under 1 Del.C. § 308, that the Murder Statute, including the mandatory death penalty contained therein, is severable from the Mercy Statute; that it does not fall with the Mercy Statute under *Furman;* and that it now stands alone, severed from the Mercy Statute.

V

It is contended that the application of the mandatory death penalty of the Murder Statute, standing alone, will be "cruel and unusual" punishment under the Eighth Amendment and "cruel" punishment under the State Bill of Rights.[12]

As has been demonstrated, *Furman* does not hold that mandatory capital punishment *per se,* uniformly applied, is violative of the Eighth Amendment. The express reservations of Justices Stewart and White and the analyses contained in the dissenting opinion make that clear. Accordingly, we are satisfied that the mandatory death penalty of the Murder Statute, if uniformly applied, has not been invalidated by *Furman.*

It is argued, however, that although it may not be specifically covered by the *Furman* decision, the mandatory death sentence nevertheless will constitute cruel and unusual punishment within the federal constitutional ban. We cannot agree.

The United States Supreme Court has consistently acknowledged the constitutionality of capital punishment *per se,* either by assumption or assertion. Wilkerson v. Utah, 99 U.S. 130, 25 L.Ed. 345 (1878); In re Kemmler, 136 U.S. 436, 10 S.Ct. 930, 34 L.Ed. 519 (1890); Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 67 S.Ct. 374, 91 L.Ed. 422 (1947); Trop v. Dulles, 356 U.S. 86, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958); Weems v. United States, 217 U.S. 349, 30 S.Ct. 544, 54 L.Ed. 793 (1910); McGautha v. California, 402 U.S. 183, 91 S.Ct. 1454, 28 L.Ed.2d 711 (1971); Robinson v. California, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962); see dissenting opinion of Mr. Justice Powell in *Furman,* 92 S.Ct. at 2819–2823.

And this Court has consistently rejected the contention that capital punishment *per se* constitutes "cruel" or "cruel and unusual" punishment within the constitutional bans. Recently, in Steigler v. State, Del. Supr., 277 A.2d 662, 669 (1971), we stated:

"* * * In our opinion, the matter of the retention or abolition of the death penalty is a question for the lawmaking authorities rather than the Courts.

"As was said in State v. Cannon, Del. Supr., 5 Storey 587, 190 A.2d 514 (1963):

" 'It is the province of the General Assembly in its wisdom to give expression to the public will. * * * We think the standards of present day society are to be determined by the expressions of that society, itself, and not by an expression of the individual opinions of members of the Judiciary. * * * The only manner in which such an expression can be made is through the action of duly elected representatives of the Society whose standard is to be applied.' "

See also Parson v. State, Del.Supr., 275 A. 2d 777 (1971); Seeney v. State, Del.Supr., 277 A.2d 670 (1971).

[4] In the light of our consistent judicial policy, and the long history of capital punishment in this State from colonial times, we reaffirm the view that capital punishment *per se* is not violative against "cruel" or "cruel and unusual" punishment; and that the retention or abolition of capital punishment in this State is for the decision of the people of this State, speaking through their chosen representatives in the General Assembly.

[5] Accordingly, we hold that, uniformly applied, the mandatory death provision of the Murder Statute, standing alone, will not constitute "cruel" or "cruel and unusual" punishment in violation of the constitutional guaranties.

VI

But the mandatory death penalty contained in the Murder Statute, hereby declared severed from the Mercy Statute, may not be constitutionally applied retroactively to the defendant in this case.

The result of severing the Murder Statute from the invalid Mercy Statute is to change the penalty for first degree murder from life imprisonment or death, at the discretion of jury and judge, to mandatory death. A retroactive application of such change of penalty would constitute a denial of due process of law.

The State Ex Post Facto Clause, U.S. Const., Art. 1, § 10 forbids the enactment of any law making a crime greater than it was when committed, by subsequently increasing the punishment. This has been the law of the land from the beginning. Calder v. Bull, 3 U.S. (3 Dall.) 386, 1 L.Ed. 648, 650 (1798).

A pertinent application of this principle appears in Lindsey v. Washington, 301 U.S. 397, 57 S.Ct. 797, 798–799, 81 L.Ed. 1182 (1937):

"The effect of the new statute is to make mandatory what was before only the maximum sentence.

* * * * *

"[T]he *ex post facto* clause looks to the standard of punishment prescribed by a statute, rather than to the sentence actually imposed. The Constitution forbids the application of any new punitive measure to a crime already consummated, to the detriment or material disadvantage of the wrongdoer.

* * * * *

"It could hardly be thought that, if a punishment for murder of life imprisonment or death were changed to death alone, the latter penalty could be applied to homicide committed before the change."

Thus, it has been held that where the punishment at the time of the offense was life imprisonment or death, at the determination of jury or judge, a change to death alone is *ex post facto* as to such offenses committed prior to the change. Marion v. State, 16 Neb. 349, 20 N.W. 289 (1884); 1 Antieau, Modern Constitutional Law, § 5:135.

It is recognized, of course, that the letter of the Ex Post Facto Clause is addressed directly to legislative action. Frank v. Mangum, 237 U.S. 309, 35 S.Ct. 582, 59 L.Ed. 969 (1915). But indirectly, via the Due Process Clause of the Fourteenth Amendment, the spirit of the *ex post facto* guaranty, and the resultant ban against the retrospective increase of punishment for a crime, is made to apply as a prohibition against judicial action having such effect. In Bouie v. City of Columbia, 378 U.S. 347, 84 S.Ct. 1697, 1702, 12 L.Ed.2d 894 (1964), the United States Supreme Court stated:

"[A]n unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an *ex post facto* law, such as Art. 1, § 10 of the Constitution forbids. An *ex post facto* law has been defined by this Court as one 'that makes an action done before the passing of the law, and which was *innocent* when done, criminal; and punishes such action,' or 'that aggravates *a crime,* or makes it *greater* than it was, when committed.' Calder v. Bull, 3 Dall. 386, 390, 1, L.Ed. 648. *If a state legislature is barred by the Ex Post Facto Clause from passing such a law, it must follow that a State Supreme Court is barred by the Due Process Clause from achieving precisely the same re-*

Footnotes at end of article.

sult by judicial construction. * * *." (Latter emphasis supplied)

The same limitation is imposed upon the United States Supreme Court by the Federal Ex Post Facto Clause, U.S. Const., Art. 1, § 9, and the Due Process Clause of the Fifth Amendment as is imposed upon this Court by the State Ex Post Facto Clause, U.S. Const. Art. 1, § 11, and the Due Process Clause of the Fourteenth Amendment. Accordingly, the consequence is the same, whether the change of penalty is deemed to have resulted from this decision of this Court, or from the decision of the United States Supreme Court in the *Furman* case.

[6] For these reasons, we hold that the mandatory death penalty provision of the Murder Statute, standing alone, may not constitutionally be applied retroactively because such application would constitute a denial of the due process of law. Otherwise stated, we hold that the mandatory death penalty provision of the Murder Statute may be constitutionally applied prospectively only, and may not be constitutionally applied to any offense committed prior to the date of this decision. Compare State v. Jones, 44 N.M. 623, 107 P.2d 324 (1940); Linkletter v. Walker, 381 U.S. 618, 85 St.Ct. 1731, 14 L.Ed.2d 601 (1965); Johnson v. New Jersey, 384 U.S. 719, 86 S.Ct. 1772, 16 L.Ed.2d 882 (1966); Great Northern Ry. v. Sunburst Oil and Refining Co., 287 U.S. 358, 53 S. Ct. 145, 77 L.Ed. 360 (1932).

VII

The foregoing impels the following answers to the questions certified:

(1) The discretionary mercy provisions of 11 Del.C. § 3901 are unconstitutional under Furman v. Georgia.

(2) The mandatory death penalty prescribed in 11 Del.C. § 571 is constitutional; but it may not be applied retroactively to the defendant in this case.

VIII

Having determined that the mandatory death penalty provision of the Murder Statute, standing alone, may not be applied retroactively, we are left with the problem of pointing to the statutory, common law, or inherent power of the Superior Court under which sentence may be imposed upon a conviction of murder in the first degree for which the mandatory death penalty of the Murder Statute may not be imposed.[13] That question was not certified and was not briefed or argued by counsel. In order that we may have the full measure of assistance of the especially well qualified counsel involved in this case, the question is reserved. Counsel will be requested to brief and argue the question at the earliest practicable time.

IX

The result reached here warrants the attention of the General Assembly for at least two reasons:

First, if the mandatory death penalty for first degree murder, now found to exist in Delaware, is not in accord with the will of the people, the law should be rectified at the earliest possible time.

Second, the result reached here does not necessarily solve the problems created by the *Furman* decision for any state wishing to retain capital punishment. History shows that the mandatory death sentence for first degree murder is also open to caprice and discrimination in the imposition of the death penalty. The jury's route for the exercise of such caprice and discrimination, historically, is to return a verdict for a lesser-included offense carrying a lesser penalty. There was in this country, almost from the beginning, a "rebellion against the common law rule imposing a mandatory death sentence on all convicted murderers"; juries took "the law in their own hands" and refused to convict on the capital offense. The result was widespread legislative development of the discretionary death sentence throughout the country. See McGautha v. California, 402 U.S. 183, 198, 91 S.Ct. 1454, 1462, 28 L.Ed.2d 711 (1971).

Obviously, any lack of uniform application—any discrimination or caprice in the imposition of the death sentence via the lesser-included offense route—will expose the mandatory death penalty provision of the Murder Statute, hereby upheld, to the same condemnation as was accorded the Mercy Statute in the *Furman* case.

Accordingly, we take the occasion to recommend legislative attention to the subject of capital punishment in the light of the *Furman* decision and its consequences in this State.

Wolcott, Chief Justice (concurring in part and dissenting in part):

I agree entirely with the conclusion of the majority in answer to Question No. 1 that, in Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972), the Supreme Court of the United States has held in effect that 11 Del.C. § 3901 (the so-called Mercy Statute) is unconstitutional. This ruling is, of course, binding upon us.

I also agree with the conclusion of the majority in answer to Question No. 2 that 11 Del.C. § 571 (the Murder Statute) is severable from 11 Del.C. § 3901 and, therefore, is unaffected by Furman v. Georgia, supra. In addition, I concur with the majority's holding that the death penalty *per se* is not cruel and unusual. 11 Del.C. § 571, therefore, continues to stand as the law of this State and requires the imposition of a mandatory death penalty upon conviction of murder in the first degree.

I disagree, however, with the majority's conclusion that 11 Del.C. § 571 may not be applied retroactively by the courts of this State. I question whether this phase of Question No. 2 is within the framework of the actual question certified; nonetheless, I will consider this aspect since the majority is of the opinion that it is.

The conclusion is based upon the prohibition of *ex post facto* laws by Art. 1, §§ 9 and 10 of the Federal Constitution which in terms forbid only the enactment of such laws. However, as a result of Bouie v. City of Columbia, 378 U.S. 347, 84 S.Ct. 1697, 12 L.Ed.2d 894 (1964), the prohibition is now apparently extended to include judicial construction of a criminal statute which has the effect of enlarging a previously prescribed penalty.

I do not think that this Court by this Opinion has made any such construction. We have held that the Murder Statute and the Mercy Statute are severable and stand independently when subjected to constitutional attack. The Supreme Court of the United States—not this Court—has held that the Mercy Statute is unconstitutional. We, of course, are bound by this decision, but we have not made it. Hence, it seems to me that, under no circumstances, can it be said that this Court has enlarged the penalty for first degree murder. Accordingly, I feel that *Bouie* is inapplicable to the case at bar. In this connection, I note that the mandatory sentence of death has always been the penalty for murder in this State, except for a short period of time.

It seems readily apparent that the Supreme Court of the United States did not consider that Delaware, unlike the other States, had two separate and independent statutes relating to this field—one providing the penalty and the other providing for mercy under some circumstances. The latter has been held unconstitutional since, on its face, it was susceptible to capricious application, but this holding does not affect in any way our Penalty Statute. It continues to stand as it always has.

In my opinion, therefore, 11 Del.C. § 571 prescribes a mandatory sentence of death upon conviction of murder in the first degree with respect to all such indictments pending, irrespective of the dates of the crimes on the indictments.

SUPPLEMENTAL OPINION

In Part VIII of the foregoing Opinion, we reserved for further briefs and argument the identification of the authority of the Superior Court under which sentence may be imposed upon a conviction of first degree murder committed prior to November 1, 1972, for which the death penalty may not be imposed. We have now had the benefit of additional assistance of counsel upon that question.

[7] Both the Attorney General and the Public Defender agree that the penalty in such case must be mandatory life imprisonment. We so hold.

Manifestly, as a matter of either legislative intent, legal concept, or simple reasonableness, a greater crime must be deemed to carry a penalty at least as severe as that prescribed for a lesser-included-offense. The statutory penalty for murder in the second degree is mandatory life imprisonment. 11 Del.C. § 572. The penalty for murder in the first degree may be no less.

The question remains as to the source of the power and authority of the Superior Court to impose a mandatory life sentence for first degree murder.

As this Court has now ruled, the mandatory death penalty of the First Degree Statute, though held to be constitutional prospectively, may not be constitutionally applied retrospectively to any offense committed prior to November 1, 1972. As to any such offense, therefore, the conclusion is impelled that the First Degree statute, § 571, lacks a constitutional penalty provision.

[8] To fill that void, we look to the immediate statutory predecessor of § 571, which was the 1958 Statute abolishing capital punishment and prescribing life imprisonment for murder in the first degree. 51 Lel.L. Ch. 347. The penalty portion of § 571 having been found unconstitutional for certain limited purposes, the next preceding Statute revives and becomes controlling for those purposes. The rationale and the result are the same, we think, as in other types of cases in which a repealer statute is found to be invalid, thus restoring its progenitor. See Clark v. State, Del.Supr., 287 A.2d 660 (1972); State ex rel. James v. Schorr, Del.Supr., 6 Terry 18, 65 A.2d 810 (1949); Abrahams v. Superior Court, Del.Supr., 11 Terry 394, 131 A.2d 662 (1957).

Accordingly, for the guidance of the Superior Court in this case and others in like retroactive category, we express the opinion that the penalty to be imposed, upon conviction of the charge of first degree murder, is mandatory life imprisonment; and that the authority therefor is 51 Del.L. Ch. 347.

FOOTNOTES

[1] 11 Del.C. § 571 provides:

"§ 571. Murder in the first degree

"Whoever commits the crime of murder with express malice aforethought, or in perpetrating, or attempting to perpetrate the crime of rape, kidnapping or treason, is guilty of murder in the first degree and of a felony and shall suffer death."

[2] 11 Del. C. § 3901 provides:

"§ 3901. Recommendation of mercy

"In all cases where the penalty for crimes prescribed by the laws of this State is death, if the jury, at the time of rendering their verdict, recommends the defendant to the mercy of the Court, the Court may, if it

seems proper to do so, impose the sentence of life imprisonment instead of death."

[3] In the dissent of Chief Justice Burger, doubt as to the precise holding of the majority was expressed as follows: (92 S.Ct. at 2807)

"The actual scope of the Court's ruling, which I take to be embodied in these concurring opinions, is not entirely clear." See also dissent of Mr. Justice Powell, 92 S.Ct. at 2817.

[4] The Eighth Amendment to the Federal Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

While the Fourteenth Amendment is, of course, operative throughout in the application of the Eighth Amendment prohibition to the State, Robinson v. California, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962); Powell v. Texas, 392 U.S. 514, 88 S.Ct. 2145, 20 L.Ed.2d 1254 (1968), reference will be made herein to the Eighth Amendment only for the sake of brevity.

[5] In *Furman* and each of the two related cases, the death sentence was imposed. In each, the determination of whether the penalty should be death or a lesser penalty was left by state statute and procedure to the discretion of the jury.

[6] Capital punishment has been a penalty in Delaware since colonial days; and, until 1911, mandatory death was the penalty for the crimes specified.

Colonial capital offenses were murder, treason, manslaughter by stabbing, serious maiming, highway robbery, burglary, third offense larceny, arson, sodomy, buggery, rape, concealing the death of a bastard child, advising another to kill such child, and witchcraft, Caldwell Penology in Delaware in Reed, History of the First State, Vol. 2, p. 852; 1 Del. L., p. 297. By the time of the 1829 Delaware Code, capital offenses were limited to seven: murder, stabbing causing death, rape, burglary, arson, second offense kidnapping, and treason. 1829 Del.C., pp. 127–131.

The 1852 Code further limited capital crimes to five: murder in the first degree, treason, rape, arson, and burglary. 1852 Del. C, pp. 471–476. The 1915 Delaware Code retained the death penalty for those same offenses. 1915 Del.C. §§ 4697, 4696, 4706, 4721, 4727. The 1935 Delaware Code retained five capital offenses: first degree murder, treason, burglary, kidnapping, and rape. 1935 Del.C., §§ 5157, 5154, 5187, 5174, 5166. The 1953 Delaware Code retained four capital offenses: first degree murder, treason, kidnapping, and rape. 1953. 1953 Del.C., §§ 571, 861, 623, 781.

Until 1911, the death penalty was mandatory in all capital offenses. In that year, the General Assembly amended the rape statute by providing a limited discretion permitting the jury to recommend mercy, in which event the court could impose the sentence of life imprisonment. 26 Del.L., Ch. 270. In 1917, the Legislature enacted the predecessor of the present Mercy Statute by providing that in any capital case, if the jury recommended mercy, the court might in its discretion, impose a sentence of life imprisonment instead of death. 29 Del.L., Ch. 266. This provision was carried into the 1935 Delaware Code as § 5330 and into the 1953 Delaware Code as § 3901 of Title 11.

Capital punishment was abolished in Delaware in 1958. 51 Del.L., Ch. 347. In 1961, capital punishment was restored for the single crime of first degree murder (the Murder Statute involved here) and at about the same time, the pre-existing Mercy Statute (the Mercy Statute involved here) was restored. The Murder Statute became law as 53 Del.L., Ch. 310; it had been S.B. 192. The Mercy Statute became law as 53 Del.L., Ch. 309; it had been S.B. 215.

S.B. 192 was introduced on June 12, 1961 and was passed and sent to the House on June 14. S.B. 215 was introduced on June 22 and, on the same date, was passed and sent to the House. On December 4, 1961, S.B. 215, as amended, passed the House and was returned to the Senate where it passed on December 5; and on December 5, S.B. 192 passed the House. The Governor vetoed both Bills; whereupon, on December 18, both Bills were passed by both Houses over the Governor's veto.

Both the Murder Statute and the Mercy Statute have been carried into the 1973 Delaware Revised Criminal Code (effective April 1973) as § 4209.

[7] The *amicus curiae* reports: By 1961, the mandatory death sentence for first degree murder had been abandoned almost universally in the United States after almost a century of change from the mandatory to the discretionary form. By 1961, New York was the only one remaining state to retain the mandatory death sentence. All other states, in which capital punishment prevailed, had changed to the discretionary death sentence; and in 1965, New York likewise changed. Nine states have abolished the death penalty and reinstated it in discretionary form; of these, four have undergone periods of abolition after an earlier adoption of discretionary capital sentencing; each reinstated the discretionary form; none reverted to the mandatory form.

[8] It is noteworthy that, when *Furman* was decided, three States—Delaware, Florida, and Louisiana—had cases pending before the Supreme Court which arose under Statutes that were "separate" enactments, mechanically and chronologically. See Fla.Stat.Ann. § 919.23 (1944) and § 782.04 (1965); La.Stat. Ann. § 14:30 (1951), § 15–409 (1951) and La.CodeCrim.Pro. Art. 817 (1966). On the authority of *Furman*, the Supreme Court vacated the death sentences imposed in the cases which had originated in these three States, thus making no distinction as to the "separate" statute cases among the total of 120 cases, involving 125 condemned persons, from 26 states.

[9] 1 Del.C. § 308 provides:

"§ 308. Severability of provisions

"If any provision of this Code or amendments hereto, or the application thereof to any person, thing or circumstances is held invalid, such invalidity shall not affect the provisions or application of this Code or such amendments that can be given effect without the invalid provisions or application, and to this end the provisions of this Code and such amendments are declared to be severable."

[10] 1 Del.C. § 301 provides:

"§ 301. Rules of construction and definitions

"The rules of construction and the definitions set forth in this chapter shall be observed in the construction of this Code and all other statutes, unless such construction would be inconsistent with the manifest intent of the Legislature, or repugnant to the Code or to the context of the same statute."

[11] Any doubt, as to the correctness of our conclusion on severability, is resolved by the maxims that a statute must be held valid if it is possible for the court to do so; that every presumption must be resolved in favor of its validity; and that it should not be declared unconstitutional unless the court is convinced of that status beyond a reasonable doubt. Coleman v. Rhodes, Del.Super., 5 W.W. Harr. 120, 159 A. 649 (1932). We are not so convinced.

[12] Del.Const. Art. 1, § 11, Del.C.Ann., provides:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted; * * *." Compare the "cruel or unusual" punishment constitutional provision dealt with in People v. Anderson, 6 Cal. 3d 628, 100 Cal.Rptr. 152, 493 P.2d 880 (1972).

[13] Four possibilities come to mind: (1) Revival of the 1958 Abolition Statute, 51 Del.L. Ch. 347, the predecessor of § 571; (2) the sentence of life imprisonment authorized by 11 Del.C. § 572 for second degree murder, the next lesser-included offense; (3) the common law power of the court to impose suitable punishment within the exercise of a sound judicial discretion; (4) the inherent power of the court to implement its judgments.

[282 N.C. 431]

STATE OF NORTH CAROLINA v. JAMES HOWARD WADDELL

Huskins, Justice:

[1] We overrule defendant's assignments of error based on denial of his motions for nonsuit and to set aside the verdict. The evidence is overwhelmingly sufficient to carry the case to the jury and to support the verdict. Likewise, defendant's third assignment addressed to the charge has no merit and cannot be sustained. The court's charge on circumstantial evidence is free from prejudicial error. We therefore put aside these assignments without discussion and go directly to the constitutional question raised by defendant and argued in the briefs.

Defendant contends that the imposition and carrying out of the death penalty was held in Furman v. Georgia, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1972), to constitute cruel and unusual punishment in violation of the Lighth and Fourteenth Amendments. The State, on the other hand, disputes defendant's interpretation of the holding in *Furman* and argues that the death sentence was lawfully and constitutionally imposed in this case and should be carried out. These antagonistic positions require an analysis of the *Furman* decision.

Furman v. Georgia was consolidated with Jackson v. Georgia and Branch v. Texas for decision. Each defendant was black. Furman killed a Georgia householder while seeking to enter the home at night. Jackson entered a Georgia home after the husband left for work, held scissors against the neck of the wife and raped her. Branch entered the Texas home of a 65-year-old widow, a white woman, while she slept and raped her, holding his arm against her throat. Furman was convicted of murder, Jackson and Branch of rape, and each was sentenced to death after a trial by jury which, under applicable Georgia and Texas statutes, had discretionary authority to determine whether to impose the death penalty. On certiorari, the United States Supreme Court reversed the judgment in each case insofar as it left undisturbed the death sentence imposed, and the cases were remanded for further proceedings. In an opinion expressing the views of five members of the Court, it was held that the imposition and carrying out of the death sentence in the three cases before the Court constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. Four members of the Court dissented, voting to sustain the constitutionality of the statutes under which defendants were tried and sentence of death imposed.

Prior to the decision in Furman v. Georgia, supra, the United States Supreme Court implicitly approved or, albeit in dictum, expressly upheld the constitutionality of capital punishment in many cases, including Wilkerson v. Utah, 99 U.S. 130, 25 L.Ed. 345 (1879); In Re Kemmler, 136 U.S. 436, 10 S.Ct. 930, 34 L.Ed. 519 (1890); Weems v. United States, 217 U.S. 349, 30 S.Ct. 544, 54 L.Ed. 793 (1910); Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 67 S.Ct. 374, 91 L.Ed. 422 (1947); Trop v. Dulles, 356 U.S. 86, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958); Witherspoon v. Illinois, 391 U.S. 510, 88 S.Ct. 1770, 20 L.Ed.2d 776 (1968); McGautha v. California, 402 U.S. 183, 91 S.Ct. 1454, 28 L.Ed.2d 711 (1971). Thus, since the ratification of the Eighth Amendment one hundred eighty-one years ago, no decision of the United States Supreme Court

prior to *Furman* casts the slightest doubt on the constitutionality of capital punishment. Therefore, since the decision in *Furman* is not grounded on prior decisions of the Court, the scope of that holding must be gleaned from the separate opinions of the Justices themselves.

The nine opinions focus upon the Eighth Amendment which provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The proscription of cruel and unusual punishments is applicable to the States through the Due Process Clause of the Fourteenth Amendment. Powell v. Texas, 392 U.S. 514, 88 S.Ct. 2145, 20 L.Ed.2d 1254 (1968); Robinson v. California, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962).

We note at the outset that only two members of the Court, Mr. Justice Brennan and Mr. Justice Marshall, concluded that capital punishment for all crimes under all circumstances is prohibited by the Eighth Amendment. Mr. Justice Brennan summarized his views in these words:

"At bottom, then, the Cruel and Unusual Punishments Clause prohibits the infliction of uncivilized and inhuman punishments. . . . The test, then, will ordinarily be a cumulative one: If a punishment is unusually severe, if there is a strong probability that it is inflicted arbitrarily, if it is substantially rejected by contemporary society, and if there is no reason to believe that it serves any penal purpose more effectively than some less severe punishment, then the continued infliction of that punishment violates the command of the Clause that the State may not inflict inhuman and uncivilized punishments upon those convicted of crimes. . . . Under these principles and this test, death is today a 'cruel and unusual' punishment."

Mr. Justice Marshall reached a like conclusion when he wrote:

"There is but one conclusion that can be drawn from all of this—*i.e.*, the death penalty is an excessive and unnecessary punishment which violates the Eighth Amendment. . . . In addition, even if capital punishment is not excessive, it nonetheless violates the Eighth Amendment because it is morally unacceptable to the people of the United States at this time in their history."

Thus, it may be seen that these two Justices joined in the *Furman* decision on the basis that capital punishment is *per se* unconstitutional.

Mr. Justice Douglas rested his concurrence on a different basis. He wrote:

"In these three cases the death penalty was imposed, one of them for murder, and two for rape. In each *the determination of whether the penalty should be death or a lighter punishment was left by the State to the discretion of the judge or of the jury.* In each of the three cases the trial was to a jury. [Emphasis added] . . . In a Nation committed to Equal Protection of the laws there is no permissible 'caste' aspect of law enforcement. Yet we know that the discretion of judges and juries in imposing the death penalty enables the penalty to be selectively applied, feeding prejudices against the accused if he is poor and despised, poor and lacking political clout, or if he is a member of a suspect or unpopular minority, and saving those who by social position may be in a more protected position. . . . Thus, these discretionary statutes are unconstitutional in their operation. They are pregnant with discrimination. . . . Any law which is nondiscriminatory on its face may be applied in such a way as to violate the Equal Protection Clause of the Fourteenth Amendment. Yick Wo v. Hopkins, 118 U.S. 356, 6 S. Ct. 1064, 30 L. Ed. 220. Such conceivably might be the fate of a mandatory death penalty, where equal or lesser sentences were imposed on the elite, a harsher one on the minorities or members of the lower castes. *Whether a mandatory death penalty would otherwise be constitutional is a question I do not reach.*" [Emphasis added.]

It seems clear that Mr. Justice Douglas left open the question of the constitutionality of a mandatory death penalty and voted to invalidate the death sentence in *Furman* and companion cases on the ground that the trial jury was given statutory discretion as to whether a defendant convicted of rape or murder should be sentenced to death or to life imprisonment.

Mr. Justice Stewart joined the majority opinion on similar grounds: That under the Georgia and Texas statutes, the death penalty was not mandatory for murder and rape but could be imposed in the unfettered discretion of trial juries, and that the exercise of this discretion resulted in "freakish" selection of those who should be executed for their crimes. He expressed his views as follows:

"[A]t least two of my Brothers have concluded that the infliction of the death penalty is constitutionally impermissible in all circumstances under the Eighth and Fourteenth Amendments. Their case is a strong one. *But I find it unnecessary to reach the ultimate question they would decide.* [Emphasis added] . . . The constitutionality of capital punishment in the abstract is not, however, before us in these cases. For the Georgia and Texas Legislatures have not provided that the death penalty shall be imposed upon all those who are found guilty of forcible rape. And the Georgia Legislature has not ordained that death shall be the automatic punishment for murder. . . . These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. For, of all the people convicted of rapes and murders in 1967 and 1968, many just as reprehensible as these, the petitioners are among a capriciously selected random handful upon whom the sentence of death has in fact been imposed. . . . I simply conclude that the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed."

Mr. Justice White concurred in the majority opinion for reasons substantially similar to those of Justice Stewart. The following language from his concurring opinion depicts his views:

"In joining the Court's judgments, therefore, I do not at all intimate that the death penalty is unconstitutional *per se* or that there is no system of capital punishment that would comport with the Eighth Amendment. . . . I cannot avoid the conclusion that as the statutes before us are now administered, the penalty is so infrequently imposed that the threat of execution is too attenuated to be of substantial service to criminal justice. . . . That conclusion, as I have said, is that the death penalty is exacted with great infrequency even for the most atrocious crimes and that there is no meaningful basis for distinguishing the few cases in which it is imposed from the many cases in which it is not. The short of it is that the policy of vesting sentencing authority primarily in juries . . . has so effectively achieved its aims that capital punishment within the confines of the statutes now before us has for all practical purposes run its course."

Four members of the Court dissented and voted to uphold the constitutionality of the Georgia and Texas statutes under which Furman, Jackson and Branch were tried and sentenced to death. The position of the four dissenters is best summed up by Chief Justice Burger as follows:

"There are no obvious indications that capital punishment offends the conscience of society to such a degree that our traditional deference to the legislative judgment must be abandoned. . . . Capital punishment is authorized by statute in 40 States, the District of Columbia and in the federal courts for the commission of certain crimes. On four occasions in the last 11 years Congress has added to the list of federal crimes punishable by death. In looking for reliable indicia of contemporary attitude, none more trustworthy has been advanced. . . . Today the Court has not ruled that capital punishment is *per se* violative of the Eighth Amendment; nor has it ruled that the punishment is barred for any particular class or classes of crimes. The substantially similar concurring opinions of Mr. Justice Stewart and Mr. Justice White, which are necessary to support the judgment setting aside petitioners' sentences, stop short of reaching the ultimate question. . . . The critical factor in the concurring opinions of both Mr. Justice Stewart and Mr. Justice White is the infrequency with which the penalty is imposed. This factor is taken not as evidence of society's abhorrence of capital punishment . . . but as the earmark of a deteriorated system of sentencing. It is concluded that petitioners' sentences must be set aside, not because the punishment is impermissibly cruel, but because juries and judges have failed to exercise their sentencing discretion in acceptable fashion."

[2] The foregoing quotations from the various separate opinions in *Furman* compel the conclusion that capital punishment has not been declared unconstitutional *per se*. Rather, the *Furman* decision holds that the Eighth and Fourteenth Amendments will no longer tolerate the infliction of the death sentence if either judge or jury is permitted to impose that sentence as a matter of discretion.

We now consider the effect of the *Furman* decision on G.S. § 14–21 which reads as follows:

"Every person who is convicted of ravishing and carnally knowing any female of the age of twelve years or more by force and against her will, or who is convicted of unlawfully and carnally knowing and abusing any female child under the age of twelve years, shall suffer death: *Provided, if the jury shall so recommend at the time of rendering its verdict in open court, the punishment shall be imprisonment for life in the State's prison, and the court shall so instruct the jury.*" (Emphasis added)

[3] Does *Furman* invalidate G.S. § 14–31 in its entirety or invalidate only the discretionary proviso, leaving death as the mandatory punishment for rape in North Carolina? A look at history is necessary to put the question in proper perspective.

Blackstone's Commentaries tell us:

"Rape was punished by the Saxon laws . . . with death . . . . But this was afterwards thought too hard; and in its stead another severe, but not capital, punishment was inflicted by William the conqueror; *viz*, castration and loss of eyes; which continued till after Bracton wrote, in the reign of Henry the third. * * *

"In the 3 Edw. I. [1275] by the statute Westm. 1. c. 13. The punishment of rape was much mitigated: the offence itself being reduced to a trespass, if not prosecuted by the woman within forty days, and subjecting the offender only to two years imprisonment, and a fine at the king's will. But, this lenity being productive of the most terrible consequences, it was in ten years afterwards, 13 Edw. I. found necessary to make the offence of rape felony, by statute Westm. 2. c. 34. And by statute 18 Eliz. c. 7. it is made felony without benefit of clergy . . ." 4 W. Blackstone Commentaries, 211–2 (1st ed. 1769).

In 1778, the State of North Carolina enacted what is now G.S. § 4–1 which states:

"All such parts of the common law as were heretofore in force and use within this

State, or so much of the common law as is not destructive of, or repugnant to, or inconsistent with, the freedom and independence of this State and the form of government therein established, and which has not been otherwise provided for in whole or in part, not abrogated, repealed, or become obsolete, are hereby declared to be in full force within this State."

By this statute the common law death penalty for rape was adopted in North Carolina. This punishment was codified in Vol. 1, c. 34, § 5 of the 1837 Revised Statutes of North Carolina.

In 1869, the General Assembly of North Carolina reenacted the punishment for rape in the following language:

"Every person who is convicted, in due course of law, of ravishing and carnally knowing any female of the age of ten years or more by force and against her will; or who is convicted, in like manner, of unlawfully and carnally knowing and abusing any female child uder the age of ten years, shall suffer death." Public Laws of 1868–69, c. 167, § 2.

An amendment in 1917 raised the age of consent from ten to twelve years. See Public Laws 1917, c. 29.

Thus, death has been the punishment for rape in North Carolina for almost two hundred years. Our present statute on the subject, G.S. § 14–21, was amended in 1949 by adding the proviso which (1) empowers the jury in its discretion to recommend and thus to fix the punishment at life imprisonment, and (2) requires the trial judge to so instruct the jury. Session Laws of 1949, c. 299, § 4.

Since the 1949 amendment adding the proviso, seventeen bills or resolutions have been introduced in the General Assembly of North Carolina designed to abolish or limit the impositon of the death penalty for rape or other capital offenses. See House Bills 924, 925, 927 and 928 in the 1955 Session; House Bill 113 in the 1961 Session; House Bill 35, Senate Bill 27 and Senate Resolution 173 in the 1963 Session; House Bills 103 and 351 in the 1965 Session; House Bills 68, 71, 138 and 314 in the 1967 Session; House Bill 160 in the 1969 Session; and House Bill 397 and Senate Bill 251 in the 1971 Session. All of these bills and resolutions failed to receive a favorable report from the committee to which referred, or were tabled or defeated on the floor of the House in which introduced.

The new State Constitution, which was ratified by the people in the general election of 1970, retained the provision contained in the former Constitution of North Carolina authorizing the General Assembly to provide by statute for the imposition of the death penalty for murder, arson, burglary and rape. See Constitution of North Carolina, Article XI, Section 2. Thus, there is nothing in the legislative or constitutional history of this State to indicate an intent by the Legislature, or by the people, to reduce the punishment for rape from death to life imprisonment, or to indicate that the 1949 proviso was enacted for that purpose except upon the discretionary recommendation of the jury, or to indicate that such proviso would have been enacted at all had its unconstitutionality been foreseen b ythe 1949 General Assembly. Rather, such history demonstrates a constant intent by the people and their representatives to retain the death penalty for murder, arson, burglary and rape notwithstanding the proviso added in 1949.

It is the proviso, and the proviso alone, which creates the discretionary difficulty condemned by the *Furman* decision; and it is quite clear that *Furman* strikes down the proviso as violative of the Eighth and Fourteenth Amendments.

[4] The question then arises; Does the remainder of G.S. § 14–21 stand alone with death as the mandatory punishment for rape? Or, is the proviso such a constituent and inherent part of a single statutory scheme of punishment that it is inseverable and the entire statute must fall?

In 16 Am.Jur.2d, Constitutional Law, § 186, the rule of severability is thus stated:

"If the objectionable parts of a statute are severable from the rest in such a way that the legislature would be presumed to have enacted the valid portion without the invalid, the failure of the latter will not necessarily render the entire statute invalid, but the statute may be enforced as to those portions of it which are constitutional. If, however, the constitutional and unconstitutional portions are so dependent on each other as to warrant the belief that the legislature intended them to take effect in their entirety, it follows that if the whole cannot be carried into effect, it will be presumed that the legislature would not have passed the residue independently, and accordingly, the entire statute is invalid."

The original portion of G.S. § 14–21 with its mandatory death penalty for rape stood alone and was given full effect by the courts of this State for a century prior to the enactment of the 1949 proviso. Grammatically, as well as historically, the two portions of the statute are distinct and separate and the constitutional invalidity of the added portion will not destroy the part which was in existence prior to the enactment of the unconstitutional portion.

"Usually, when an amendatory exception to a statute proves unconstitutional, the original statute stands wholly unaffected by it." 16 Am.Jur.2d, Constitutional Law, § 184. "When exceptions, exemptions, or provisos in a statute are found to be invalid, the entire act may be void on the theory that by striking out the invalid exception the act has been widened in its scope and therefore cannot properly represent the legislative intent. *This result is not reached, however, when the repugnant exception was added by way of amendment*, as it may be said that the Legislature did intend, at least originally, to pass the act without offering the exception." (Emphasis added) Sutherland, Statutes and Statutory Construction, § 2412 (3d ed. 1943).

In Frost v. Corporation Commission, 278 U.S. 515, 49 S.Ct. 235, 73 L.Ed. 483 (1929), the United States Supreme Court dealt with an Oklahoma statute which, as originally enacted, required a certificate of public convenience and necessity in order to engage in the business of operating a cotton gin. The statute was thereafter amended to insert a proviso exempting gins operated by cooperatives. The Court held the proviso violated the Equal Protection Clause of the Fourteenth Amendment but upheld the statute as initially written, saying:

"Here it is conceded that the statute, before the amendment, was entirely valid. When passed, it expressed the will of the legislature which enacted it. Without an express repeal, a different Legislature undertook to create an exception, but, since that body sought to express its will by an amendment which, being unconstitutional, is a nullity and, therefore, powerless to work any change in the existing statute, *that statute must stand as the only valid expression of the legislative intent.*" (Emphasis added)

In United States v. Jackson, 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 138 (1968), the Supreme Court of the United States held invalid a proviso in the Federal Kidnapping Act (18 U.S.C. § 1201(a)) providing for the death sentence upon conviction of kidnapping under certain circumstances if the jury so recommended in its verdict. Originally, the statute made the crime punishable by imprisonment only. The Court held that the remainder of the statute was valid since the unconstitutional proviso was severable from it, saying:

"As we said in Champlin Rfg. Co. v. Commission, 286 U.S. 210, 234, 52 S.Ct. 559, 76 L.Ed. 1062: 'The unconstitutionality of a part of an Act does not necessarily defeat . . . the validity of its remaining provisions. Unless it is evident that the legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law.

"Under this test, it is clear that the clause authorizing capital punishment is severable from the remainder of the kidnapping statute and that the unconstitutionality of that clause does not require the defeat of the law as a whole."

The fact that the proviso in G.S. § 14–21 gives the jury the discretion to recommend life imprisonment rather than death does not distinguish the case before us from United States v. Jackson, supra.

In Bank v. Lacy, 188 N.C. 25, 123 S.E. 475 (1924), this Court said: "The invalidity of one part of a statute does not nullify the remainder when the parts are separable, and the invalid part was not the consideration or inducement for the Legislature to enact the part that is valid." To like effect: Jackson v. Board of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969); Clark v. Meyland, 261 N.C. 140, 134 S.E.2d 168 (1964); Fox v. Commissioners of Durham, 244 N.C. 497, 94 S.E.2d 482 (1956); Power Co. v. Clay County, 213 N.C. 698, 197 S.E. 603 (1968); Connolly v. Union Sewer Pipe Co., 184 U.S. 540, 22 S. Ct. 431, 46 L.Ed. 679 (1902).

It is the proviso which confers upon juries the discretion to send one defendant to death and another to prison for life for the same crime committed under substantially similar circumstances. This, and only this, is what *Furman* condemns as violative of the Eighth and Fourteenth Amendments. The proviso, then, can no longer be given effect as part of the law of North Carolina. This leaves in effect the original statute making the death sentence mandatory upon a conviction of rape, and forbids an instruction to the jury that it may, in its discretion, fix a different punishment.

In light of the authorities cited, we hold that the unconstitutional proviso in G.S. § 14–21 is severable and the remainder of the statute with death as the mandatory punishment for rape remains in full force and effect. A similar conclusion was reached by the Supreme Court of Delaware in State v. Dickerson, Del. Supr., 298 A.2d 761 (decided November 1, 1972).

[5–8] We recognize that the Legislature, not the courts, decides public policy, responds to public opinion and, by legislative enactment, reflects society's standards. The matter of retention, modification or abolition of the death penalty is a question for the law-making authorities rather than the courts. In view of the decision in *Furman*, the Legislature may wish to delete the unconstitutional proviso from G.S. § 14–21 (rape), G.S. § 14–17 (murder), G.S. § 14–52 (burglary), and G.S. § 14–58 (arson); or it may wish to rewrite these statutes altogether to give expression to what it conceives to be the public will. Meanwhile, we hold that the effect of the *Furman* decision upon the law of North Carolina concerning the punishment for rape, murder in the first degree, arson and burglary in the first degree is this: Upon the trial of any defendant so charged, the trial judge may not instruct the jury that it may in its discretion add to its verdict of guilty a recommendation that defendant be sentenced to life imprisonment. The trial judge should charge on the constituent elements of the offense set out in the bill of indictment and instruct the jury under what circumstances a verdict of guilty or not guilty should be returned. Upon the return of a verdict of guilty of any such offense, the court must pronounce a sentence of death. The punishment to be imposed for these cap-

ital felonies is no longer a discretionary question for the jury and therefore no longer a proper subject for an instruction by the judge.

[9] Since the invalid proviso in G.S. § 14–21 was given effect from the time it was enacted in 1949 to the date of the *Furman* decision in all cases wherein the defendant was convicted of rape or other capital crimes under the statutes applicable thereto, the practical effect of a judicial determination that the proviso is severable and therefore eliminated from the statute is to change the penalty for rape (or other capital crimes) from *death or life imprisonment in the discretion of the jury* to *mandatory death*. An upward change of penalty by legislative action cannot constitutionally be applied retroactively. Article I, section 16 of the Constitution of North Carolina forbids the enactment of any *ex post facto* law. The Federal Constitution contains a like prohibition against *ex post facto* enactments by a state. See Constitution of the United States, Art. I, sec. 10. It has been held that this section of the Constitution "forbids the application of new punitive measure to a crime already consummated, to the detriment or material disadvantage of the wrongdoer. * * * It could hardly be thought that, if a punishment for murder of life imprisonment or death were changed to death alone, the latter penalty could be applied to homicide committed before the change." Lindsey v. Washington, 301 U.S. 397, 57 S.Ct. 797, 81 L.Ed. 1182 (1937). It thus appears that where the punishment at the time of the offense was death or life imprisonment in the discretion of the jury, as in the case before us, a change by the Legislature to death alone would be *ex post facto* as to such offenses committed prior to the change. State v. Broadway, 157 N.C. 598, 72 S.E. 987 (1911).

While we recognize that the letter of the *ex post facto* clause is addressed to legislative action, the constitutional ban against the retroactive increase of punishment for a crime applies as well against judicial action having the same effect. "[A]n unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an *ex post facto* law, such as Art. I. § 10 of the Constitution forbids. An *ex post facto* law has been defined by this Court as one 'that makes an action done before the passing of the law, and which was *innocent* when done, criminal; and punishes such action,' or 'that aggravates *a crime*, or makes it *greater* than it was, when committed.' [Citation omitted] If a state legislature is barred by the *Ex Post Facto* Clause from passing such a law it must follow that a State Supreme Court is barred by the Due Process Clause from achieving precisely the same result by judicial construction." Bouie v. Columbia, 378 U.S. 347, 84 S.Ct. 1697, 12 L.Ed.2d 894 (1964).

[10] For the reasons stated, we hold that North Carolina's mandatory death penalty for rape, murder in the first degree, burglary in the first degree and arson may not be constitutionally applied to any offense committed prior to the date of this decision but shall be applied to any offense committed after such date. *Compare*, Johnson v. New Jersey, 384 U.S. 719, 86 S.Ct. 1772, 16 L.Ed.2d 882 (1966).

[11] We now turn to the task of applying the *Furman* decision, and the holding here, to the death sentence imposed upon defendant in this case.

Defendant was tried, convicted and sentenced under G.S. § 14–21, and the trial judge instructed the jury, *inter alia*, as follows: "If you return a verdict of guilty of rape, you may accompany your verdict with a recommendation of life imprisonment. If you make no such recommendation, the law provides that the defendant will be put to death in the gas chamber. If you do so recommended, the punishment will be imprisonment for life. You are completely free to accompany a verdict of guilty with a recommendation of life imprisonment or not, as the law leaves that to your complete and unbridled discretion. Thus members of the jury, depending on how you find the facts, there are three possible verdicts which you may return, you may find the defendant guilty of rape with no recommendation; guilty of rape with a recommendation of life imprisonment or not guilty." Thus, the jury was permitted to exercise its discretion and choose between death and life imprisonment. The proviso in G.S. § 14–21 requiring the judge to so charge and permitting the jury in its discretion to so choose is not materially different from the discretion vested in the jury by the Georgia and Texas statutes condemned by *Furman*. It is apparent, therefore, that *Furman* forbids the imposition of the death penalty in this case. This conclusion is buttressed by the fact that, following the decision in *Furman*, five cases in which we had affirmed the imposition of the death sentence were remanded to this Court by the Supreme Court of the United States "for further proceedings," the judgment of this Court having been vacated "insofar as it leaves undisturbed the death penalty imposed." We remanded those cases to the respective superior courts for imposition of sentences of life imprisonment. State v. Miller, 281 N.C. 740, 190 S.E.2d 841 (1972); State v. Hamby and Chandler, 281 N.C. 743, 191 S.E.2d 66 (1972); State v. Chance, 281 N.C. 746, 191 S.E.2d 65 (1972); State v. Westbrook, 281 N.C. 748, 191 S.E.2d 68 (1972); State v. Doss, 281 N.C. 751, 191 S.E.2d 70 (1972).

Accordingly, the judgment of the Superior Court of Sampson County insofar as it imposed the death penalty upon this defendant is reversed. The case is remanded to the Superior Court of Sampson County with directions to proceed as follows:

1. The presiding judge of the Superior Court of Sampson County will cause to be served on the defendant, James Howard Waddell, and on his counsel of record, notice to appear during a session of said Superior Court at a designated time, not less than ten days from the date of the notice, at which time, in open court, the defendant, James Howard Waddell, being present in person and being represented by his counsel, the presiding judge, based on the verdict of guilty of rape returned by the jury at the trial of this case at the December 1971 Session, will pronounce judgment that the defendant, James Howard Waddell, be imprisoned for life in the State's prison.

2. The presiding judge of the Superior Court of Sampson County will issue a writ of habeas corpus to the official having custody of the defendant, James Howard Waddell, to produce him in open court at the time and for the purpose of being present when the judgment imposing life imprisonment is pronounced.

Remanded for judgment.

Bobbitt, Chief Justice (concurring in part and dissenting in part).

I agree with the majority's conclusion that "the *Furman* decision [Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726, 33 L. Ed.2d 346 1972)] holds that the Eighth and Fourteenth Amendments will no longer tolerate the infliction of the death sentence if either judge or jury is permitted to impose that sentence as a matter of discretion." Under North Carolina statutes, whether the punishment for first degree murder, or rape, or burglary in the first degree, or arson, is to be death or life imprisonment depends solely on how the jury exercises its unbridled discretion.

Prior to *Furman*, this Court had sustained the convictions and death sentences in State v. Miller, 276 N.C. 681, 174 S.E.2d 481 (1970); State v. Hamby and Chandler, 276 N.C. 674, 174 S.E.2d 385 (1970); State v. Chance, 279 N.C. 643, 185 S.E.2d 227 (1971); State v. Westbrook, 279 N.C. 18, 181 S.E.2d 572 (1971); and State v. Doss, 279 N.C. 413, 183 S.E.2d 671 (1971). On authority of *Furman*, the Supreme Court of the United States vacated the judgment(s) in each of these cases "insofar as it [left] undisturbed the death penalty imposed," and remanded the case to this Court for further proceedings. Miller v. North Carolina, 408 U.S. 937, 92 S.Ct. 2863, 33 L.Ed.2d 755 (1972); Hamby and Chandler v. North Carolina, 408 U.S. 937, 92 S.Ct. 2862, 33 L. Ed.2d 754 (1972); Chance v. North Carolina, 408 U.S. 940, 92 S. Ct. 2878, 33 L. Ed.2d 764 (1972); Westbrook v. North Carolina, 408 U.S. 939, 92 S.Ct. 2873, 33 L.Ed.2d 761 (1972); Doss v. North Carolina, 408 U.S. 939, 92 S.Ct. 2875, 33 L.Ed.2d 762 (1972). Thereupon, this Court remanded each of these cases to the superior court which had tried it with direction that judgments imposing a sentence of life imprisonment be pronounced. State v. Miller, 281 N.C. 740, 190 S.E.2d 841 (1972); State v. Hamby and Chandler, 281 N.C. 743, 191 S.E.2d 66 (1972); State v. Chance, 281 N.C. 746, 191 S.E.2d 65 (1972); State v. Westbrook, 281 N.C. 748, 191 S.E.2d 68 (1972); State v. Doss, 281 N.C. 751, 191 S.E.2d 70 (1972).

The decision on this appeal is that *Furman* requires that this Court vacate the death sentence and remand *this case* to the superior court for the pronouncement of judgment imposing a life sentence. I emphatically agree with this decision. Moreover, I do not think *any death sentence* may be constitutionally inflicted unless *our General Assembly* strikes from our present statutes the provisions which leave to the unbridled discretion of a jury whether the punishment shall be death or life imprisonment. In my opinion, this Court has no right to ignore, delete or repeal these provisions, which were put there by the General Assembly as an integral part of its plan for the punishment of crimes for which the death sentence was permissible. *Furman* did not repeal them. This Court has no right to repeal them.

While unnecessary to the disposition of this appeal, the majority opinion states the views of four members of this Court with reference to the conduct of trials and the sentencing of defendants in the future for crimes of murder in the first degree, rape, burglary in the first degree and arson *committed subsequent to the present decision*. Since the decision in *Furman*, several cases have been tried in our superior courts in which the defendants were convicted and sentenced to life imprisonment when the jury returned verdicts of guilty (no recommendation as to punishment being involved) and at least two cases in which upon a like verdict the defendant received a death sentence. My dissent is not directed to the fact that the majority are giving an advisory opinion or directive to our superior court judges with references to crimes committed *subsequent to Furman*. Although the appeals in these cases will come to us in due course, I agree that our superior court judges are *now* entitled to some directive from this Court. *The ground on which I dissent is that the majority are giving what I consider to be the wrong advisory opinion or directive.*

The views expressed in the majority opinion *to which I dissent* may be summarized as follows: The *Furman* decision invalidates the portion of G.S. § 14–21 which reads: "Provided, if the jury shall so recommend at the time of rendering its verdict in open court, the punishment shall be imprisonment for life in the State's prison, and the court shall so instruct the jury." The invalidation of this provision leaves intact that portion of the statute which precedes it and provides for punishment by death. The *Fur-*

man decision does not invalidate the death penalty under present North Carolina statutes. It makes death the sole and exclusive punishment for rape. However, the death penalty is not to be imposed and carried out except for crimes committed subsequent to the filing of *this* decision.

If *Furman* had decided that the portion of G.S. § 14–21 quoted above was separable and invalid and that death is now the sole and exclusive punishment for rape, such decision would apply to all rapes committed subsequent to 29 June 1972, the date *Furman* was decided. But this was *not* the decision in *Furman*. *Furman* simply held that *the death penalty provision* of G.S. § 14–21 as now constituted was invalid and that, absent amendment, no death sentence can be constitutionally imposed and carried out. The dismemberment of G.S. § 14–21, and the declaration that death is the sole and exclusive punishment for rape, are neither required nor warranted by the decision in *Furman*.

Under Article XI, §§ 1 and 2, of the Constitution of North Carolina, the General Assembly is authorized to provide that the crimes of murder, rape, burglary and arson, and these only, may be punishable by death. Pursuant thereto, the General Assembly has enacted statutes which provide that a person convicted of first degree murder, G.S. § 14–17, or of rape, G.S. § 14–21, or of first degree burglary, G.S. § 14–52, or of arson, G.S. § 14–58, shall suffer death *unless* the jury, at the time of rendering its verdict in open court, recommends that the defendant's punishment shall be imprisonment for life in the State's prison.

There has been no change in any of the provisions of G.S. § 14–17, G.S. § 14–21, G.S. § 14–52, and G.S. § 14–58, since the enactment of Chapter 299, Session Laws of 1949, which contains the following: "Sec. 4. Section 14–21 of the General Statutes of North Carolina is hereby *rewritten* so as to read as follows:

"Sec. 14–21. Punishment for rape. Every person who is convicted of ravishing and carnally knowing any female of the age of twelve years or more by force and against her will, or who is convicted of unlawfully and carnally knowing and abusing any female child under the age of twelve years, shall suffer death: *Provided,* if the jury shall so recommend at the time of rendering its verdict in open court, the punishment shall be imprisonment for life in the State's prison, and the court shall so instruct the jury." (Our italics.)

Sections 14–17, §§ 14–52 and 14–58 of the General Statutes were rewritten by sections 1, 2 and 3 of Chapter 299, Session Laws of 1949. As rewritten they prescribed in like manner the punishment for murder in the first degree, burglary in the first degree and arson, respectively.

Our General Assembly has provided that no death sentence can be pronounced unless (1) the jury is instructed that the mandatory punishment will be death unless the jury when returning its verdict in open court recommends that the punishment be imprisonment for life in the State's prison, and unless (2) notwithstanding such instruction the jury returns a verdict of guilty and does not recommend that the punishment be imprisonment for life in the State's prison. Subsequent to the enactment of the 1949 Act, whether the punishment for murder in the first degree, or for rape, or burglary in the first degree, or for arson was to be death or life imprisonment was to be determined by juries, case by case, rather than by law applicable to all who committed crimes bearing those names. This Court consistently held that no constitutional right of a defendant was violated by provisions which authorized the jury, upon finding a defendant guilty of murder in the first degree, or of rape, or of burglary in the first degree or of arson, to determine whether the punishment was to be death or imprisonment for life, notwithstanding the absence from the statute of any standards to guide the jury in making that determination.

Notwithstanding our decisions upholding G.S. § 14–17, G.S. § 14–21, G.S. § 14–52 and G.S. § 14–58, the possibility that the Supreme Court of the United States would render a decision substantially like the decision in *Furman* had been anticipated. In the report submitted by the Judicial Council for consideration by the General Assembly of 1969, attention was called to this possibility. *If the General Assembly wished to continue the death penalty for the crime of rape,* it was recommended that G.S. § 14–21 be amended by *striking the following:* "Provided, if the jury shall so recommend at the time of rendering its verdict in open court, the punishment shall be imprisonment for life in the State's prison, and the court shall so instruct the jury." Similar recommendations were made with reference to G.S. § 14–17 (first degree murder), G.S. § 14–52 (first degree burglary) and G.S. § 14–58 (arson). To implement these recommendations, bills were prepared and introduced. H.B. No. 136 (relating to rape, first degree burglary and arson), and H.B. No. 137 (relating to murder in the first degree), were referred to Judiciary Committee No. 2 of the House. Both received unfavorable reports. The General Assembly, although advised that the provision for the imposition of a death sentence might be held invalid, refused to prescribe death as the punishment for rape without providing for the alternative of life imprisonment if the jury so recommended.

H.B. No. 397 was introduced in the General Assembly of 1971. Section 2 thereof provided: "Sec. 2. G.S. 14–21 is hereby amended by striking the following words: 'shall suffer death: Provided, if the jury shall so recommend at the time of rendering its verdict in open court, the punishment shall be imprisonment for life in the State's prison.', and by inserting in lieu thereof the following words: 'shall suffer punishment by imprisonment for life in the State's prison.' " Sections 1, 3 and 4 of H.B. No. 397 provided for the amendment in like manner of the provisions of G.S. § 14–17, G.S. § 14–25 and G.S. § 14–58 relating to punishment for murder in the first degree, burglary in the first degree and arson. H.B. No. 397 was referred to and (as amended) reported favorably by judiciary Committee No. 2 but failed to pass the House on second reading.

The reasonable inference from the foregoing is that the General Assembly wanted G.S. § 14–17, G.S. § 14–21, G.S. § 14–52 and G.S. § 14–58 to remain exactly as they had been since 1949 and as upheld by the decisions *of this Court.* All provisions of G.S. § 14–21 relate to the single subject indicated by the caption, to wit, "Punishment for rape." The provisions thereof constitute a single legislative plan. Only the *death penalty provision* was invalidated by *Furman.*

It is the decision of a majority of this Court—not the decision in *Furman*—which dismembers G.S. § 14–21 and declares a particular portion thereof invalid and undertakes—in direct conflict with *Furman*—to validate the death penalty provision of G.S. § 14–21 and adjudge that under present statutes death is the sole and exclusive punishment for rape. The main thrust of *Furman* is to restrict the circumstances in which capital punishment may be imposed. It is not only legally unsound but ironic and unrealistic to use *Furman* as a basis for holding that *hereafter under present statutes* death will be the sole permissible punishment for rape.

Whether the General Assembly *would have prescribed* death or life imprison if it had been confronted with the necessity of making that decision cannot be answered. In my view, this question must be answered now by the General Assembly rather than by this Court's speculation as to what the General Assembly at previous sessions would have done if they had been confronted with the necessity of making that decision.

The reliance placed by the majority on United States v. Jackson, 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 138 (1968), invites further consideration of that decision. *In Jackson, the death penalty provision* of the Federal Kidnapping Act (18 U.S.C. § 1201 (a)) was held *invalid* because it imposed an impermissible burden upon an accused's exercise of his Fifth Amendment right not to plead guilty and his Sixth Amendment right to demand a jury trial. In Pope v. United States, 392 U.S. 651, 88 S.Ct. 2145, 20 L.Ed.2d 1317 (1968), based on *Jackson, the death penalty provision* of the Federal Bank Robbery Act (18 U.S.C. § 2113(c)) was held *invalid.* No other provision of either of these statutes was invalidated.

The provision for punishment by death "if the verdict of the jury shall so recommend" considered in *Jackson* was incorporated in the Federal Kidnapping Act when rewritten by the Act of May 18, 1934, 48 Stat. 781–82. The death penalty provision considered in *Pope* was a part of the original Federal Bank Robbery Act of May 18, 1934, 48 Stat. 783. Section 3 provided that the violation thereof "shall be punished by imprisonment for not less than 10 years or by death if the verdict of the jury shall so direct." No statute *amending* or *rewriting the original Act* was involved.

Whether the death penalty provision was a part of the original act or incorporated by later amendment or rewriting was not the basis of decision in either *Jackson* or *Pope.* Moreover, the decisions in *Jackson* and *Pope* were not based upon the discretionary power granted to the jury. They were based upon the fact that Rule 23(a) of the Federal Rules of Criminal Procedure provided: "Cases required to be tried by a jury shall be so tried unless the defendant waives a jury trial in writing with the approval of the court and the consent of the government." Under this rule, if a defendant was permitted to plead guilty or to waive a jury trial, he would thereby avoid the possibility of a death sentence.

In State v. Anderson, *281 N.C.* 261, 188 S.E.2d 336 (1972), the defendant appealed to this Court from a judgment which imposed death sentences based on verdicts of guilty of murder in the first degree (without recommendation of life imprisonment). The murders for which defendant was indicted and convicted were committed on 29 June 1971.

The opinion in State v. Anderson, *supra* at 267, 188 S.E.2d at 340, states: *"Jackson* and *Pope* stand for the proposition that every defendant has a constitutional right to plead not guilty and that the Federal Constitution does not permit the establishment of a death penalty applicable only to those defendants who assert their constitutional right to contest their guilt before a jury."

Chapter 616, Session Laws of 1953, codified as G.S. § 15–162.1, provided in pertinent part as follows: "(a) Any person, when charged in a bill of indictment with the felony of murder in the first degree, or burglary in the first degree, or arson, or rape, when represented by counsel, whether employed by the defendant or appointed by the court under G.S. 15–4 and G.S. 15–5, may, after arraignment, tender in writing, signed by such person and his counsel, a plea of guilty of such crime; and the State, with the approval of the court, may accept such plea. . . . (b) In the event such plea is accepted, the tender and acceptance thereof shall have the effect of a jury verdict of guilty of the crime charged with recommendation by the jury in open court that the punishment shall be imprisonment for life in the State's prison; and thereupon, the court

shall pronounce judgment that the defendant be imprisoned for life in the State's prison."

This Court, being of the opinion that the procedure authorized by G.S. § 15–162.1 did not preclude a sentence of death after a conviction by a jury without recommendation of life imprisonment, unheld the convictions and death sentences in the following cases: State v. Atkinson (murder), 275 N.C. 288, 167 S.E.2d 241 (1969); State v. Hill (murder), 276 N.C. 1, 170 S.E.2d 885 (1969); State v. Roseboro (murder), 276 N.C. 185, 171 S.E.2d 886 (1970); State v. Sanders (murder), 276 N.C. 598, 174 S.E.2d 487 (1970); State v. Williams (murder), 276 N.C. 703, 174 S.E.2d 503 (1970); State v. Atkinson (rape), 278 N.C. 168, 179 S.E.2d 410 (1971).

Subsequently, based on *Jackson* and *Pope*, the Supreme Court of the United States reversed the judgments in these cases "insofar as [they] impose[d] the death sentence" and remanded the cases to this Court for further proceedings. Atkinson v. North Carolina, 403 U.S. 948, 91 S.Ct. 2283, 29 L.Ed.2d 859 (1971); Hill v. North Carolina, 403 U.S. 948, 91 S.Ct. 2287, 29 L.Ed2d 860 (1971); Roseboro v. North Carolina, 403 U.S. 948, 91 S.Ct. 2289, 29 L.Ed.2d 860 (1971); Sanders v. North Carolina, 403 U.S. 948, 91 S.Ct. 2290, 29 L.Ed.2d 860 (1971); Williams v. North Carolina, 403 U.S. 948, 91 S.Ct. 2290, 29 L.Ed.2d 860 (1971); Atkinson v. North Carolina, 403 U.S. 948, 91 S.Ct. 2292, 29 L.Ed.2d 861 (1971).

Thereafter, this Court remanded each of these cases to the superior court where it was tried with directions that judgments imposing sentences of life imprisonment be pronounced. State v. Atkinson, 279 N.C. 386, 183 S.E.2d 106 (1971); State v. Hill, 279 N.C. 371, 183 S.E.2d 97 (1971); State v. Roseboro, 279 N.C. 391, 183 S.E.2d 108 (1971); State v. Sanders, 279 N.C. 389, 183 S.E.2d 107 (1971); State v. Williams, 279 N.C. 388, 183 S.E.2d 106 (1971); State v. Atkinson, 279 N.C. 385, 183 S.E.2d 105 (1971).

In the report submitted by the Judicial Council for consideration by the General Assembly of 1969, attention was called to the possibility that the Supreme Court of the United States would hold that a death sentence could not be imposed and carried out if a defendant could avoid the possibility of a death sentence by pleading guilty and thereby surrendering his right to jury trial. If the General Assembly wished to continue the death penalty, it was recommended that G.S. § 15–162.1 be repealed. G.S. § 15–162.1 was repealed by Chapter 117, Session Laws of 1969. It is here noted that G.S. § 15–162.1 was not detached and invalidated by the decisions of the Supreme Court of the United States in the six cases referred to above.

As noted in State v. Anderson, *supra* "[F]or some obscure reason, the General Assembly reenacted the provisions of G.S. 15–162.1 by Chapter 562 of the 1971 Session Laws, effective 15 June 1971. Then, apparently to correct the error, G.S. 15–162.1 was again repealed by enactment of Chapter 1225 of the 1971 Session Laws, effective 21 July 1971. It thus appears that from 15 June 1971 to 21 July 1971 the death penalty provisions of our statutes once again applied only to those defendants who asserted their right to plead not guilty. United States v. Jackson, *supra;* Pope v. United States, supra; Atkinson v. North Carolina, *supra*. Here, the murders were committed on 29 June 1971 while the provisions of G.S. § 15–162.1 were in effect, and therefore the death sentences in these cases are unconstitutional and cannot be carried out. Hill v. North Carolina, *supra* [403 U.S. 948, 91 S.Ct. 2287, 29 L.Ed. 2d 860]." The murders having been committed when (reinstated) G.S. § 15–162.1 was in effect, this Court vacated the death sentences and remanded the cases to the superior court for the pronouncements of judgments imposing sentences of life imprisonment.

From 1953 until the repeal of G.S. § 15–162.1, North Carolina's legislative plan in respect of the death penalty was embodied in G.S. § 14–17, G.S. § 14–21, G.S. § 14–52 G.S. § 14–58 and in G.S. § 15–162.1. Although enacted in 1953 as a separate statute, G.S. § 15–162.1 was *in pari materia* with G.S. § 14–17, G.S. § 14–21, G.S. § 14–52 and G.S. § 14–58 as rewritten in 1949. Hence, G.S. § 15–162.1 had to be considered as if its provisions were incorporated in G.S. § 14–17, G.S. § 14–21, G.S. § 14–52 and G.S. § 14–58 as rewritten in 1949. When the Supreme Court of the United States, on authority of *Jackson* and *Pope*, vacated the death sentences which this Court had upheld in *Atkinson, Roseboro, Sanders* and *Williams*, it did not hold that G.S. § 15–162.1 was invalid. As this Court recognized in State v. Anderson, *supra*, what the Supreme Court held was that so long as G.S. § 15–162.1 remained a part of our legislative plan, no death sentence could be imposed or carried out. This objection could be and was removed by the repeal of G.S. § 15–162.1. In like manner, the decision in *Furman* does not invalidate any particular clause of G.S. § 14–17, G.S. § 14–21, G.S. § 14–52 or G.S. § 14–58. It simply holds that no death sentence can be imposed and carried out as long as our statute contains provisions which leave to the unbridled discretion of a jury whether the punishment shall be death or life imprisonment.

The *Furman* decision was filed 29 June 1972. Its impact upon state statutes similar to our G.S. § 14–17, G.S. § 14–21, G.S. § 14–52, and G.S. § 14–58 was considered in the decisions discussed below.

In State v. Johnson, 31 Ohio St.2d 106, 285 N.E.2d 751 (1972), the jury found the defendant guilty of murder in the first degree and did not recommend mercy. His appeal from a death sentence was decided by the Supreme Court of Ohio on 19 July 1972. The pertinent portion of the Ohio statute provided: "Whoever violates this section is guilty of murder in the first degree and shall be punished by death unless the jury trying the accused recommends mercy, in which case the punishment shall be imprisonment for life." Ohio R.C. § 2901.01 (1954).

The following excerpts from the opinion of Justice Brown set forth the disposition of the appeal and the rationale of the Court's decision:

"The United States Supreme Court, in Furman v. Georgia . . . has held that the carrying out of a death penalty imposed at the discretion of the trier of the facts constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

"Under that holding, which we are required to follow, the infliction of the death penalty under the existing law of Ohio is not unconstitutional (with the possible exception of taking of the life or attempting to take the life of the President, Vice President, or a person in the line of succession to the presidency [R.C. 2901.09], or of the Governor or Lieutenant Governor [R.C. 2901.10], which statutes purport to impose a mandatory penalty of death).

"We have reviewed the record of the proceedings in this case and find ample evidence of guilt of murder in the first degree.

* * * * *

"It is our conclusion that, except as to the death sentence, the judgment of the Court of Appeals is affirmed. With regard to the death sentence, the judgment of the Court of Appeals must be modified and the sentence is reduced to life imprisonment, as prescribed in R.C. 2901.01."

In Capler v. State, Miss., 268 So. 2d 338 (1972), the defendant was convicted of murder and sentenced to suffer death. His conviction and sentence were affirmed by the Supreme Court of Mississippi, which also denied his petition for a rehearing. The Supreme Court of the United States granted his petition for certiorari and ordered "that the judgment of the Supreme Court of Misissippi in this case be vacated insofar as it leaves undisturbed the death penalty imposed and that this cause be remanded to the Supreme Court of the State of Mississippi for further proceedings." Capler v. Mississippi, 408 U.S. 937, 92 S. Ct. 2862, 33 L.Ed.2d 754 (1972). This order and mandate followed the decision in *Furman*.

The pertinent Mississippi statute provided: "Every person who shall be convicted of murder shall suffer death, unless the jury rendering the verdict shall fix the punishment at imprisonment in the penitentiary for the life of the convict; or unless the jury shall certify its disagreement as to the punishment as provided by section 1293 [Code of 1930; § 2536, Code of 1942] in which case the court shall fix the punishment at imprisonment for life." Miss. Code of 1942, § 2217 (1957). Upon further consideration, the Supreme Court of Mississippi remanded the case to the trial court for the pronouncement of a judgment of life imprisonment. The rationale of this decision is epitomized by Chief Justice Gillespie in these words: "The only infirmity in section 2217 is that the harsher penalty of death may not lawfully be imposed. The remaining part of the statute is complete, and it does not follow that the remaining provision providing for imprisonment in the penitentiary for the life of the defendant must fall. We hold that because of the decision in Furman v. Georgia the death penalty cannot be inflicted; that the remainder of the statute is valid, and the only other punishment for murder is life imprisonment." *Accord*, Peterson v. State, Miss., 268 So.2d 335 (1972).

In State v. Square, La., 268 So.2d 229 (1972), the defendant's conviction of murder and the death sentence pronounced thereon had been affirmed by the Supreme Court of Louisiana but the Supreme Court of the United States, citing Stewart v. Massachusetts, 408 U.S. 845, 92 S.Ct. 2845, 33 L.Ed.2d 744 (1972), following Furman v. Georgia, vacated the judgment insofar as it left undisturbed the death penalty imposed and remanded the case for further proceedings. 408 U.S. 938, 92 S.Ct. 2871, 33 L.Ed.2d 760 (1972). The pertinent portion of the Louisiana statute provided: "In a capital case the jury may qualify its verdict of guilty with the addition of the words 'without capital punishment,' in which case the punishment shall be imprisonment at hard labor for life." L.S.A.C. Cr.P. art. 817 (1967).

Under consideration upon remand, the per curiam opinion of the Supreme Court of Louisiana contains the following:

"We construe the Mandate of the United States Supreme Court to require the imposition of a sentence other than death. Cf., State v. Shaffer, 260 La. 605, 257 So.2d 121 (1971) and State v. Duplessis, 260 La. 644, 257 So.2d 135 (1971).

"Accordingly, in compliance with the Mandate of the United States Supreme Court, the death sentence imposed upon defendant is annulled and set aside, and the case is remanded to the 4th Judicial District Court with instructions to the trial judge to sentence the defendant to life imprisonment.

"Case remanded."

In Garcia v. State, 501 P.2d 1128 (Okl. Cr.1972), the jury found the defendant guilty of murder and fixed his punishment at death. The pertinent Oklahoma statute provided: "Every person convicted of murder shall suffer death, or imprisonment at hard labor in the State penitentiary for life, at the discretion of the jury. Upon trial of an indictment for murder, the jury, if they

find the defendant guilty, must designate in their verdict whether he shall be punished by death or imprisonment for life at hard labor, and the judgment of the court shall be in accordance therewith. But upon a plea of guilty the court shall determine the same." 21 Okla.Stat.Ann. § 707 (1958). On 21 June 1972, the Court of Criminal Appeals of Oklahoma affirmed the conviction and death sentence. However, that decision was modified 26 October 1972, on rehearing, at which time the following order was entered: "In the light of Furman v. Georgia, Jackson v. Georgia, and Branch v. Texas . . . the judgment and sentence of death by electrocution is modified to a term of life imprisonment, and as so Modified, the judgment and sentence is Affirmed." 501 P.2d at 1141.

In People v. Speck, 52 Ill.2d 284, 287 N.E. 2d 699 (1972), the jury found the defendant guilty of murder in each of eight cases. His convictions and the death sentences pronounced thereon were affirmed by the Supreme Court of Illinois. However, the Supreme Court of the United States reversed each judgment insofar as it imposed a death sentence.

The pertinent portions of the Illinois statutes (S.H.A. ch. 38 (1972)) are quoted below:

"§ 9–1. *Murder*

* * * * *

"(b) Penalty.

"A person convicted of murder shall be punished by death or imprisonment in the penitentiary for any indeterminate term with a minimum of not less than 14 years. If the accused is found guilty by a jury, a sentence of death shall be imposed by the court unless the jury's verdict so provides in accordance with Section 1–7(c)(1) of this Code."

* * * * *

"§ 1–7. *Judgment, Sentence and Related Provisions*

* * * * *

"(c) Capital Offenses.

"(1) Where, upon a trial by jury, a person is convicted of an offense which may be punishable by death, the jury may return a verdict of death. Where such verdict is returned by the jury, the court may sentence the offender to death or to imprisonment. Where such verdict is not returned by the jury, the court shall sentence the offender to imprisonment."

Upon remand of the *Speck* case, Justice Schaefer, speaking for the Supreme Court of Illinois, said: "The Supreme Court has now held that a defendant could not be validly sentenced to death under the same Illinois statutes that are applicable to this case. (Moore v. Illinois (1972), 408 U.S. 786, 92 S.Ct. 2562, 33 L.Ed.2d 706; Furman v. Georgia. . . .) Therefore, the death penalty cannot be reimposed on the defendant, and the only remaining question is the procedure to be followed in resentencing him to a sentence other than death."

In Commonwealth v. Bradley, 449 Pa. 19, 295 A.2d 842 (1972), the jury found the defendant guilty of murder in the first degree and fixed the penalty at death. On direct appeal, the conviction was affirmed but the death sentence was vacated and the *defendant was sentenced to life imprisonment*. The pertinent portion of the Pennsylvania statute provided: "Whoever is convicted of the crime of murder of the first degree is guilty of a felony and shall be sentenced to suffer death in the manner provided by law, or to undergo imprisonment for life, at the discretion of the jury trying the case, which shall, in the manner hereinafter provided, fix the penalty." 18 Pa.Stat.Ann. § 4701 (1963). The ground of decision was stated by Justice Roberts as follows: "In Furman v. Georgia, . . . the United States Supreme Court recently held *that the imposition of the death penalty under statutes such as the one pursuant to which the death penalty was imposed upon appellant is violative of the Eighth and Fourteenth Amendments*. Accordingly, appellant's sentence of death may not now be imposed." 295 A.2d at 845. (Our italics.) *Accord*, Commonwealth v. Sharpe, Pa., 296 A.2d 519 (1972); Commonwealth v. Lopinson, Pa., 296 A.2d 524 (1972); Commonwealth v. Ross, 449 Pa. 103, 296 A.2d 629 (1972).

In Graham v. State, Ark., 486 S.W.2d 678 (1972), the jury found the defendant guilty of murder in the first degree and did not recommend a life sentence. The pertinent Arkansas statute provided: "The jury shall have the right in all cases where the punishment is now death by law, to render a verdict of life imprisonment in the State penitentiary at hard labor." Ark.Stat.Ann. § 43–2153 (Repl.1964). Upon defendant's appeal, the Supreme Court of Arkansas upheld the conviction but remanded the case to the trial court for the pronouncement of a judgment of life imprisonment. The following excerpt from the opinion of Justice Byrd indicates the ground of decision: "[T]he U.S. Supreme Court, as presently constituted, has recently decided that where a jury is permitted to decide between the punishments of life and death, the death penalty constitutes 'cruel and unusual punishment' and that such interpretation is applicable to the several states through the Fourteenth Amendment. See Furman v. Georgia. . . .

"So long as the ruling in Furman v. Georgia, *supra*, is made applicable to this State, we are obliged to reduce appellant's sentence from death to life imprisonment as being the next highest available penalty, Ark.Stat.Ann. § 43–2308 (Repl.1964)." 486 S.W.2d at 679.

In State v. Baker, 81 Wash. 2d 281, 501 P.2d 284 (1972), the jury found defendant guilty of murder in the first degree and asked that the death penalty be inflicted. The pertinent portion of the Washington statute provided: "Murder in the first degree shall be punishable by imprisonment in the state penitentiary for life, unless the jury shall find that the punishment shall be death. . . . " R. C. Wash. Ann. § 9.48.030 (1961). Notwithstanding the jury's request, the trial judge deferred imposition of the death penalty on the condition that the defendant be incarcerated for life not subject to parole. The case was before the Supreme Court of Washington on the State's appeal from that order. In remanding the case for a proper sentence in the light of *Furman*, the Court said: "The decision in *Furman* has rendered the issue presented here moot *since the state is now precluded from any attempt to have the death penalty imposed under the existing statute*. The question whether a trial court may defer the death penalty has become academic." *Id.* at 284–285. (Our italics.)

In Huggins v. Commonwealth, Va., 191 S.E.2d 734 (1972), the jury found the defendant guilty of first degree murder and fixed his punishment at death. The pertinent statute provided: "Murder of the first degree shall be punished with death, or by confinement in the penitentiary for life, or for any term not less than twenty years." Va. Code 1950 § 18.1–22. Based on *Furman*, Justice Poff, for the Supreme Court of Virginia, said: "Insofar as it authorized discretionary imposition of the death penalty, Virginia's statute is unconstitutional. With respect to the death sentence, the judgment is vacated." *Id.* at 735. The conviction was upheld and the case was remanded for a new trial on the issue of punishment, that is, to determine whether the confinement in the penitentiary was to be for life, or for a term of twenty years, or for a term exceeding twenty years. *Accord*, Hodges v. Commonwealth, Va., 191 S.E.2d 794 (1972).

Although the above-cited decisions in which death sentences were reversed and sentences of life imprisonment were substituted therefor involved crimes committed prior to *Furman*, none suggests that a death sentence may be imposed and carried out unless and until present statutory provisions are amended. All either state or clearly imply that under existing statutes the death sentence may not be imposed and carried out without regard to whether the crime was committed before or subsequent to *Furman*.

The Florida, Louisiana and Pennsylvania cases discussed below relate to current and future problems of procedure because of unequivocal holdings that under existing statutes a death penalty cannot be imposed and carried out.

In Donaldson v. Sack, 265 So.2d 499 (Fla. 1972), Donaldson, who had been indicted for murder in the first degree, filed his petition in the Supreme Court of Florida for a writ of prohibition. Fla.Const. Art. V, § 9(2), F.S.A., vested in the criminal courts of record jurisdiction of "all criminal cases not capital." Fla.Const. Art. V, § 6(3), vested in the circuit courts "all criminal cases not cognizable by subordinate courts." Donaldson asserted that respondent, Circuit Court Judge Sack, had no jurisdiction to proceed with his case because, as a result of the decision in *Furman*, "capital cases" no longer existed in Florida.

On 29 June 1972, when *Furman* was decided, Florida statutes then in force included the following:

"The unlawful killing of a human being, when perpetrated from a premeditated design to effect the death of the person killed or any human being, or when committed in the perpetration of or in the attempt to perpetrate any arson, rape, robbery, burglary, abominable and detestable crime against nature or kidnapping, shall be murder in the first degree and shall constitute a capital felony, punishable as provided in § 775.082." Fla.Stat.Ann § 782.04(1) (1972 Supp.), F.S.A.

"Whoever ravishes and carnally knows a female of the age of ten years or more, by force and against her will, or unlawfully or carnally knows and abuses a female child under the age of ten years, shall be guilty of a capital felony, punishable as provided in § 775.082. . . ." Fla.Stat.Ann. § 794.01 (1972 Supp.), F.S.A.

"A person who has been convicted of a capital felony shall be punished by death unless the verdict includes a recommendation to mercy by a majority of the jury, in which case the punishment shall be life imprisonment. A defendant found guilty by the court of a capital felony on a plea of guilty or when a jury is waived shall be sentenced to death or life imprisonment, in the discretion of the court." Fla.Stat.Ann. § 775.082(1) (1972 Supp.), F.S.A.

A Florida statute which became effective 1 October 1972, and is now codified as section 775.082(2) and (3), provided: "(2) In the event *the death penalty* in a capital felony is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, a person who has been convicted of a capital felony shall be punished by life imprisonment.

"(3) In the event *the death penalty* in a capital felony is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment with no eligibility parole." (Our italics.)

Excerpts from the opinion of Judge Dekle are quoted below.

"Since Furman v. Georgia . . . in effect 'removes" (until new legislation which may revive it) 'capital cases,' then there appears to be no logical escape from the fact that our circuit courts at this time, and until any legislation which may revive 'capital cases,' do not have jurisdiction in those cases heretofore delineated as 'capital' and according-

ly subsequent to Furman jurisdiction in such cases now pending or being filed vests in the courts of record and may be transferred there in those 17 counties of Florida which have such courts."

"We are unable in the face of existing authorities and logic to find support for the continuance of 'capital offense' as heretofore applied. Accordingly, it must fall with the U.S. Supreme Court's holding against the death penalty as provided under present legislation. Our decision is compelled by that Court's action."

"We find no difficulty with a continuation of the sentencing for thee former capital offenses' under § 775.082(1) as automatically life imprisonment upon conviction, inasmuch as that is the only offense left in the statute. . . . The elimination of the death penalty from the statute does not of course destroy the entire statute. We have steadfastly ruled that the remaining consistent portions of statutes shall be held constitutional if there is any reasonable basis for doing so and of course this clearly exists in these circumstances."

"The removal of capital punishment only removes 'capital cases' as that term has been known. The offense—and the imposition of a life sentence upon conviction—remains. . . . There simply is not at this time such a designation as a 'capital case' as set forth in the several provisions of our Constitution, statutes and rules."

Since there were no "capital cases" under existing Florida statutes, the court then discusses the drastic impact of its decision upon Florida's Criminal Rules relating to (1) the requirement of twelve jurors in a "capital case," (2) provisions for a speedy trial, (3) jury selection procedures, (4) bifurcated trial procedures, (5) necessity for indictment by a grand jury, and (6) right to bail.

In Anderson v. State, 267 So.2d 8 (Fla. 1972), the Supreme Court of Florida, based on *Furman*, vacated the death sentences of forty defendants. It corrected the sentences of those who had been convicted of murder in the first degree by providing that each be imprisoned for the term of his natural life. In doing so, the Court said: "The elimination of the death penalty from the statute prescribing the penalty for murder in the first degree does not destroy the entire statute. The only sentence which can now be imposed upon conviction of the crime of murder in the first degree is life imprisonment. This is an automatic sentence and a reduction from the sentence previously imposed. The Court has no discretion." The defendants in the rape cases having been convicted for rapes committed prior to 1 January 1972, were subject to imprisonment for life *or* for any term of years within the discretion of the Court. Fla.Stat.Ann. § 794.01 (1944). Their cases were remanded for resentencing.

On authority of *Donaldson* and *Anderson*, *supra*, the Supreme Court of Florida in State v. Whalen, 269 So.2d 678 (Fla. 1972), held that a trial judge, sitting as sole trier of fact after accepting a plea of guilty to first degree murder and holding an evidentiary hearing on the issue of the extent of penalty, did not have power to impose the death sentence. Chief Justice Roberts said: "This question concerning bifurcated trials is moot since at the present time capital punishment may not be imposed. This Court has held that there are currently no capital offenses in the State of Florida. If there is no capital offense, there can be no capital penalty." *Id.* at 679.

In Ex Parte Contella, 485 S.W.2d 910 (Tex. Cr.App. 1972), the apepals were from orders in habeas corpus proceedings in which the accused were denied bail after indictment for murder with malice. The Texas Constitution contained this provision: "All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident. . . ." A Texas statute provided: "All prisoners shall be bailable unless for capital offeneses, when the proof is evident." A capital felony was defined by statute as "(a)n offense for which the highest penalty is death." The cited Texas decisions had held that "[t]he term 'proof is evident' means the accused, with cool and deliberate mind and formed design, maliciously killed the deceased, and that upon a hearing of the facts before the court a dispassionate jury would, upon such evidence, not only convict but would assess the death penalty." Vernon's Ann.P.C. art. 1257 provides: "The punishment for murder shall be death or confinement in the penitentiary for life or for any term of years not less than two." Vernon's Ann.C.Crim.Proc. art. 37.07 (1972 Supp.) provides that, in capital cases, where the state has made it known in writing prior to trial that it will seek the death penalty, the punishment must be assessed by the jury.

The following excerpts from the opinion of Judge Roberts set forth the disposition of the appeals and the rationale of the decision.

"In the case of Furman v. Georgia . . . the United States Supreme Court held that the death penalty, at least insofar as it is currently imposed in this country, 'constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.' That being the case, we conclude that the death penalty, as it is currently authorized, may not be imposed as a penalty for the crime of murder.

"In light of this holding, the question which is before the Court is whether, in terms of our Constitution and statute, bail may now be denied in cases which, prior to the holding in Furman v. Georgia, *supra*, the death penalty could have been imposed. We conclude that bail may not be denied in such cases.

* * * * *

"We therefore conclude that bail may no longer be denied on the ground that the offense is a capital offense and the proof is evident. Since the death penalty may not be imposed, there no longer exists a 'capital felony' as defined in Art. 47, V.A.P.C. Likewise, since the death penalty is no longer a possible penalty, it is impossible for the State to offer evidence, in this or any other case, sufficient to establish that the 'proof is evident' as that term is defined in Ex parte Paul, *supra*, [420 S.W.2d 956 (Tex.Cr.App.)]. Therefore, there is no case in which bail may be denied under the provisions of Art. 1, Section 11 of the Texas Constitution or Art. 1.07, V.A.C.C.P.

"The orders denying bail are reversed and the trial judge is ordered to set bail herein." 485 S.W.2d at 911–912.

In Commonwealth v. Truesdale, Pa., 296 A.2d 829 (1972), the defendant was awaiting trial on indictments of first degree murder and conspiracy. Under the Pennsylvania Constitution a "capital" offense is not bailable and defendant had been denied bail. After the decision in *Furman*, defendant made an application for his release on bail on the ground that *Furman* abolished the death penalty as it theretofore had existed in Pennsylvania. After a hearing, the trial court granted bail. The Commonwealth immediately filed a petition in the Supreme Court requesting the assumption of plenary jurisdiction to determine whether defendant had a right to bail pending trial. The Court observed that "[w]ith the decision of the United States Supreme Court in Furman v. Georgia . . . as well as this Court's decision in Commonwealth v. Bradley, 449 Pa. 19, 295 A.2d 842 (1972), *which cases have invalidated the death penalty as it presently exists in Pennsylvania*, we are left to decide if the definition of 'capital offense' which we adopted in *Alberti* [Commonwealth ex rel. Alberti v. Boyle, 412 Pa. 398, 195 A.2d 97] requires that the bail set for Truesdale was proper." 296 A.2d at 832 (Our italics.) Holding that bail was properly granted, the Court stated that "since there are presently no criminal offenses in the Commonwealth for which the death penalty may be imposed, there are no 'capital offenses'; hence, by mandate of our Constitution, all offenses are bailable prior to trial." *Id.* The Court clearly recognizes and accepts the fact that the effect of the *Furman* decision was to make "the maximum penalty for murder in the first degree . . . life imprisonment." 296 A.2d at 835.

In State v. Holmes, La., 269 So.2d 207 (1972), and in State v. Flood, 269 So.2d 212 (La. 1972), the Supreme Court of Louisiana held that *Furman* did not destroy the classification of certain crimes in Louisiana as capital offenses. The impact of *Furman* was described in these words: "The crime [of murder] remains unchanged; only the penalty has been changed. True, the penalty is what made murder a capital offense, and it is not actually a capital offense in Louisiana today. But the *nature* of the offense has not changed—only the punishment." State v. Flood, *supra*, at 214. Hence, *Holmes* held that a person charged with a crime formerly punishable by death had to be tried by a jury of twelve, all of whom must concur to render a verdict; and *Flood* held that a person so charged was not entitled *as of right* to be released on bail.

The majority opinion cites Delaware v. Dickerson, Del. Supr., 298 A.2d 761 (1972). This is the only decision disclosed by our research which supports to any extent the view of the majority herein. Dickerson was charged with a first degree murder committed prior to the decision in *Furman*. Two questions of law were certified by the Superior Court to the Supreme Court, to wit: "1. Are the discretionary mercy provisions of 11 Del.C. § 3901 unconstitutional under Furman v. Georgia? 2. If the answer to Question 1 is yes, is the mandatory death penalty prescribed in 11 Del.C. § 571 constitutional?" Both questions were answered "Yes".

11 Del.C. § 571 provided that whoever committed the crime of first degree murder as defined therein "shall suffer death." 11 Del.C. § 3901 provided: "In all cases where the penalty for crimes prescribed by the laws of this State is death, if the jury, at the time of rendering their verdict, recommends the defendant to the mercy of the Court, the Court may, if it seems proper to do so, impose the sentence of life imprisonment instead of death."

The questions certified seem to have been adroitly phrased to elicit the answers which were given. The true question was whether *Furman* had invalidated the death penalty provision of the Delaware statute. All justices (3) of the Supreme Court of Delaware concurred in answering the certified questions as stated above. The majority (2) held that the death penalty could not be applied retroactively to the defendant in the case under consideration. This is an excerpt from the majority opinion: "Having determined that the mandatory death penalty provision of the Murder Statute, standing alone, may not be applied retroactively, we are left with the problem of pointing to the statutory, common law, or inherent power of the Superior Court under which the sentence may be imposed upon a conviction of murder in the first degree for which the mandatory death penalty of the Murder Statute may not be imposed. That question was not certified and was not briefed or argued by counsel." Chief Justice Wolcott dissented from "the majority's conclusion that 11 Del.C. § 571 may not be applied retroactively by the courts of this State." His dissent is based on this premise: "The Supreme Court of the United States—not this Court—has held that the Mercy Statute is unconstitutional. We, of course, are bound by this decision, but we have not made it." Suffice to say, in my view *Furman* held only that the *death penalty pro-*

vision of the Delaware statute was invalid. Therefore, as I see it, the holdings of the Supreme Court of Delaware in Dickerson were not required or supported by *Furman*.

I agree that the *Furman* decision has not established the proposition that capital punishment under all circumstances constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States. Moreover, nothing in the *Furman* decision would seem to invalidate a statute of our General Assembly prescribing death as the sole and exclusive punishment for murder in the first degree, rape, burglary in the first degree, or arson. Whether such a statute should be enacted is for legislative determination. The majority opinion states: "We recognize that the Legislature, not the courts, decides public policy, responds to public opinion and, by legislative enactment, reflects society's standards. The matter of retention, modification or abolition of the death penalty is a question for the lawmaking authorities rather than the courts." With this statement I emphatically agree. However, in their directive that death shall be the sole and exclusive punishment for all crimes of first degree murder, rape, first degree burglary, and arson, committed *after the filing of this decision*, the majority, in my view, have assumed to act in a legislative rather than in a judicial capacity. Thereby they demonstrate the difference between precept and practice. Of course, the practical efect of today's decision is to place upon those members of the General Assembly who favor the abolition or limitation of capital punishment the burden of initiating and passing legislation to that effect.

It is my view that, unless and until G.S. § 14–17, G.S. § 14–21, G.S. § 14–52, and G.S. § 14–58 are amended by our General Assembly, *Furman* requires that trials be conducted solely to determine the guilt of the defendant; and, if found guilty of murder in the first degree, rape, burglary in the first degree, or arson, that the defendant be sentenced to life imprisonment as the only permissible punishment.

Higgins, Justice (concurring in result).

A court opinion must reflect the views of the majority of the Court. A concurring in result opinion may reflect the individual views of the writer.

In my opinion, Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346, does not work any change in North Carolina trial procedure. The decision deals with punishment only. Hence in what are now our four capital felonies the trial court should, as in other cases, omit any reference to punishment and charge on the constituent elements of the offenses and instruct the jury under what circumstances a verdict of guilty should be returned. As a result of the Court's holding in Furman, a charge on the right of the jury to recommend life imprisonment is now an idle gesture and should be omitted. The recommendation is not authorized until the jury unequivocally finds guilt. A conviction without a jury recommendation now requires life imprisonment and permits nothing more.

After discussing the effect of the 1949 amendment giving the jury power to recommend life imprisonment in our four capital felony cases, the majority opinion concludes: "It is the proviso, and the proviso alone, which creates the discretionary difficulty condemned by the Furman decision; and it is quite clear that Furman strikes down the proviso as a violative of the Eighth and Fourteenth Amendments."

I do not so interpret the effect of Furman. That decision does not strike down the proviso and does not hold that it violates the Eighth and Fourteenth Amendments. Furman holds that after the jury determines guilt and the State law permits either the court or the jury discretion whether the punishment shall be death or life imprisonment, life imprisonment must be imposed. Where discretion is given, Furman holds that a life sentence is valid but strikes down the death penalty. The rationale of the rule seems to be that if discretion between a death sentence or life imprisonment is given either to the court or the jury, the milder punishment must be imposed because in the interpretation of criminal statutes that which is the more favorable to the accused must be accepted.

The fixing of punishment for crime is a legislative function. The General Assembly, in my view, may fix death as the punishment for either or all of the four offenses named in Article XI, Section 2 of the North Carolina Constitution. The Legislature may provide the death penalty or it may provide life imprisonment, but when it undertakes to give an option, the milder judgment must be imposed.

In my opinion, this Court can no more strike out the proviso for life imprisonment than it can strike out the death penalty. Both provisions were inserted in the law by the General Assembly. I am unfamiliar with any authority this Court has to legislate on the subject by repealing either provision.

This further objection to the opinion: After the Court has "eliminated" the right of the jury to recommend life imprisonment in this case, the Court further decrees that capital punishment shall be restored after this Court's opinion is handed down. This holding seems to be required in order that the Court may dig itself out of the hole it fell into by its holding that Furman "strikes down the proviso as violative of the Eighth and Fourteenth Amendments." Furman, as I understand it, holds that life imprisonment is valid, but because of the option, Furman strikes down the death penalty.

Since writing the above I have read the well documented opinion of the Chief Justice. I fully concur therein.

Lake, Justice (concurring).

I concur in all parts of the opinion of Justic Huskins. In view of the length of the dissenting portion of the opinion of the Chief Justice and of the number of authorities cited therein, and because of the importance of the issue, I deem it advisable to state, as briefly as possible, why I do not find its argument persuasive or the citations convincing upon the question with which the opinion of Justice Huskins deals.

The jury having returned a verdict of guilty of rape without making a recommendation that the defendant's punishment be life imprisonment, a sentence to death was imposed by the trial court pursuant to G.S. § 14–21. It is, therefore, our duty to determine the effect now to be given that statute by the courts of North Carolina. We may not properly bypass that task, nor escape our responsibility for it by labeling the question one of policy for determination by the Legislature.

The Supreme Court of the United States being the higher authority on the validity of judgments under the Constitution of the United States, its mandates, issued in reliance upon Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346, vacating the death sentences previously affirmed by this Court in the five cases cited in the opinion of Justice Huskins, became the law of those five cases. Under the compulsion of those mandates, this Court remanded those cases to the respective superior courts for the imposition of sentences of life imprisonment.

The present case, on the contrary, is before us for the first time. In it we have no mandate from the Supreme Court of the United States vacating the death sentence imposed upon this defendant. In the absence thereof, it is our duty, not that of the Legislature, to determine just what the United States Supreme Court decided in Furman v. Georgia, supra, and to determine the present state of the law of North Carolina with reference to punishment for the crime of rape in the light of that decision.

Only this Court can determine whether any portion of G.S. § 14–21 is the law of North Carolina today and, if so, which portion. The Legislature, now in session, cannot make that determination. The Legislature can determine what the law of this State ought to be and shall be in the future. That is policy making and that is the Legislature's prerogative and responsibility. It is for us, and for us alone, to determine what part of G.S. § 14–21, if any, is the law of North Carolina today and determinative of the validity of the sentence from which this defendant appeals. That is not policy making but the interpretation of the statute—an exercise of the judicial function which we may not abdicate or assign to the Legislature. Constitution of North Carolina, Art. I, § 6; Art. IV, § 1.

It is quite clear, as the opinion of Justice Huskins plainly states, that it is for the Legislature, not for this Court, to determine the policy of this State as to what acts shall be deemed crimes and as to the punishment therefor; that is, to determine what punishment ought to be and shall be imposed for the offense of rape hereafter committed. Constitution of North Carolina, Art. I, § 6; Art. II, § 1; Art. XI, § 2. But the Legislature has spoken in G.S. § 14–21 and, until it speaks again, it is the duty of this Court to determine what if anything, remains of its pronouncement in G.S. § 14–21 after the decision in Furman v. Georgia, supra. No officer or agency, save this Court, can make that determination.

The determination of that question as stated in the opinion of Justice Huskins is, in my view, unassailably correct. If the Legislature, now sitting, deems the result of our determination is unwise, as a matter of policy, it may, as to rapes hereafter committed, adopt and promulgate a different rule as to punishment. That is its responsibility, not ours.

The opinion of the Chief Justice states:

"If *Furman* had decided that the portion of G.S. 14–21 quoted above was separable and invalid and that death is now the sole and exclusive punishment for rape, such decision would apply to all rapes committed subsequent to 29 June 1972, the date *Furman* was decided. But this was not the decision in *Furman*." Of course, it was not, for the simple reason, if for none other, that the Supreme Court of the United States does not have the authority to decide that question. Whether a statute is separable or inseparable is a question of statutory interpretation. It is well settled that the interpretation of a state statute is a quesion to be determined by the supreme court of the state. The Supreme Court of the United States has repeatedly accepted as binding upon it the interpretation placed upon state statutes by the highest courts of such states.

Thus, the Supreme Court of the United States has not said, and may not properly determine that G.S. § 14–21 is or is not separable. What it has said in Furman v. Georgia, supra, is that the discretion which the proviso in G.S. § 14–21 undertook to vest in North Carolina juries cannot be conferred upon them consistently with the Fourteenth Amendment. It having so held, it is now the prerogative and duty of this Court, and this Court alone, to determine whether the proviso is severable from the original statute unto which the proviso was attached by amendment in 1949. Thus, it is the date of the decision of that question by this Court—today—not the date of the decision in Furman v. Georgia, supra, which fixes the offenses of rape for which a death sentence may be imposed without running afoul of the Ex Post Facto principle.

The opinion of the Chief Justice further states:

"*Furman* simply held that *the death penalty provision* of G.S. 14–21 as now con-

stituted was invalid and that absent amendment, no death sentence can be constitutionally imposed and carried out."

I do not find the words, "absent amendment," in any of the nine opinions by the justices in Furman v. Georgia, supra, nor in the per curiam statement of the decision therein. Furman v. Georgia, supra, did not hold "the death penalty provision of G.S. 14–21" invalid. It held, as the opinion of Justice Huskins states, that the death penalty cannot be imposed *at a time when juries or judges are given the discretion to impose the death penalty on one defendant and life imprisonment on another for the same offense*—quite a different thing.

I am unable to agree with the reasoning by which the Chief Justice reaches the conclusion that the defeat in 1971 of the legislative proposal to abolish the death penalty for rape and make life imprisonment the mandatory punishment therefor now compels us to hold that, since Furman v. Georgia, supra, life imprisonment has become the mandatory punishment for the crime. Quite obviously, the 1971 Legislature preferred, as a matter of policy, to leave North Carolina juries in possession of the discretion which the 1949 amendment to G.S. § 14–21 attempted to give them. It seems to me perfectly clear that the 1971 Legislature did not believe the then prophesy that the United States Supreme Court would decide as it did in Furman v. Georgia, supra. As the opinions of the four dissenting justices in Furman v. Georgia, supra, show, the earlier decisions of the Court afforded ample basis for such legislative disbelief. However, in any event, the Chief Justice's opinion, if adopted by this Court, would result in our declaring G.S. § 14–21 now to mean precisely what the 1971 Legislature expressly refused to make it say. This we may not do. The Legislature of 1971 obviously wanted the whole of G.S. § 14–21, including the provsio, which it believed constitutionally permissible, but this is far from showing it wanted the whole or nothing. It certainly fails to show that, if unable to have the whole, it wanted the part which it refused to adopt, standing alone, in preference to the part which it refused to repeal.

The array of decisions from other states, cited in the opinion of the Chief Justice, are simply not in point on the question of the severability of G.S. § 14–21. In the first place, substantially all of them, if not all, held only that the death penalty may not be imposed by a state in a case which arose and was adjudicated while the state undertook to give its juries the discretion which Furman v. Georgia, supra, held cannot be vested in juries. In so holding these decisions do not conflict with the opinion of Justice Huskins. In the second place, of all the cited decisions only those from Mississippi and Florida appear to contain any discussion of the question of the severability of the various state statutes involved and the Mississippi and Florida decisions appear to rest on the acceptance by those courts of the view that their statutes were severable and the life sentence provisions therein were the parts which survived the decision in Furman v. Georgia, supra. In the third place, decisions from other states as to the severability of their statutes cannot help us materially in determining whether our own statute is severable, even if the wording of the statutes be identical, because the legislative history of the respective statutes may well be quite different. As the opinion of Justice Huskins demonstrates, the history of G.S. § 14–21 leads to the conclusion that the proviso, added by the amendment of 1949, is severable from the remainder of the statute.

It is one thing to hold, as the Mississippi and Florida Courts appear to have done, that a statute like G.S. § 14–21 is severable and the part which survives Furman v. Georgia, supra, is that providing for a life sentence. This would, as Justice Huskins has demonstrated, simply be a most strained and improbable view of the intent of the North Carolina Legislature in the light of its repeated refusals to abolish capital punishment. It is a far different thing to say, as the opinion of the Chief Justice suggests, that G.S. § 14–21 is an inseparable whole.

If this view suggested in the opinion of the Chief Justice were correct, it would necessarily follow that the imposition of a sentence to imprisonment for life would be unlawful. It is well settled, as shown by the authorities cited by Justice Huskins, that if the provisions of a statute are, indeed, so inter-related that they are an inseparable whole, the statute cannot be partly unconstitutional and partly constitutional. Quite obviously, the effect of Furman v. Georgia, supra, is that G.S. § 14–21 is not, in its entirety, constitutional. If it be inseparable, then the entire statute would fall under the impact of Furman v. Georgia, supra, and G.S. § 14–21 would authorize no sentence whatever. In that event, rape being a felony at common law and no specific punishment being provided by a valid statute, G.S. § 14–2 would apply and the maximum sentence for rape would be imprisonment for ten years plus a fine.

Of course, the real thrust of the opinion of the Chief Justice is not that G.S. § 14–21 is inseparable but that it is separable and that the proviso is the surviving portion. This I find inconsistent with the legislative history of the statute, correctly set forth by Justice Huskins.

Sharp, Justice (concurring in the opinion of Chief Justice Bobbitt).

I concur fully with the views expressed by the Chief Justice in his well-documented opinion and in his conclusion that the effect of *Furman* is to invalidate the death penalty under the laws of this State as presently written and to make life imprisonment the punishment for first degree murder, rape, arson, and first degree burglary. In signifying my concurrence I add these comments:

In my view, there are no constitutional infirmities in capital punishment *per se* and, under the conditions prevailing today, I do not consider the death penalty cruel and unusual punishment for the crimes for which the State Constitution authorizes the General Assembly to prescribe it. * * *

Mr. HASKELL. Mr. President, just briefly, in my opening statement, prior to the time that the Senator from Nebraska came on the floor, I called attention to the fifth mitigating circumstance, pointing out that juries can be wrong and err and that if they were wrong and erred, there would be absolutely nothing the judge could do under the circumstances.

Mr. HRUSKA. Mr. President, if the Senator would yield, let me say that something could be done. There is a provision for appellate review. It grants the defendant a right to appeal the imposition of the sentence. If there is clear error, the court of appeals has the power to set aside the verdict. If the circuit court found the imposition of the sentence was clearly erroneous, it could strike it down. Now, then, what are we going to say: that maybe even the circuit court is in error? I do not think that would abide in our system of jurisprudence.

The right of appellate review of the sentence is a safeguard added by this bill. We have never had such a right of appeal in our jurisprudence. But with the enactment of this bill, we would.

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

Mr. HRUSKA. Surely.

Mr. HASKELL. Just one comment. I am sure the distinguished Senator is aware that the scope of review of a jury finding by the appellate court is quite different than the normal ability to set aside by a trial judge. I am sure the Senator is aware that there must be a far greater showing of error.

That is all I have to say.

Mr. HRUSKA. Aside from the inherent power of the judge to set aside a verdict that a finding is clearly in error, there is express statutory authority in S. 1401 for appellate review. When there is a clear error, that is ground for the circuit court to say so accordingly.

Who are we to say, academically, and in the abstract, "Well, but there still might be a mistake?" If we are to administer justice at all, such a view cannot be tolerated.

Mr. HASKELL. If the Senator will yield further, I see authority in the trial judge to set aside the initial verdict in the sense of whether the man committed the act, but I do not see any authority for the trial judge to set aside a finding on mitigating or aggravating circumstances.

Mr. HRUSKA. I say inherently the practice of permitting a judge to set aside a finding that is plainly erroneous is the rule generally in criminal law and I refer to the Federal Rules of Criminal Procedure 35 and 52. Specifically, rule 52, provides that plain errors or defects may be noticed by the court even on its own motion. I am happy to yield to the Senator from North Carolina on that point if he would like to elaborate on it.

Mr. ERVIN. Mr. President, I think a trial judge always has discretion to set aside any verdict which he for any reason thinks is wrong, either on the facts or because of misdirection he gave the jury.

Mr. HRUSKA. In addition to that, which is a part of our existing law, I refer to the language on page 21 of the bill, starting on line 7:

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),

And I underscore these words—

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.

That is as plainly as we could provide for judicial review of that sentence; and I submit that it takes care of the type of case to which the Senator from Colorado refers.

Mr. HASKELL. Mr. President, may I ask the Senator from Nebraska one ques-

tion? Is it the Senator's understanding that the trial judge, if he felt the jury made an erroneous finding on mitigating circumstances, could set aside the jury's finding?

Mr. HRUSKA. I refer the Senator to the statement just made by the Senator from North Carolina, whose experience in criminal law results from being a prosecutor, a defender, and a Judge, and who is also an eminent authority in this field: Yes, he can.

But separate and apart from that, I return again to the language in the statute. If there is any misgiving in the mind of anyone, including the Senator from Colorado, that the power does not exist in the hands of the judge, it is reviewable by the circuit court.

Mr. HASKELL. But it is the Senator's understanding of this bill that the trial judge could set aside the special verdict under (f), which appears on page 14?

Mr. HRUSKA. In the event of the existence of a clearly erroneous finding, yes, that is my understanding and my belief.

Mr. HASKELL. I thank the Senator.

Mr. McCLELLAN. Mr. President, I am ready to vote on the pending amendment. But I ask unanimous consent to have printed in the RECORD at this point an article published in the Washington Post today, entitled "Montana Renews Death Penalty in Kidnapings."

Yesterday, the Governor of Montana signed into law a bill restoring the death penalty for kidnapers who murder their victims.

Also yesterday, the Pennsylvania Senate cleared legislation making the death penalty mandatory for nine types of murder—including the killing of a policeman or a prison guard.

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

MONTANA RENEWS DEATH PENALTY IN KIDNAPINGS

[Reuters]

HELENA, MONT., March 12.—The governor of Montana has signed into law a measure restoring the death penalty in the state for kidnapers who murder their victims.

The law was prompted by a spate of abductions in Montana and elsewhere in the country.

In Harrisburg, Pa., the Pennsylvania Senate cleared legislation making the death penalty mandatory for nine types of murders—including the killing of a policeman or prison guard. Gov. Milton J. Shapp has 10 days to decide if he will sign or veto the measure.

Mr. McCLELLAN. Mr. President, I would like to make this observation. No one supporting this bill does it with any great degree of pleasure. We are acting here in response to a public demand that some effective legislation be enacted to meet the contingencies of the situation that was found to be faulty by the Supreme Court.

I do not think there is any question but that the majority of the people and the legislatures of the majority of the States want this faulty situation corrected and the death penalty restored in cases where the most atrocious crimes have been committed.

The PRESIDING OFFICER (Mr. ABOUREZK). The question is on agreeing to the amendment of the Senator from Colorado. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Montana (Mr. MANSFIELD), the Senator from Wisconsin (Mr. NELSON), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Alabama (Mr. SPARKMAN), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "yea."

I further announce that, if present and voting, the Senator from West Virginia (Mr. RANDOLPH) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Maryland (Mr. BEALL), the Senator from New Hampshire (Mr. COTTON), the Senator from Colorado (Mr. DOMINICK), and the Senator from Oregon (Mr. HATFIELD) are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "yea."

The result was announced—yeas 41, nays 47, as follows:

[No. 66 Leg.]

YEAS—41

Abourezk	Hartke	Moss
Bayh	Haskell	Muskie
Bentsen	Hathaway	Pastore
Brooke	Hughes	Pell
Buckley	Inouye	Percy
Burdick	Javits	Proxmire
Case	Kennedy	Ribicoff
Church	Mathias	Stafford
Clark	McGee	Stevenson
Cranston	McGovern	Taft
Eagleton	McIntyre	Tunney
Fong	Metcalf	Weicker
Gravel	Metzenbaum	Williams
Hart	Mondale	

NAYS—47

Aiken	Domenici	Montoya
Allen	Eastland	Nunn
Baker	Ervin	Packwood
Bartlett	Fannin	Pearson
Bellmon	Goldwater	Roth
Bennett	Griffin	Schweiker
Bible	Gurney	Scott, Hugh
Biden	Hansen	Scott,
Brock	Helms	William L.
Byrd,	Hruska	Stevens
Harry F., Jr.	Huddleston	Symington
Byrd, Robert C.	Jackson	Talmadge
Cannon	Johnston	Thurmond
Chiles	Long	Tower
Cook	Magnuson	Young
Curtis	McClellan	
Dole	McClure	

NOT VOTING—12

Beall	Hatfield	Nelson
Cotton	Hollings	Randolph
Dominick	Humphrey	Sparkman
Fulbright	Mansfield	Stennis

So Mr. HASKELL's amendment (No. 1019) was rejected.

Mr. McCLELLAN. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BUCKLEY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 18, after line 12, insert the following new subsection (i): "(i) In no event shall a sentence of death be carried out upon a pregnant woman."

Mr. BUCKLEY. Mr. President, I yield to the Senator from Missouri.

Mr. EAGLETON. Mr. President, I ask unanimous consent that a member of my staff, Mr. Robert Harris, have the privilege of the floor during the pendency of this debate.

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

Mr. BUCKLEY. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield for a question?

Mr. BUCKLEY. I yield.

Mr. ROBERT C. BYRD. Could the Senator give Members some idea as to how soon he would anticipate a vote on his amendment?

Mr. BUCKLEY. Mr. President, I do not anticipate speaking more than 2 or 3 minutes on this amendment. I do not know what the sponsors of the bill might wish to say.

Mr. McCLELLAN. I will agree to 5 minutes on a side.

Mr. BUCKLEY. I gladly accept that.

Mr. ROBERT C. BYRD. Mr. President, I make that request.

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

Mr. BUCKLEY. Mr. President, the amendment states, quite simply:

In no event shall a sentence of death be carried out upon a pregnant woman.

The purpose of the amendment is, I think, self-evident. It is to reiterate and reinforce the traditional common-law rule that an unborn child shall not be made to suffer death on account of his or her mother's crime. Implicit in that rule was the recognition of the unborn child as a legal person. It should be unnecessary to reiterate this longstanding rule, but the Supreme Court's rulings of January 1973, justifying abortion-on-request have raised doubts as to whether any legal protection remains for the unborn child. Mr. Justice Blackmun in his opinion for the Court in those cases did not allude to the common law precedent mandating a stay of execution for a pregnant woman. And from the Court's self-interested perspective, it is well that he did not. For mere reference to the rule would have exposed a fact that the majority of the Court was at great pains to disguise or deny, namely, that historically, the unborn child had a legally protectable interest wholly separate from that of the mother. From my own perspective, the unborn child facing death because of his mother's impending execution is no less a legal person than the unborn child facing death because of abortion.

The Supreme Court itself in an 1891 decision, *Union Pacific Railway* v. *Botsford*, 141 U.S. 250, remarked the legally protectable status of the unborn child, stating that the execution-reprieve doctrine was intended "to guard against the

taking of the life of an unborn child for the crime of the mother." A tragic footnote in the application of this long-standing rule was provided by an earlier Massachusetts case, Commonwealth against Spooner (1778), in which a condemned woman claimed to be several months advanced in pregnancy. The sheriff was ordered by the Court to take steps to confirm or deny the claim, and owing either to the crudity of the tests then available or to the ignorance or malice of the examiners, or both, pregnancy was not confirmed and the unfortunate woman was executed. An autopsy revealed "a perfect male fetus of the growth of 5 months." The reaction to this discovery is movingly described by the reporter of the case:

(H)er statement that she was about to become a mother, was generally regarded as the trick of an artful woman to postpone the day of her suffering. But when she had paid the full penalty of the law and the startling truth was whispered to the retiring multitude, that her statement was true, and that the vengeance of the law had fallen on her unborn child, there was a universal feeling of regret at the haste of the proceedings. Every mother, who had seen her die, shuddered at the recollection; and what must have been the feelings of that "jury of discreet matrons"—mothers as they were to whom had been committed the charge of ascertaining the truth, and who, through prejudice, or ignorance, or malice, had been the occasion of this grievous mistake!

Mr. President, I believe no one in this body would condemn an unborn child to death under such circumstances. In consideration of the long-standing status of this humane and merciful rule, and in recognition of the moral and legal rights of the unborn child, I urge my colleagues to support my amendment.

I believe that the point is self-evident. This does not mean that no women may be executed but, rather, that the authorities would have to await delivery of her child before carrying out the sentence.

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

Mr. BUCKLEY. I yield.

Mr. MATHIAS. Mr. President, I should like to associate myself with the statement made by the distinguished Senator from New York and to ask unanimous consent that I may be a cosponsor of his amendment, which I support very fully.

Mr. BUCKLEY. Mr. President I ask unanimous consent that the name of the distinguished Senator from Maryland be added as a cosponsor. The Senator from Kansas (Mr. DOLE) and the Senator from North Carolina (Mr. HELMS) are also cosponsors of the amendment.

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

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

Mr. BUCKLEY. I yield.

Mr. DOLE. Mr. President, I think it is desirable that the amendment proposed by the distinguished Senator from New York (Mr. BUCKLEY) be included among the provisions of this important legislation.

Throughout our Nation's nearly 200 years, we have always endeavored to protect and defend the lives and well-being of our infant children, who have not yet had the opportunity to choose between right and wrong. This same ideal necessarily extends to the yet unborn child, whose unsullied innocence is a matter of factual inherence—regardless of the actions or conduct of his procreator.

This notion has been alluded to on numerous occasions over the years, perhaps no more explicity, than in the 1891 Supreme Court decision in Union Pacific Railroad against Botsford. Although the issue itself was not principal to that case, it was noted, through citation of the common law doctrine of "execution reprieve," to be imperative that we "guard against the taking of the life of an unborn child for the crime of the mother."

In reality, the moral ethics of those who are charged with execution of sentencing may never allow such a situation to arise in the first instance. However, that probability is not in itself sufficient to insure against the possibility that an unacceptable event of that type might somehow occur.

I am strongly in favor, therefore, of acting to preclude the carrying out of a death sentence upon a pregnant woman. While this is certainly a very unique and specialized area of concern, it is by all means appropriate for incorporation into this bill, whose very spirit and intent is that of specific standardization and strict definition.

Mr. BUCKLEY. Mr. President, I reserve the remainder of my time.

Mr. McCLELLAN. Mr. President, I should like to ask the Senator a question, on my own time.

I am very much in sympathy, in many respects, with what the Senator is trying to do. I would hate to see the execution take place if a woman were pregnant.

Does the Senator's amendment relate to the condition of the woman at the time she commits the crime, or would it apply to her if, after committing the crime, she became pregnant for the purpose of saving her life?

Mr. BUCKLEY. It would apply at any time. I understand the incentives implicit in the question. But this certainly was a situation which people had to cope with under the common law rule. We are able to cope in those days, and I am sure we could do so in the future.

Mr. McCLELLAN. Certainly, no one wants to see a woman executed when she is in that condition. But I can conceive of one who is guilty of the most atrocious crime trying to escape the death penalty, if she has a little interval from the time of the crime, to give her an opportunity to become pregnant. Perhaps I misunderstood the Senator.

Mr. BUCKLEY. Under those circumstances, she would escape the penalty for only 9 months.

Mr. McCLELLAN. Mr. President, I am ready to vote, unless someone wishes to speak.

The PRESIDING OFFICER. Is all time yielded back?

Mr. BUCKLEY. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment is yielded back.

The question is on agreeing to the amendment of the Senator from New York. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Louisiana (Mr. LONG), the Senator from Montana (Mr. MANSFIELD), the Senator from Wisconsin (Mr. NELSON), the Senator from Alabama (Mr. SPARKMAN), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Maryland (Mr. BEALL), the Senator from New Hampshire (Mr. COTTON), the Senator from Colorado (Mr. DOMINICK), the Senator from Oregon (Mr. HATFIELD), and the Senator from Arizona (Mr. GOLDWATER) are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "yea."

The result was announced—yeas 87, nays 0, as follows:

[No. 67 Leg.]

YEAS—87

Abourezk	Ervin	Montoya
Aiken	Fannin	Moss
Allen	Fong	Muskie
Baker	Gravel	Nunn
Bartlett	Griffin	Packwood
Bayh	Gurney	Pastore
Bellmon	Hansen	Pearson
Bennett	Hart	Pell
Bentsen	Hartke	Percy
Bible	Haskell	Proxmire
Biden	Hathaway	Randolph
Brock	Helms	Ribicoff
Brooke	Hruska	Roth
Buckley	Huddleston	Schweiker
Burdick	Hughes	Scott, Hugh
Byrd, Harry F., Jr.	Inouye	Scott, William L.
Byrd, Robert C.	Jackson	Stafford
Cannon	Javits	Stevens
Case	Johnston	Stevenson
Chiles	Kennedy	Symington
Church	Magnuson	Taft
Clark	Mathias	Talmadge
Cook	McClellan	Thurmond
Cranston	McClure	Tower
Curtis	McGee	Tunney
Dole	McGovern	Weicker
Domenici	McIntyre	Williams
Eagleton	Metcalf	Young
Eastland	Metzenbaum	
	Mondale	

NAYS—0

NOT VOTING—13

Beall	Hatfield	Nelson
Cotton	Hollings	Sparkman
Dominick	Humphrey	Stennis
Fulbright	Long	
Goldwater	Mansfield	

So Mr. BUCKLEY's amendment was agreed to.

Mr. ROBERT C. BYRD and Mr. HUGHES addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, may the Senator from Iowa be recognized and then yield to me for a unanimous-consent request?

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HUGHES. Mr. President, I am happy to yield to the Senator from West Virginia.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on each of the two amendments by Messrs. KENNEDY and HART, amendments Nos. 1015 and 1016, there be a time limitation of 40 minutes, to be equally divided in accordance with the usual form, and that time on any amendment to an amendment, debatable motion, or appeal be limited to 10 minutes, to be equally divided and controlled in accordance with the usual form.

The PRESIDING OFFICER. Is there objection?

Mr. McCLELLAN. Mr. President, reserving the right to object, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. McCLELLAN. As I understand it, the request applies to only two amendments. Is that correct?

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. McCLELLAN. It does not apply to the so-called gun control amendment?

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. McCLELLAN. And the time is 40 minutes?

Mr. ROBERT C. BYRD. Yes.

Mr. McCLELLAN. What did the Senator say about 10 minutes?

Mr. ROBERT C. BYRD. On any amendment to an amendment, debatable motion, or appeal.

Mr. McCLELLAN. Except that all the amendments should be germane. I would like that to be included.

Mr. ROBERT C. BYRD. Very well, in accordance with the usual form; yes.

Mr. McCLELLAN. Mr. President, I have no objection.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HUGHES. Mr. President, I would like to ask the distinguished Senator from New York (Mr. BUCKLEY) a couple of questions about the amendment that was just adopted, for my own clarification. As the Senator from Iowa understands the amendment, it prevents execution of a pregnant woman. Is that correct?

Mr. BUCKLEY. That is correct.

Mr. HUGHES. If a woman was pregnant, awaiting execution, and the baby was born prior to the date of the execution, would the woman then be executed?

Mr. BUCKLEY. She would then be executed.

Mr. HUGHES. She would then be executed. Is there any provision for the mother to nurse the baby for any period of time, say 30 or 60 days or 6 months, before the execution?

Mr. BUCKLEY. No, but I assume the competent officials would have the humane good sense to do the right thing under those circumstances.

Mr. HUGHES. In other words, the court then could perform the execution simply by setting the execution date, say, if they knew the mother was pregnant, 10 months ahead, so they could obviously execute the woman then?

Mr. BUCKLEY. That is correct.

Mr. HUGHES. So the amendment which was just adopted could not prevent the execution if the court wanted to execute; simply by controlling the date of execution, they could see that execution was performed?

Mr. BUCKLEY. What we want to prevent is killing an unborn child.

Mr. HUGHES. So the purpose of the amendment is to see that the child is born, and has no relationship to the life of the mother?

Mr. BUCKLEY. That is correct.

Mr. HUGHES. I thank the Senator from New York for clarifying that point.

Mr. KENNEDY. Mr. President, I call up my amendments No. 1015, on behalf of the Senator from Michigan (Mr. HART) and myself.

The PRESIDING OFFICER. The amendments will be stated.

The assistant legislative clerk proceeded to read the amendments.

Mr. KENNEDY. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

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

Amendments No. 1015 are as follows:

On page 14, line 3, immediately after "(f)", insert "(1)".

On page 14, line 7, strike out "(1)" and insert "(A)".

On page 14, line 8, strike out "(2)" and insert "(B)".

On page 14, line 12, strike out "(3)" and insert "(C)".

On page 14, line 15, strike out "(4)" and insert "(D)".

On page 14, line 20, strike out "(5)" and insert "(E)".

On page 14, between lines 24 and 25, insert the following:

"(2)(A) 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 the action resulting in the offense for which the defendant was convicted involved the holding or detaining by the defendant of one or more individuals as hostage or otherwise and that, on the basis of an assurance given to him by the Attorney General or his delegate to the effect that the release of any and all such individual or individuals then held or otherwise detained would be considered a mitigating factor for purposes of this subsection, the defendant thereafter released any and all such individual or individuals on the basis of that assurance.

"(B) In any sentencing hearing involving a defendant who received an assurance in accordance with the provisions of subparagraph (A) of this paragraph and who, on the basis thereof, released any and all individual or individuals held or detained by him at the time such assurance was given, the Attorney General shall certify that information to the court conducting such hearing and such certification shall be deemed a mitigating factor for purposes of this subsection.".

Mr. KENNEDY. Mr. President, amendment No. 1015, which has been offered by the Senator from Michigan (Mr. HART) and myself, would provide an additional mitigating factor——

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

Mr. KENNEDY. I yield.

Mr. McCLELLAN. Does the Senator wish a rollcall vote on the amendment?

Mr. KENNEDY. Yes, I would wish a rollcall vote.

Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, could I ask for the yeas and nays on the other amendment, No. 1016?

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order to order the yeas and nays on amendment No. 1016.

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

Is there a sufficient second?

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the yeas and nays be ordered on the gun control amendment, as well, at whatever time that is going to be considered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order to order the yeas and nays on that amendment.

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

Is there a sufficient second?

The yeas and nays were ordered.

Mr. McCLELLAN. Mr. President, I would like to reserve the right to move to table. I might make such a motion if I feel it necessary.

The PRESIDING OFFICER. No right to table has been lost. The motion may still be made.

Mr. ROBERT C. BYRD. Mr. President, the yeas and nays were ordered on the question of adopting the amendment. Does not that rule out a motion to table?

The PRESIDING OFFICER. No, it does not.

Mr. McCLELLAN. That is what I wanted to be clear on. I was under the impression that it did.

The PRESIDING OFFICER. A unanimous-consent agreement to vote on a motion to adopt an amendment would rule out the motion to table. But a simple order for the yeas and nays would not.

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

Mr. McCLELLAN. I just wanted to reserve that right.

Mr. KENNEDY. Mr. President, I ask unanimous consent that our time begin to run at this point.

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

Mr. KENNEDY. Mr. President, our amendment No. 1015 would provide for an additional mitigating factor which, upon agreement of the Attorney General or his delegate, would preclude the death penalty if, after killing one or more individuals, the defendant released hostages. Without such a provision under the bill as it is now written, a defendant who has already killed an individual would automatically receive the death penalty and would therefore have nothing to lose in killing the remaining hostages he holds. Our amendment, on the other hand, would provide law enforcement officials, in appropriate cases, with a bargaining tool that would allow them to offer the defendant a guarantee that he would not get the death penalty in return for releasing his hostages.

Further, by requiring the consent of the Attorney General before the act of releasing hostages could become a miti-

gating factor, my amendment would insure that the provision apply only in appropriate cases at the discretion of the Attorney General. If we were to make the addition of the mitigating factor of release of hostages an absolute one, applicable in every case, thereby leaving the decision up to the criminal, conceivably he could decide to kill all of his hostages as long as he was careful to release one person alive in order to avoid the death penalty.

In the interest of saving the lives of innocent victims at a time when crimes involving hostages are occurring almost daily, I urge my colleagues to vote for this amendment regardless of your position on the death penalty.

Mr. HART. Mr. President, would the Senator yield?

Mr. KENNEDY. I yield.

Mr. HART. Mr. President, as the Senator from Massachusetts has already described, this amendment would try to reduce the possibility of the quasi-mandatory operation of the bill having the effect of increasing the risk of death to hostages of a skyjacker, kidnaper, or bank robber. Presently, the bill offers no opportunity for police authorities to try to bargain for the release of such hostages if one person was killed in the effort to gain command of an aircraft, or to accomplish the initial kidnaping. Death would be mandatory; the kidnaper would gain nothing by releasing the hostages.

Our amendment would permit the Attorney General to direct the U.S. attorney to stipulate that release of hostages was a mitigating factor. This would not guarantee a kidnaper or skyjacker that by taking hostages he could evade the death penalty. The Attorney General could refuse to promise such a stipulation. But if he did, the situation would be no worse than it is under the present bill. And, in appropriate cases where the Attorney General did agree to make the stipulation, it would be a valuable tool to save lives.

Mr. KENNEDY. Mr. President, if the Senator would yield for a moment. Under the present bill if a skyjacker actually killed some individual in the process of the skyjacking, under the existing legislation the mandatory death sentence would apply. Therefore, there would be very little incentive for the hijacker to come to terms with law enforcement officials or to be willing to release any of the hostages because of the fact that he had already committed a crime for which the death penalty is automatic.

It is because of this factor that we feel it would be useful or helpful, both in terms of preserving life and bringing an individual to justice, to provide for a degree of flexibility.

As I understand it, this degree of flexibility does not exist under the current law, and there would be very little incentive for a hijacker, if a death had occurred in the process of the hijacking, to preserve the lives of hostages.

Mr. HART. The Senator from Massachusetts is correct. There is no flexibility in the bill unless this amendment is agreed to. Once the skyjacker or kidnaper has killed, those whom he continues to hold become excess baggage. He might as well kill them too because he is a dead dock unless this amendment is agreed to.

To cite a current and cruel case, the daughter of the California publisher, Mr. Hearst, was kidnaped. As I read the papers, the girl's fiance was beaten and physically assaulted by the kidnapers. If the fiance had been killed in that scuffle, how much worse Miss Hearst's prospects would be. That is why this amendment makes good sense.

Mr. KENNEDY. It is because of this situation that this amendment is offered, to provide an incentive.

Mr. President, we reserve the remainder of our time.

Mr. McCLELLAN. Mr. President, I yield 3 minutes to the Senator from Nebraska.

Mr. HRUSKA. Mr. President, I rise in opposition to the amendment. I believe it would be counterproductive.

Suppose that an individual would engage in an illegal act, an offense against the U.S. law, and would kill someone and then escape. When law enforcement officials were closing in upon him, he could grab two or three people and hold them hostage. He could then say, "All right. I will agree not to kill them, and I will return them if I get excused by the Attorney General from any death penalty."

We would have put in by reason of this amendment a situation that would really endanger the public and result in the loss of lives of innocent people. It would give an individual who has committed an offense for which the penalty of death may be imposed the incentive to take hostages so that he can bargain with the Attorney General to avoid the death penalty.

I would like to ask if the Senator from Massachusetts thinks there is any merit to that suggestion.

Mr. KENNEDY. Mr. President, first of all, I think the Senator's argument defies any kind of logic, because the defendant would be attempting to escape, and if he had a hostage, he would be running the further risk of the possibility of identification. Finally, he has taken hostages on the chance that the Attorney General might be willing to exercise his discretion which he is in no way compelled to do.

If this were mandatory, there might be some logic. I still feel that a defendant would be more involved in attempting to escape rather than taking a hostage. But the fact that it is purely discretionary, I think, destroys the logic of the fact situation that the Senator from Nebraska has presented.

Mr. HRUSKA. Mr. President, the only comment I would have on that is to say that if the taking of the hostages was contemporaneous with the commission of the offense for which the man is later convicted, that is one situation. But the amendment we have before us would cover situations where hostages could be seized at a later time, in circumstances unrelated to the crime, unrelated to the offense for which he is ultimately convicted.

What about those who may be future hostages, those who are seized by offenders in efforts to obtain the assurance of the Attorney General that the death penalty will not be imposed.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. HRUSKA. I yield myself 2 more minutes.

What about the hostages? It is not a very nice arrangement for them, when, as a result of this provision they are put in that predicament. I think that is a pretty high price to be paid by innocent people. We should not trifle with the dignity of human life by putting them in that situation which, in my judgment, can be the result if we adopt this amend-

I yield back the remainder of my time, if there is any remaining. It is my hope, Mr. President, that the amendment will be defeated.

Mr. McCLELLAN. Mr. President, does the Senator from Massachusetts yield back the remainder of his time?

Mr. KENNEDY. Is the Senator prepared to yield back his time?

Mr. McCLELLAN. No, I wish to speak on the amendment.

Mr. KENNEDY. I reserve the remainder of my time.

Mr. McCLELLAN. Mr. President, I wish we had more Senators here to listen to this argument.

This amendment would sanction by law a negotiating agency to negotiate with the most cruel criminals who may come along. It is an invitation to any criminal, any kidnapper, any robber, any hijacker, the minute he commits a crime resulting in the death of another, to take with him a hostage. No matter how horrible the original crime. No matter how dastardly. No matter how many are involved, whether there are 1, 2, or 10 people killed. All he has to do is take with him one or more hostages, and then bargain for the lives of the hostages with the Attorney General under the sanction of law to escape the death penalty.

Any criminal smart enough and sophisticated enough to plan such a crime and to execute it certainly would have the judgment and the ingenuity to take hostages and then bargain for his own life. This is one of the most dangerous precedents, in my judgment, that we could set. Suppose he takes a half dozen hostages and the Attorney General is reluctant, because the person has perhaps already murdered someone in some horrible fashion, maybe by crucifixion or torture. He takes some hostages, and then he says to the Attorney General, "You cannot condemn me under the law if I release these hostages on your promise that I will not be electrocuted."

And it is binding. This is to be one of the mitigating factors. All he would have to do is take two persons, and say, "I will kill one today if you do not agree to my terms." He kills that one today. Then he says, "I will kill the other one tomorrow if you do not agree to spare my life. I have nothing to lose now."

Let me point out something else. Under this amendment they can cut off their ears, they can punch out their eyes, they can mutilate them, and then return them. The amendment does not say they are to be returned unharmed. They can do anything to the hostages they want to short of killing them. The Attorney

General could not know whether they have been hurt or not. He could not know, as he bargains, whether they have been maimed for life.

Of course, the criminal will bargain to save his own life. He will agree to turn them loose to save his life. But we are setting a trap for ourselves. I hope we will never go that far.

There is risk as long as we have wanton murderers at large in the land. Everyone's life to some extent is exposed to danger. But if we are going to invite and set up the plan in advance, the criminal will have sense enough to get hostages. I do not think that kind of power should be vested in an Attorney General. If it is to be vested anywhere, it ought to be in some court, some tribunal where there is a right of review, where society can be protected, where the decision is not made on the whim, the faulty judgment, or the expert judgment, if you will, of just one man.

There is a lot at stake in this amendment. We would be encouraging crime of the worst order. We would be promising the worst criminal that if he can get himself some hostages, he will have a chance to save his own life. We do not even protect them while they are in his care. All this amendment requires is that they be released, that he agrees to release them. There is nothing in here about their condition or how they are to be released, whether they are to be unharmed.

I hope the Senate will not give sanction to a proposal of this kind. For the moment, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I yield the Senator from Michigan such time as he may require.

Mr. HART. Mr. President, I think this discussion has enabled all of us to see a little more clearly the situation we confront. It was because of that anticipation that Senator KENNEDY and I provided the authority in the Attorney General to make a judgment as to what humanity's claim is in a given situation.

I have confidence that the Attorney General would resolve it correctly. The hard truth is that hostages are taken now, and can be taken at any time. Bargaining is undertaken, whether it is a direct kidnaping or involves 100 people on an airplane, and humanity's claim is sought to be answered now. But if this bill becomes the law, and a single death has occurred, unless we have this authority in the Attorney General, that skyjacker would not give a damn what happened, because, as the Senator from Arkansas says, it is the chair for him.

Let us try to anticipate that situation, and adopt this amendment.

The PRESIDING OFFICER. Who yields time? Is all remaining time yielded back?

Mr. McCLELLAN. We will not yield back the remainder of our time until we determine whether there are any other amendments.

The PRESIDING OFFICER. There is an amendment to the amendment which, as I understand it, has not yet been called up, but which is eligible to be called up.

Mr. McCLELLAN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McCLELLAN. If we yield back the time, would we then proceed to vote?

The PRESIDING OFFICER. Not if an amendment to the amendment is offered.

Mr. McCLELLAN. All right. I am prepared to yield back my time, if someone wishes to offer an amendment.

Mr. KENNEDY. Mr. President, let me just make this brief comment. I could not let the RECORD stand as left by the Senator from Arkansas about all the gruesome details of what might happen were this amendment to be accepted. If we are going to talk about the torture of different hostages, I hope those who are not going to support the amendment will have some degree of understanding for the position that would be taken by law enforcement officials who are attempting to free hostages in a plane or in some other kind of skyjacking. I would hope that the law enforcement officials will be able to explain to the families of the dead hostages that they could not negotiate their release because the law did not give them the opportunity.

I hope the families will understand that the criminal had nothing more to lose by crashing or blowing up the plane, after he has been involved in the initial killing.

As the Senator from Michigan (Mr. HART) has pointed out, this is completely discretionary power. I think it is a responsibility, an awesome responsibility, which any Attorney General can exercise on behalf of the preservation of life, with some flexibility to use this discretion in appropriate cases.

Mr. JOHNSTON. Mr. President, I am wondering, is it discretionary if the Attorney General makes a promise to a kidnapper holding hostages, not to then fulfill that promise, or does he have the discretion later, after the hostages have been released, where he may determine it is not a worthwhile case? Does this ripen into a contract between the United States and the kidnapper, if the agreement is made prior to the release of the hostages?

Mr. KENNEDY. Once the assurance is given, it would be considered to be a mitigating circumstance, and the Attorney General would be bound to make that presentation at the time of the sentencing.

Mr. JOHNSTON. Well, I have an amendment which I am prepared to offer when time is yielded back, which would make clear that the promise made by the Attorney General would not be binding if made prior to release of the hostages. I submit that it is only proper that the United States should not allow itself, whether it be the Attorney General, a delegate, or anyone else, to have a shotgun held at his head and make a promise which is binding, but rather any negotiations prior to that time should become binding only after the force itself.

Mr. KENNEDY. It is only binding if the defendant complies with the terms. If the Attorney General says that the hostages have to be released, then if he kills that individual, there is no agreement. There would have to be a release of the hostages in order to have a binding agreement and that individual would have to be freed for the terms to be complied with.

Mr. President, I am prepared to yield back my time.

Mr. McCLELLAN. Mr. President, I agree with the Senator from Massachusetts that the criminal has nothing to lose after he has committed the crime, blows up the airplane with women and children in it, because after he blows it up, he has nothing to lose. He has got everything to gain. He will gain his life back by bartering, by threatening the hostages, maybe by torturing them to the point where the Attorney General would agree.

Sure, he has got nothing to lose. He has everything to gain—and that is his life—preserving his life.

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

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

The PRESIDING OFFICER (Mr. HATHAWAY). All time has now been yielded back. The question is on agreeing to the amendment.

Mr. JOHNSTON. Mr. President, I have an amendment at the desk which I call up at this time.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 2, line 13, change the period to a comma and add the following:

"*Provided*, That any such promise or assurance made by the Attorney General or his delegate, made prior to the release of such hostages shall not be binding on the United States, the Attorney General, or his delegate."

Mr. McCLELLAN. Mr. President, I would like to ask the Senator, would he modify his amendment further, where he says, ". . . shall not be binding on the United States, the Attorney General, or his colleague . . ." and add "or on the courts of the United States". Under the amendment as now written, it would not be binding on the courts.

Mr. JOHNSTON. The intent of the amendment is to allow the Attorney General to make it binding, provided the Attorney General makes that decision after the hostages have been released.

Mr. McCLELLAN. The Senator does not say here "or on the court." That is what I would hope the Senator would do.

Mr. JOHNSTON. I concur with the Senator in the sense that it would not be binding on the court provided the Attorney General decides to change his mind later.

Let me explain the intent of my amendment and then I will be glad to modify it if it does not achieve that purpose.

All through the law, the common law, the civil law, virtually every law I know of, any promise made under duress is held to be an unenforceable promise. Indeed, a shotgun marriage can be annulled upon proof of having used the shotgun because the consent is vitiated by the force.

What we are doing in this amendment,

if it is not changed, is to say that a promise made by the Attorney General pursuant to force will be binding on the United States and will be binding on the Attorney General. What this does is to encourage the dealing with kidnapers and making a promise and then making the promise ripen into allegedly enforceable promise.

If the kidnapers of Hearst's daughter would say that they will release the hostages, if the Attorney General will not give them the death penalty, he has no choice. He must give this mitigating circumstance. He must give that mercy in that situation, whether the kidnapers actually deserve it or not. They could have killed 10 people, all the hostages, upon a promise to release one, and the Attorney General would have no choice, in my judgment, but to release that hostage, and that promise then would ripen into an immediate, legally enforceable promise.

What this amendment would do would be to provide that, in effect, if the Attorney General has to make that promise while the hostages are still being held, that promise is not binding. Like any other promise, it would not be binding and, therefore, the Attorney General could then decide, after the fact, after the release of the hostages, whether it should in fact be a mitigating circumstance.

In my judgment, this kind of theme should run throughout all the law, that not only where hostages are held or where there is a prison riot and negotiations are held with prisoners under duress, or in any other situation where prisoners are held in the United States through the Attorney General or other law enforcement officer when he negotiates under duress, none of those promises should be binding. They are not in the rest of the law and they should not be here.

I quite agree with the Senator from Massachusetts and the Senator from Michigan that we should be able to hold out some carrot to the kidnapers so that it is not automatically decided they will be put to death. But if we make that discretionary, that would be all the carrot they would need.

Mr. President, I reserve the remainder of my time.

Mr. HART. Mr. President, if I understand it correctly, the situation of the hostages would be better under the amendment of the Senator from Louisiana than if the bill as reported was adopted. But the hostage's situation would be still better if the amendment offered by the Senator from Massachusetts and the Senator from Michigan were adopted.

I know that the concern of the Senator from Louisiana is for the State's integrity and less for the appeal in the claim on us from the hostage. Have I described the situation?

Mr. JOHNSTON. I think that is correct. Under my amendment, the criminal would have the hope that the Attorney General would grant him amnesty. Under the amendment of the Senator from Michigan, he would have the absolute legal right.

Mr. HART. And the criminal, under the Kennedy-Hart amendment, would know that he could rely on the commitment from the Attorney General. Under the amendment of the Senator from Louisiana, the criminal would be unsure.

Mr. JOHNSTON. That is correct.

Mr. HART. Under that circumstance and understanding, it seems to me that those of us who feel that the Kennedy-Hart approach is preferable would vote against the amendment offered by the distinguished Senator from Louisiana. Unfortunately, that vote shall occur first, so I would urge the rejection of that amendment.

The PRESIDING OFFICER. Who yields time?

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

Mr. JOHNSTON. I yield.

Mr. McCLELLAN. Would the Senator agree to modify his amendment to provide that any assurances given will not be binding on any court of the United States? If the Senator says "any court in the United States," there is no question. It is not binding on anybody if something goes wrong.

Mr. JOHNSTON. The intent is to make the death penalty discretionary if the hostages are released. If we add that language, would it be the intent of the Senator from Arkansas to then have it discretionary to inflict the death penalty?

The PRESIDING OFFICER. All time of the Senator from Louisiana has expired. The Senator from Massachusetts has 3 minutes remaining on his amendment.

Mr. McCLELLAN. Mr. President, will the Senator yield me a half minute?

Mr. KENNEDY. I yield.

Mr. McCLELLAN. I want to put that discretion in the court, if the Senator from Louisiana contends it is discretionary, and not leave it to the Attorney General's discretion.

Mr. JOHNSTON. With that explanation, Mr. President, I modify the amendment to add the words "or the courts."

Mr. McCLELLAN. "Or any court of the United States."

Mr. JOHNSTON. "Or any court of the United States."

The PRESIDING OFFICER. Will the Senator send the modification to the desk?

Mr. JOHNSTON. Yes.

The PRESIDING OFFICER. The clerk will state the amendment as modified.

The legislative clerk read as follows:

At the end of the amendment proposed by the Senator from Louisiana, add the words "or any court of the United States."

The PRESIDING OFFICER. Who yields time?

Mr. HART. Mr. President, I ask unanimous consent that, without the time being charged to either side, the clerk now read the amendment as modified.

The PRESIDING OFFICER. Is there objection? The Clerk hears none, and it is ordered.

The clerk will read the amendment as modified.

The legislative clerk read as follows:

On page 2, line 13, change the period to a comma and add the following: "*Provided*, That any such promise or assurance made by the attorney general, or his delegate, made prior to the release of such hostages, shall not be binding on the United States, the attorney general or his delegate, or any court of the United States."

The PRESIDING OFFICER. The Senator from Massachusetts has 2 minutes remaining.

Mr. KENNEDY. Mr. President, I think that certainly weakens our amendment.

For the reasons the Senator from Michigan pointed out earlier, our interest was to put the safety of the hostage first and now the hijacker does not have as much incentive to release the hostages since the agreement is not automatically binding.

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

Mr. KENNEDY. I yield.

Mr. JOHNSTON. What it does is to change a mandatory death sentence to a discretionary death sentence.

The PRESIDING OFFICER. All time on the amendment has expired.

Mr. KENNEDY. Mr. President, I ask unanimous consent that we may have 4 additional minutes, evenly divided.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered

Mr. KENNEDY. As I understand it, it does not make it discretionary. All it does is make it discretionary whether the court is going to accept the agreement. It does not change the existing legislation that we are debating here, at least in my understanding of the amendment as modified. The court could accept or reject the agreement.

Mr. JOHNSTON. The intent is to allow the Attorney General to recommend to the court and to allow the court to take into consideration the release of hostages as being a mitigating circumstance which reduces a mandatory death sentence to a life sentence. It can be done on the basis of this amendment; whereas, under the original amendment offered by the Senator from Massachusetts, a promise made would automatically reduce a mandatory death sentence to a life sentence.

The PRESIDING OFFICER. Is all time yielded back?

Mr. KENNEDY. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

The question is on agreeing to the amendment of the Senator from Louisiana, as modified.

The amendment, as modified, was agreed to.

The PRESIDING OFFICER. The question is now on agreeing to the amendment of the Senator from Massachusetts, as modified by the amendment of the Senator from Louisiana On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOLE. Is a motion to table the amendment, as modified, still in order?

The PRESIDING OFFICER. Yes.

Mr. DOLE. Mr. President, I move to table the amendment, as modified.

The PRESIDING OFFICER. The question is on the motion to table the amendment, as modified.

Mr. KENNEDY. Mr. President, I ask for the yeas and nays.

Mr. HRUSKA. Mr. President, I ask for a rollcall vote.

The yeas and nays were ordered.

The PRESIDING OFFICER. The yeas and nays have been ordered, and the clerk will call the roll.

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. What is the question?

The PRESIDING OFFICER. The question is on agreeing to the motion by the Senator from Kansas to table the amendment of the Senator from Massachusetts as amended by the amendment of the Senator from Louisiana.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Indiana (Mr. HARTKE), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Louisiana (Mr. LONG), the Senator from Montana (Mr. MANSFIELD), the Senator from Wyoming (Mr. MCGEE), and the Senator from Wisconsin (Mr. NELSON) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Maryland (Mr. BEALL), the Senator from Utah (Mr. BENNETT), the Senator from Kentucky (Mr. COOK), the Senator from New Hampshire (Mr. COTTON), the Senator from Colorado (Mr. DOMINICK), and the Senator from Oregon (Mr. HATFIELD), are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "nay."

The result was announced—yeas 40, nays 47, as follows:

[No. 68 Leg.]

YEAS—40

Aiken	Ervin	Packwood
Allen	Fannin	Randolph
Baker	Goldwater	Roth
Bartlett	Griffin	Scott, Hugh
Bible	Gurney	Scott,
Brock	Hansen	William L.
Buckley	Helms	Sparkman
Byrd,	Hruska	Stennis
Harry F., Jr.	Huddleston	Stevens
Byrd, Robert C.	McClellan	Symington
Cannon	McClure	Talmadge
Curtis	McIntyre	Thurmond
Dole	Montoya	Tower
Eastland	Nunn	Young

NAYS—47

Abourezk	Hart	Moss
Bayh	Haskell	Muskie
Bellmon	Hathaway	Pastore
Bentsen	Hughes	Pearson
Biden	Humphrey	Pell
Brooke	Inouye	Percy
Burdick	Jackson	Proxmire
Case	Javits	Ribicoff
Chiles	Johnston	Schweiker
Church	Kennedy	Stafford
Clark	Magnuson	Stevenson
Cranston	Mathias	Taft
Domenici	McGovern	Tunney
Eagleton	Metcalf	Weicker
Fong	Metzenbaum	Williams
Gravel	Mondale	

NOT VOTING—13

Beall	Fulbright	Mansfield
Bennett	Hartke	McGee
Cook	Hatfield	Nelson
Cotton	Hollings	
Dominick	Long	

So Mr. DOLE's motion to lay on the table Mr. KENNEDY's amendment, as amended by Mr. JOHNSTON, was rejected.

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from Massachusetts (Mr. KENNEDY), as amended. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Montana (Mr. MANSFIELD), and the Senator from Wisconsin (Mr. NELSON) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Maryland (Mr. BEALL), the Senator from Utah (Mr. BENNETT), the Senator from Kentucky (Mr. COOK), the Senator from New Hampshire (Mr. COTTON), the Senator from Kansas (Mr. DOLE), the Senator from Colorado (Mr. DOMINICK), and the Senator from Oregon (Mr. HATFIELD) are necessarily absent.

I further announce that, if present and voting the Senator from Oregon (Mr. HATFIELD) would vote "yea."

The result was announced—yeas 49, nays 40, as follows:

[No. 69 Leg.]

YEAS—49

Abourezk	Hartke	Moss
Bayh	Haskell	Muskie
Bellmon	Hathaway	Pastore
Bentsen	Hughes	Pearson
Biden	Humphrey	Pell
Brooke	Inouye	Percy
Burdick	Jackson	Proxmire
Case	Javits	Ribicoff
Chiles	Johnston	Schweiker
Church	Kennedy	Stafford
Clark	Mathias	Stevenson
Cranston	McGee	Taft
Domenici	McGovern	Tunney
Eagleton	Metcalf	Weicker
Fong	Metzenbaum	Williams
Gravel	Mondale	
Hart	Montoya	

NAYS—40

Aiken	Fannin	Packwood
Allen	Goldwater	Randolph
Baker	Griffin	Roth
Bartlett	Gurney	Scott, Hugh
Bible	Hansen	Scott,
Brock	Helms	William L.
Buckley	Hruska	Sparkman
Byrd,	Huddleston	Stennis
Harry F., Jr.	Long	Stevens
Byrd, Robert C.	Magnuson	Symington
Cannon	McClellan	Talmadge
Curtis	McClure	Thurmond
Eastland	McIntyre	Tower
Ervin	Nunn	Young

NOT VOTING—11

Beall	Dole	Hollings
Bennett	Dominick	Mansfield
Cook	Fulbright	Nelson
Cotton	Hatfield	

So the Kennedy amendment, as modified, was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate go into executive session for not to exceed 3 minutes, to consider certain nominations.

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

Mr. SPARKMAN. Mr. President, eight of these nominations were favorably reported today by the Committee on Foreign Relations, and one by the Committee on the Judiciary. I ask for their immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will state the nominations.

DEPARTMENT OF STATE

The assistant legislative clerk read the nomination of Leonard Unger, of Maryland, to be Ambassador Extraordinary and Plenipotentiary to the Republic of China.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The assistant legislative clerk read the nomination of Robert W. Dean, of Illinois, to be Ambassador Extraordinary and Plenipotentiary to Peru.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The assistant legislative clerk read the nomination of John Gunther Dean, of New York, to be Ambassador Extraordinary and Plenipotentiary to the Khmer Republic.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The assistant legislative clerk read the nomination of Hermann F. Eilts, Pennsylvania, to be Ambassador Extraordinary and Plenipotentiary to the Arab Republic of Egypt.

The PRESIDING OFFICER. Without objection, the nomination was confirmed.

U.S. ADVISORY COMMISSION ON INTERNATIONAL EDUCATIONAL AND CULTURAL AFFAIRS

The assistant legislative clerk read the nomination of Lawrence Y. Goldberg, of Massachusetts, to be a member of the U.S. Advisory Commission on International Educational and Cultural Affairs for the remainder of the term expiring May 11, 1975.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The assistant legislative clerk read the nominations of Leo Cherne, of New York; Rita E. Hauser, of New York; and Leonard H. Marks, of the District of Columbia, to be members of the U.S. Advisory Commission on International Educational and Cultural Affairs for terms expiring May 11, 1976.

The PRESIDING OFFICER. Without objection, the nominations are confirmed.

AMERICAN REVOLUTION BICENTENNIAL ADMINISTRATION

The assistant legislative clerk read the nomination of John W. Warner, of Virginia, to be Administrator of the Amer-

ican Revolution Bicentennial Administration.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

Mr. SPARKMAN. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nomination.

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

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

CAPITAL PUNISHMENT

The Senate resumed the consideration of the bill (S. 1401) to establish rational criteria for the mandatory imposition of the sentence of death, and for other purposes.

Mr. KENNEDY. Mr. President, I yield to the Senator from Virginia.

Mr. WILLIAM L. SCOTT. Mr. President, I appreciate the courtesy of the distinguished Senator from Massachusetts in yielding me a moment so that I might comment on the bill before us.

Certainly the death penalty is a matter upon which reasonable people may disagree, but I would commend the administration for the message it sent to Congress urging that we meet the criteria set down by the Supreme Court, and also commend the committee for the bill that it brought to us for consideration. I am pleased to be a cosponsor of this measure.

It seems to me that the only justification for passing a bill reestablishing the death penalty in certain cases for major crimes is its effect as a deterrent to crime. There is a fine line that has been laid down by the committee in the bill before us to meet the requirements of the Supreme Court and to reestablish the death penalty. In my opinion this is a good bill, a major deterrent to crime, and I express the hope that the bill can be passed, and passed overwhelmingly, without any amendments that would tend to weaken its provisions.

AMENDMENT NO. 1016

Mr. KENNEDY. Mr. President, I call up my amendment No. 1016.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. KENNEDY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

Mr. KENNEDY's amendment (No. 1016) is as follows:

On page 13, beginning with line 17, strike out all through line 2 on page 14 and insert in lieu thereof the following:

"(e) If the jury or, if there is no jury, the court finds, beyond a reasonable doubt, that one or more of the applicable aggravating factors set forth in subsection (g) or (h) exists, the court shall sentence the defendant to death, except that if such jury or court, as the case may be, finds by a preponderance of the information 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.".

On page 14, line 3, immediately after "(f)", insert "(1)".

On page 14, line 7, strike out "(1)" and insert "(A)".

On page 14, line 8, strike out "(2)" and insert "(B)".

On page 14, line 12, strike out "(3)" and insert "(C)".

On page 14, line 15, strike out "(4)" and insert "(D)".

On page 14, line 20, strike out "(5)" and insert "(E)".

On page 14, between lines 24 and 25, insert the following:

"(2) For purposes of determining the existence of mitigating factors under this section, the provisions of this section relating thereto shall be liberally construed.".

The PRESIDING OFFICER. The Senator from Arkansas and the Senator from Massachusetts are advised that on this amendment there is a time limitation. Who yields time?

Mr. KENNEDY. Mr. President, I yield myself such time as I may require.

Our amendment contains two sections. One would require that aggravating circumstances, as set forth in subsections (g) and (h), be proven beyond a reasonable doubt, and not merely by a preponderance of the evidence, as the bill provides. I believe this higher criminal standard is necessary in order to diminish the possibility that an irrevocable punishment be imposed on an innocent person. Although under present sentencing procedures the standard of preponderance of the evidence is used, I believe, with the automatic imposition of the death penalty provided under S. 1401, the higher standard is both necessary and appropriate.

The second portion of our amendment provides that all the mitigating factors set forth in subsection (f) be liberally construed. Words such as "relatively minor," and "substantial duress," are in my judgment quite vague. This provision of the amendment would insure that a jury caught between two interpretations of what facts constitute relatively minor participation or substantial duress would choose the interpretation most favorable to the defendant, thereby diminishing the possibility of error.

I direct the attention of Senators to the list of aggravating factors. Subparagraph (5) requires that the defendant commit the offense in an especially heinous, cruel, or depraved manner. We ask why should such facts not be proved beyond a reasonable doubt?

If a defendant committed an offense in return for payment, which is a hired killer, why should that not be proved beyond a reasonable doubt?

It seems to us that the seriousness of the mandatory application of the death penalty should require that in the proving of the aggravating circumstances, they should be proved beyond reasonable doubt.

In proving a fact by the preponderance of the evidence, the prosecution is required to go as far as 51 percent toward a certainty. The standards of beyond a reasonable doubt would require almost 100 percent, at least in the 90th percentile. When we are talking about taking the life of a human being, should we not at least require the higher standard so that we reduce the possibility of error?

On the other hand, considering the mitigating circumstance—the words in section (f) are, I believe, sufficiently vague to permit great latitude in the interpretation. There are other mitigating factors listed under section (f) such as "could not reasonably have foreseen that his conduct would result in death."

The thrust of this part of the amendment is to provide an interpretation which would, in a case of jury indecision, result in a decision in the light most favorable for preserving human life. So I would hope that this particular amendment would be acceptable to the proponents of the bill.

I yield such time as the Senator from Michigan (Mr. HART) may require.

Mr. HART. Mr. President, I shall be very brief. I think the explanation offered by the Senator from Massachusetts is inclusive and I would hope persuasive.

All I should underscore, perhaps, is an effort to remind my colleagues that history unfortunately shows that even when the requirement is proof beyond a reasonable doubt, even when that is the standard, we know that innocent men have been convicted—I do not say executed, except for the one that we know of in England—but convicted.

How much more likely are mistakes to be made if the jury finds only on the basis of a preponderance of the evidence, yet that is the standard on which the judgment shall be made as to the existence of a fact which will require execution unless this amendment is agreed to. I hope very much that we shall.

Mr. HRUSKA. Mr. President, while I appreciate the concerns of the distinguished Senators from Massachusetts and Michigan that have prompted their amendment to increase the degree of proof for the aggravating factors from the standard of "preponderance of the evidence" to the standard "beyond a reasonable doubt," I believe that the amendment is neither workable nor necessary.

The amendment would be unworkable because the aggravating factors do not lend themselves to that kind of proof. One of the aggravating factors is that "the defendant committed the offense in an especially heinous, cruel, or depraved manner." But how could it be shown that the defendant committed the offense in a heinous, cruel or depraved manner beyond a reasonable doubt?

It does not lend itself to that kind of proof.

Aside from that point, I believe that the amendment is unnecessary because there are already safeguards in the bill designed to insure that no errors are committed. In addition to the procedural safeguards already available to a defendant in a criminal trial, one of which requires proof of guilt to be beyond a reasonable doubt, the bill provides three other safeguards:

First, the defendant is accorded a bifurcated, or two-stage, trial. Thus, evi-

dence relevant to the issue of punishment can only be admitted during the second stage, not the first stage where the issue of guilt is decided. The risk of creating prejudice by admitting evidence relevant to punishment during the first stage is thereby avoided.

Second, the rules of evidence are not applicable with respect to the admissibility of evidence of mitigating circumstances, but remain in force with respect to aggravating circumstances. Such a procedure guarantees that all evidence favorable to the defendant will be considered while unreliable derogatory evidence will continue to be excluded.

Finally, S. 1401 provides for appellate review of the imposition of the death sentence. The defendant is granted the right to appeal the imposition of the sentence.

With all these safeguards, there appears to be no need to require that agravating factors be proved beyond a reasonable doubt. I believe that these safeguards reduce to almost an impossibility the likelihood of an innocent man being executed.

I, therefore, oppose the amendment. I believe it to be both unworkable and unnecessary. It is my hope that the amendment will be rejected.

Mr. McCLELLAN. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER (Mr. BARTLETT). The Senator from Arkansas is recognized for 3 minutes.

Mr. McCLELLAN. Mr. President, this bill as it is now is pretty much in conformity with present law. I invite the attention of Senators to subsection (e) which provides that the decision of the court or jury as to the existence of any aggravating or mitigating factors is to be based upon a "preponderance of the information." The preponderance standard is now, and has been, the standard utilized for the purposes of sentencing in both the Federal and State systems. In trying to arrive at a just sentence in a particular case, the judge considers all the material presented to him and reaches a decision based upon a preponderance of that information. Thus, this bill contemplates no change whatever in the sentencing system now applicable to all Federal crimes. The expression "preponderance of the information" merely appears novel because it is not usually stated.

I should note, however, that when the Congress last took up the question of sentencing for "dangerous special offenders" in the Organized Crime Control Act of 1970 this was precisely the standard adopted under those sentencing provisions. That act, passed by the Senate in January of 1970, provided for increased sentences for defendants who were determined to be "dangerous special offenders" by a preponderance of the information.

Lest there be any confusion, the use of the term "information" rather than the term "evidence" was the result of a deliberate choice because subsection (c) of the bill allows the defendant to present material tending to prove the existence of any mitigating factors even if it does not meet the standards of admissibility of "evidence" in a criminal trial.

Mr. President, it seems to me that in this bill and with the amendment already adopted to it, we are going pretty much overboard toward accommodating the worst criminals we can have in this country.

Certainly, a finding by a preponderance of the evidence that these aggravating facts exist—after the judgment of guilt beyond a reasonable doubt on the crime of murder has already been reached—should be sufficient. The bill allows the defendant to offer anything in mitigation that he wishes. He is not controlled by the rules of evidence. He can make any presentation in mitigation.

I think we are being more than fair. We are going pretty far to try to have a statute that will permit the death penalty under only the highest standards and requirements of law. There will be no death penalty unless Congress or the States, or both, in certain instances, enact a law setting up standards such as are in this bill, such as will meet the tests set out in Furman.

The real issue before us is whether we are going to have a death penalty or whether we are not. We are trying to meet the standards that the courts set up. I do not think we ought to go beyond those standards. We can go beyond them and just say there will be no death penalty statute. If that is what the Senate wants, that is its right. That is pretty much what we are leading to.

I hope the amendment will be defeated. I am ready to yield back the remainder of my time.

Mr. KENNEDY. Mr. President, I yield myself 3 minutes.

I am somewhat perplexed as to why those who oppose this amendment feel that they can make a judgment about what is preponderance of the evidence but cannot do it with regard to beyond a reasonable doubt. They say that is a standard they do not feel lends itself sufficiently to definition to be able to be willing to accept it, but they have no trouble with the lesser standard.

I do not see why the amendment we have suggested here would complicate that particular understanding for the judge and for the jury. I do not believe that is really a legitimate argument.

I should like to ask the proponents of the bill and the manager of the bill what the real meaning of some of these words, say, for instance, in respect to the mitigating factors.

One of the mitigating factors is that the participation of the defendant is "relatively minor." Could the Senator from Nebraska help me in understanding what the managers of the bill feel would be "relatively minor"? Would that include, for example, someone who is driving the getaway car in a bank robbery? Would that be considered relatively minor or not? I am trying to get some kind of understanding of the legislative history for these terms.

Mr. HRUSKA. Two issues are involved. One is the issue of guilt. Certainly, if six people are involved in a bank robbery and one of them is driving a car and perhaps two are lookouts and three go into the bank and actually perpetrate the robbery, they are all engaged in the robbery. If a homicide occurs during that venture, their participation would involve all of them, and on the issue of guilt, they are on an even standing.

When we come to the matter of mitigating circumstances, then the rules of evidence do not apply. The whole matter can be considered by the factfinder without the restraints imposed by the rules of evidence. As a result almost any evidence will be allowed to establish mitigating circumstances. That is an additional safeguard in favor of those who want to establish a relatively minor role.

The PRESIDING OFFICER. The 3 minutes of the Senator from Massachusetts have expired.

Mr. KENNEDY. Will the Senator yield on his own time?

Mr. HRUSKA. I yield myself 2 minutes.

Ultimately, of course, it will be for the jury to decide, in view of all the circumstances, whether the role of the driver of that car or the role of the lookouts, outside the building, were minor, as compared, for example, to the robber inside the bank who, as in one case in the State of Nebraska, told five officers and employees of the bank to lie down with their faces to the floor, and then walked from one to the other and shot them dead.

In light of all the circumstances, the proof of the planning and premeditation of the defendants and their intent, it would be for the jury to decide whether the lookouts were involved only in a minor role or in a major role, in determining whether the mitigating factor existed. If the jury found that the mitigating factor existed, the lookouts would not be subject to execution; whereas, the one who actually put them on the floor and pulled the trigger would be. That is the purpose of the mitigating circumstance.

Mr. KENNEDY. My question is this: Should a judge, in reviewing the legislative history of this particular provision as it applied to that circumstance in Nebraska, consider that the person who drove the getaway vehicle in that particular circumstance——

Mr. HRUSKA. That is a question for the jury to decide, in the light of all the circumstances that prevail.

Mr. KENNEDY. Mr. President, we are talking about the legislative history. We are trying to find out what those words really mean.

I ask the Senator from Arkansas whether he has anything he wishes to add. What I am giving is a rather simple fact situation which I think probably arises with a considerable degree of frequency.

Is it the position of the floor managers of the bill that that factual situation would fall into their interpretation of "relatively minor" or outside it?

Mr. HRUSKA. If the Senator will yield, I will answer in part, and then I will yield to the Senator from Arkansas.

Mr. KENNEDY. I should like the Senator to answer, but on his own time.

Mr. HRUSKA. The Senator from Massachusetts has been traveling on our time.

Mr. KENNEDY. Mr. President, I ask that the Chair make those adjustments.

Mr. McCLELLAN. Mr. President, a parliamentary inquiry. Whose time are we on now? I thought we had yielded this time.

The PRESIDING OFFICER. At the moment, we are on the time of the Senator from Massachusetts.

Mr. McCLELLAN. I thought I had yielded the floor.

Mr. HRUSKA. Mr. President, I yield myself 2 minutes, with the permission of the Senator from Arkansas.

Mr. McCLELLAN. Very well.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. HRUSKA. Mr. President, the Senator from Massachusetts speaks of legislative history. But the question whether or not a mitigating factor exists is a question of fact not governed by instructions of the judge as to legal questions. When the language of the statute is brought before a jury and the instructions are read to the jury that "you are to consider this evidence and you are to determine whether or not this conduct was minor or not," that is a question of legislative history. But the actual decision made by the jury is a determination of a question of fact. I do not see the parallel, the analogy, the pertinence, or relevance. Questions of fact are completely divorced from questions of law. Only with respect to the latter can legislative history offer guidance.

Mr. KENNEDY. I would be glad to hear at this point from the Senator from Arkansas. I think every member of the Senate would be concerned if the floor managers of the bill cannot tell us on a simple factual situation if someone is involved in a minor role or not. If they cannot tell us, how can we expect members of the jury to be able to make that decision by a fair preponderance of the evidence? We are not even able to give them guidelines. We have a simple factual situation that I have posed to develop that point so that there might be guideposts for judges reviewing legislative history. From this debate the courts will probably find that the guidelines with respect to mitigating factors are vague indeed.

I wonder if the Senator from Arkansas might respond on a simple factual situation. We have a judge up in Massachusetts and he is trying to instruct a Federal jury in Massachusetts. Let us assume there has been a bank robbery at the First National Bank in Boston and there has been a killing in that bank. After conviction the Judge has to instruct the jury as to their responsibility in deciding whether the defendant who drove the getaway car played a minor role. How would the Senator from Arkansas clarify that?

Mr. McCLELLAN. I cannot tell how judges might determine any questions of fact.

Mr. KENNEDY. That is not the question.

Mr. McCLELLAN. If the Senator wants my opinion I will give it. I thought he was asking me.

Mr. KENNEDY. Yes, sir.

Mr. McCLELLAN. I think every case has to stand on its own circumstances. But if three people enter into a conspiracy to go into a bank and rob the bank at gunpoint and to kill, if necessary, to carry out that robbery, and the man sitting in the car is a part of that conspiracy, in my opinion that would not be a minor part.

Mr. KENNEDY. It would not be a minor part.

Mr. McCLELLAN. No. If he went there as a result of that conspiracy, knowing there might be a shooting, a killing. Any circumstances might be testified to, but if he went there for the purpose of committing a robbery, it would not be a minor part.

Mr. KENNEDY. Then, the Senator holds that the fellow who drives the getaway car will be included.

What about the person that hides the bank robbers. Let us say there is a killing in a Boston bank robbery and the criminals go out to Somerville and hide in somebody's basement. Would that person who hid them be considered to have played a relatively minor role?

Mr. McCLELLAN. If it is a relative or something like that, it might be considered to be a minor role. If he did not actually participate in the crime, then the act of concealing is a separate crime and not a part of the crime.

Mr. KENNEDY. Say he was in the discussion and knew they were in a conspiracy to rob the bank.

Mr. McCLELLAN. The Senator did not say that.

Mr. KENNEDY. I am giving it to the Senator now.

Mr. McCLELLAN. Well, let us have it.

Mr. KENNEDY. I am trying to make legislative history for this section concerning mitigating factors.

Mr. McCLELLAN. I think you can imagine a thousand circumstances that would all be different.

Mr. KENNEDY. That is why we are bringing this up.

Mr. McCLELLAN. And there is no way to write that into law. We can only use general language which it will be up to a jury to interpret in the light of their common sense.

Mr. KENNEDY. Then the test would be whether a person knew they were going down to rob the bank. He knew they were going down to rob the bank and then he hid those persons. I am asking if that would be considered a minor role or not? What would be the attitude of the judge in instructing a jury? What about the person who went out and bought the car for the people who were going to rob the bank?

We have seen that one of the managers of the bill has been unwilling to give a definitive answer as to whether the person who drove the getaway car was involved in a minor way or in a major way, and the other manager felt that it would fall within the purview of these particular sections of section (f).

These are circumstances that take place throughout the United States frequently and it seems to me that they are relevant. It is pertinent to the degree of finality by which this sentencing is carried out.

We are attempting to provide by this amendment that in meeting the standards on the aggravating factors they meet the standards beyond a reasonable doubt; and that in regard to the mitigating factors that we are going to interpret those in such a way as to be considered favorable in terms of the defendant. I think we have a responsibility to the cause of justice in this area.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. McCLELLAN. Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator from Arkansas has 5 minutes remaining and the Senator from Massachusetts has 3 minutes remaining.

Mr. McCLELLAN. Mr. President, I merely wish to make one observation. There is no legislative body that can write a law portraying in the statute every kind of circumstance that might arise. For that reason we use in the statutes general language that has a simple, common meaning and understanding among intelligent people—so that it can be applied by such people in the various situations that might occur.

The question of whether a person's participation in a crime is minor will be for a jury to determine on the basis of the facts and circumstances presented at the trial.

I cannot predict what a jury would do on a set of facts, but certainly it is not intended here to impose the death penalty upon a person when he played only some minor part in a crime. But it will be up to the jury to make that determination based on circumstances surrounding the commission of the crime. I do not know any other way to do it.

Mr. KENNEDY. Mr. President, I yield myself 2 minutes.

The thrust of this amendment provides that where there is any indecision, it is going to be found in favor of the preservation of life, rather than death. That is the whole point of the amendment.

Mr. President, I am prepared to yield back my time.

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

Mr. KENNEDY. How much time does the Senator from Maine want?

Mr. HATHAWAY. Mr. President, how much time remains? I will take only about 1 minute.

The PRESIDING OFFICER. The Senator from Massachusetts has 1 minute remaining.

Mr. KENNEDY. Mr. President, I yield that 1 minute to the Senator from Maine.

Mr. HATHAWAY. I thank the Senator from Massachusetts.

Mr. President, I want to say that I oppose the imposition of the death penalty in any situation. But I would support the KENNEDY-HART amendment, because in case the bill passes, it should at least be in as palatable a form as we can make it. The amendment of the Senator from Massachusetts and the Senator from Michigan is consistent with the procedure we use in the trial of a respondent in a State or Federal court. The State

or the Federal Government is required to prove beyond a reasonable doubt the guilt of the respondent. If the respondent asserts the affirmative defense of insanity, he is charged with the burden of proving that defense, but not beyond a reasonable doubt.

The PRESIDING OFFICER. The time of the Senator has expired.

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

The PRESIDING OFFICER. All time on the amendment has expired or been yielded back.

Mr. HATHAWAY. Mr. President, I ask unanimous consent to proceed for 1 additional minute.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. McCLELLAN. Mr. President, if Senators are going to ask for time, I withdraw my yielding back of the time.

The PRESIDING OFFICER. The Senator from Maine is recognized for 1 minute.

Mr. HATHAWAY. If a respondent is making an affirmative defense, he has to prove it only by a preponderance of the evidence. The amendment before us invokes that same procedure with respect to sentencing. I think it is a very wise amendment. The question of the individual's life is at stake, and I certainly think the aggravating circumstances mandating the death penalty should have to be proved beyond a reasonable doubt.

Finally, Mr. President, let me say that I considered offering a perfecting amendment to change the word "shall" to "may" on line 7 of the pending amendment, but in view of the fate suffered be a similar amendment offered earlier today by the Senator from Colorado, I decided that would be useless.

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

The PRESIDING OFFICER. All time on the amendment has been yielded back or consumed. The question is on agreeing to the amendments (No. 1016) offered by the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Michigan (Mr. HART). The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Montana (Mr. MANSFIELD), and the Senator from Wisconsin (Mr. NELSON) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT), the Senator from New Hampshire (Mr. COTTON), the Senator from Colorado (Mr. DOMINICK), and the Senator from Oregon (Mr. HATFIELD) are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "yea."

The result was announced—yeas 49, nays 43, as follows:

[No. 70 Leg.]

YEAS—49

Abourezk	Hathaway	Muskie
Baker	Huddleston	Pastore
Bayh	Hughes	Pearson
Biden	Humphrey	Pell
Brooke	Inouye	Percy
Burdick	Jackson	Proxmire
Case	Javits	Ribicoff
Church	Kennedy	Schweiker
Clark	Mathias	Scott, Hugh
Cook	McGee	Stafford
Cranston	McGovern	Stevenson
Eagleton	McIntyre	Taft
Fong	Metcalf	Tunney
Gravel	Metzenbaum	Weicker
Hart	Mondale	Williams
Hartke	Montoya	
Haskell	Moss	

NAYS—43

Aiken	Dole	McClure
Allen	Domenici	Nunn
Bartlett	Eastland	Packwood
Beall	Ervin	Randolph
Bellmon	Fannin	Roth
Bentsen	Goldwater	Scott, William L.
Bible	Griffin	Sparkman
Brock	Gurney	Stennis
Buckley	Hansen	Stevens
Byrd, Harry F., Jr.	Helms	Symington
Byrd, Robert C.	Hruska	Talmadge
Cannon	Johnston	Thurmond
Chiles	Long	Tower
Curtis	Magnuson	Young
	McClellan	

NOT VOTING—8

Bennett	Fulbright	Mansfield
Cotton	Hatfield	Nelson
Dominick	Hollings	

So Mr. KENNEDY's amendment (No. 1016) was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HUMPHREY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on the gun control amendment to be offered by the Senator from Massachusetts (Mr. KENNEDY), there be a time limitation of 2 hours, to be equally divided between the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Arkansas (Mr. McCLELLAN); that time on any amendment thereto be limited to 20 minutes, to be equally divided and controlled in accordance with the usual form; that time on any debatable motion or appeal related thereto be limited to 20 minutes, to be divided in accordance with the usual form; and that the agreement be in the usual form.

The PRESIDING OFFICER. Is there objection?

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

Mr. ROBERT C. BYRD. I yield.

Mr. JAVITS. The question of germaneness, and so on, applies only to this amendment?

Mr. ROBERT C. BYRD. The Senator is correct.

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

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, if I may have the attention of the Senate, it is the intention of the joint leadership to adjourn over until Tuesday noon following the completion of action on the pending business today. From what I can ascertain in talking with Senators, there are no other major amendments to be called up, other than the gun control amendment. The Senator from Iowa (Mr. HUGHES) has an amendment on which he is willing to agree to a time limitation of 20 minutes, to be equally divided. I think the Senator from Arkansas has indicated that that would be agreeable to him, and I ask unanimous consent to that effect.

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

Mr. ROBERT C. BYRD. The House of Representatives may adjourn shortly, and it is the desire of the leadership to get Senate action on the concurrent resolution putting the Senate over until Tuesday. I hope that the leadership may have the understanding and the cooperation of all Senators, as it usually does have, so that the Senate may stay in session today until such time as it completes action on the pending bill. I hesitate to hold up the adjournment resolution any longer for fear the House may adjourn. So I intend to offer that resolution at this time.

If I am mistaken with respect to Senators who may have amendments which would put us beyond today, I would like to know about it now, because I do not wish to offer this resolution now, putting us over until Tuesday, if we are not going to finish the bill today.

Mr. McCLELLAN. I know of only the two as to which the time limitation has been agreed to.

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

Mr. ROBERT C. BYRD. I yield.

Mr. JAVITS. I am considering a motion to recommit the bill. If I do not make it, perhaps someone else will. I do not consider it necessary to engage in any extensive debate on that.

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

SENATE CONCURRENT RESOLUTION 75—ADJOURNMENT OF THE SENATE FROM TODAY UNTIL MARCH 19, 1974

Mr. ROBERT C. BYRD. Mr. President, I offer a concurrent resolution, and ask for its immediate consideration.

The PRESIDING OFFICER. The concurrent resolution will be stated.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 75) providing that when the Senate completes its business today, it stand adjourned until noon, Tuesday, March 19, 1974.

The PRESIDING OFFICER. Without objection the Senate will proceed to its consideration.

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

Mr. ROBERT C. BYRD. I yield.

Mr. SYMINGTON. Will this resolution now go through, regardless of any other amendment, so that we can again take

up the bill on Tuesday if action is not completed today?

Mr. ROBERT C. BYRD. No, it is anticipated that the bill will be acted on today.

Mr. SYMINGTON. I thank the Senator. I would suggest to the able Senator from West Virginia that we complete action on the pending bill today, regardless of the time.

Mr. ROBERT C. BYRD. That is the intention of the leadership, and I think that is the conscientious intention of all Senators.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 75) was considered and agreed to, as follows:

S. CON. RES. 75

Resolved by the Senate (the House of Representatives concurring), That when the Senate completes its business today, Wednesday, March 13, 1974, it stand adjourned until noon, Tuesday, March 19, 1974.

CAPITAL PUNISHMENT

The Senate continued with the consideration of the bill (S. 1401) to establish rational criteria for the mandatory imposition of the sentence of death, and for other purposes.

Mr. HUGHES. Mr. President, I call up an amendment which I have at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

At the end of the bill, add the following new section:

SEC. 17. Notwithstanding any other provision of law, the United States marshal charged with the execution of any sentence of death shall take such action as may be necessary to cause such execution to be carried out in public. The United States marshal shall utilize such communication facilities, including radio and television, as may be necessary to assure the widest possible exposure of such execution to the public, and shall carry out such execution at a time most likely to provide such exposure.

Mr. HUGHES. Mr. President, I ask for yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. HUGHES. Mr. President, as everyone in this body knows, I am unalterably opposed to this entire bill, and I intend to vote against it regardless of the passage of this or any other amendment, believing that this is a long trip into the past, regardless of what happens if it passes.

However, it has been maintained that the purpose for this bill is as a deterrent against serious crimes, and throughout our debate on restitution of a Federal death penalty statute, proponents have based their support in large measure on the deterrent effect of execution. For example, the Senator from Arkansas said, in his opening remarks yesterday, that:

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.

But, Mr. President, how many people will be aware of—and therefore deterred by—a death penalty statute as long as execution of the death penalty remains a private affair?

Executions in the 20th century—whether by hanging, gassing, or electrocution—have been performed behind the walls of our prisons with only the warden, a physician, the executioners, and perhaps a few other witnesses present.

Mr. President, the last execution in my State was a Federal execution while I was Governor of the State. The execution took place in an old garage, where they built a wooden platform and filed the witnesses in to witness the execution, in an old, broken-down garage inside the walls of the State prison, out of sight and out of mind of everyone except those in the immediate vicinity.

Mr. President, if indeed there is a deterrent effect to be derived from executions, as the Senator from Arkansas would contend—it certainly will not be known to the vast majority of our people as long as executions are carried out in private.

Therefore, the amendment I am offering requires the U.S. marshal charged with the execution of any sentence of death "to take such action as may be necessary to cause this execution to be carried out in public. The U.S. marshal shall utilize such communication facilities, including radio and television, as may be necessary to assure the widest possible exposure of such execution to the public. and shall carry out such execution at a time most likely to provide such exposure."

Mr. President, let us be deadly realistic about what we are doing here today. My colleagues will recall the horror expressed by many Germans following the end of the Second World War when they learned the truth of what had happened in the concentration camps at Dachau, Auschwitz, Buchenwald, Sachsenhausen, and others—the houses of death inflicted by the state.

The German people said they had not known what was going on behind the fences of the camps.

Mr. President, until there is greater public exposure to these killings by the State, the American people, too, can, and will, say they have not known what was going on behind the walls of the prisons in the chambers of death.

If Senators believe there is a deterrent effect inherent in the death penalty, then my amendment will provide a way to greatly increase this deterrence.

Let us at least not be hypocrites.

Let us at least be consistent with our previously stated position.

We cannot have it both ways.

If the death penalty is to be a deterrent, the more people who see the execution, are offended by it, are alarmed by it, and know that if they ever commit a similar crime they are subject to a similar penalty, the better. So if we believe in what we are doing here today, this amendment, I think, will offer a way for the death penalty to be a more effective deterrent to capital crime, if in fact it is a deterrent at all.

Mr. President, I reserve the remainder of my time.

Mr. McCLELLAN. Mr. President, I do not think I want to discuss the merits of this amendment. I will simply say to my colleagues that any of you who want an invitation to attend a public execution have the opportunity to get that invitation by voting for this amendment.

I think the amendment is a step backward. There is nothing progressive about it. A man who is executed will be dead in a minute—just as dead whether it is done in public or done in private.

My thought is that this pretty much reflects upon us if we vote ourselves invitations to attend a public execution.

I cannot vote for the amendment, Mr. President. My colleagues may want to do so, but I cannot.

Mr. HUGHES. Mr. President, I ask unanimous consent that the name of the junior Senator from California (Mr. TUNNEY) be added as a cosponsor of this amendment.

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

Mr. HUGHES. Mr. President, I did not plan that this amendment would be drawn facetiously to the pending bill, but this is a bill which is deadly and is a matter of life or death because a vote for this bill will be a vote for death. A vote against it will be a vote for life.

I truly believe that as long as we carry out executions in this country in closed quarters, in old garages, in secret chambers, behind closed doors, the American people will not be aware of the vicious feelings of pain and agony being suffered in what is happening there.

We can continue to maintain our innocence of what we are saying and doing—all of us—in the name of the State; but, for God's sake let us not be hypocrites about what we are doing. If we want to execute people, then do it in the open, do it where we all know what is happening, do it where we all can feel the pain and agony being inflicted before death. Let us at least get it out in the open and understand the nature of what we are really doing.

Several Senators addressed the Chair.

Mr. HUMPHREY. Mr. President, I am not going to vote for this bill no matter what kind of amendments are placed upon it. I cannot vote for the Senator's amendment although I fully understand the purpose of what he has in mind. I know the Senator is not being facetious because he need take no back seat to anyone in his dedication to good deeds and in his deep concern for humankind.

My feeling about the bill is that it will not be a crowning glory for Congress to legislate the death penalty. The work of this Nation should be in the protection of life, in the enhancement of life, and in the enrichment of life.

My father was a State representative in the South Dakota State Legislature in the year 1937. He was the author of the repeal amendment of the death penalty in that State. It was not a particularly popular issue. But he was right.

As his son, I intend to see that my vote is one that will not have Congress impose the death penalty in the Federal code.

Mr. MATHIAS. Mr. President, I find that the amendment of the Senator from Iowa poses some difficulties—very real

difficulties—which I thought I might try to explain.

It so happens, by chance, I finished reading a book entitled "The Disappearance of Dr. Corcoran," which describes the famous 19th century murder of a Boston doctor for which a member of the Harvard medical fraternity was later tried and convicted.

The conclusion of the book describes the execution of Dr. John White Webster who was convicted of the murder. One of the final passages in the book describes the great crowd which descended upon the place of execution in Boston at the time of the execution and the enormous public interest and curiosity, the morbid fascination which execution had created.

Of course, if we go back into history, we find that rather than stimulating a feeling of revulsion at the executions, public executions indeed stimulated the kind of morbid and unhealthy curiosity of vast crowds which historically gathered to witness the executions. So that rather than being in any way revolted by the sight, they seemed to have been stimulated by it.

I wonder whether the Senator would care to comment, as a matter of human response.

Mr. HUGHES. I by no means want to imply that this is not a repulsive amendment because it is repulsive, and I hope it is repulsive to almost everyone, to think about seeing an execution, or listening to it. I am not speaking against the amendment here but it is one intended to be repulsive because the matter of an execution itself is the most repulsive thing I can think of.

My contention is, that if it is to be a deterrent, in order to be a deterrent it has to be widely disseminated, seeking the experience, in order to deter anything.

If it draws a crowd, then I regret it, because I do not want to go back to the ancient days of mass crowds and picnic celebrations at executions. We should face what we are doing today. This amendment will serve to make us realize it.

Mr. MATHIAS. Mr. President, there is one historical incident I can think of in which an execution operated as the Senator from Iowa thinks might work if his amendment were to be adopted.

During the Revolutionary War, there were some Marylanders who were still loyal to their oath to the British crown. These men, who were called Tories at the time, were charged with treason. Under the law in Maryland, which was the law of Britain at the time, the punishment for treason was to be hanged, drawn, and quartered. They were taken to the jail in Frederick, Md. They were hanged, cut down while still alive, their bowels were taken out and burned, and their bodies divided into four parts and exposed as the Governor had directed.

That punishment was so barbarous it had the effect of bringing about the abolition of hanging, drawing, and quartering in the State of Maryland and, thereafter, throughout the United States.

So, there is at least that historical precedent which would operate in the direction the Senator from Iowa would propose.

Mr. HUGHES. I heard one comment here today when the amendemnt of the Senator from New York was voted on, where it was charged that a vote for the amendment would be a vote for motherhood—you know, Mr. President, that we were not going to execute a pregnant woman. As a matter of fact, they did not realize as they voted for that amendment, that they probably would execute the woman anyway, after the baby was born, so it was not a vote for motherhood but a vote for an unborn child to survive the execution. When we are dealing with as distasteful thing as an execution, we should realize fully what we are doing.

Mr. President, I ask unanimous consent to modify my amendment as it has been pointed out to me it contains an error.

Mr. McCLELLAN. Have not the yeas and nays been ordered?

Mr. HUGHES. Yes, the yeas and nays have been ordered. Mr. President, I ask unanimous consent to modify my amendment——

Mr. McCLELLAN. Let me hear the modification, please.

Mr. HUGHES. Mr. President, the amendment now reads:

Notwithstanding any other provision of law, the United States marshal charged with the execution of any sentence of death shall take such action as may be necessary to cause such execution to be carried out in public.

Then it reads, "The United States marshal shall"—strike the words "utilize such"—"make available to all communications facilities"—and then add—"the media, including radio and television opportunities to assure the widest possible exposure of such execution to the public, and shall carry out such execution at a time most likely to provide such exposure."

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The text of the amendment is modified as follows:

At the end of the bill, add the following new section:

SEC. 17. Notwithstanding any other provision of law, the United States marshal charged with the execution of any sentence of death shall take such action as may be necessary to cause such execution to be carried out in public. The United States marshal shall make available to all such communication facilities and media, including radio and television, opportunities as may be necessary to assure the widest possible exposure of such execution to the public, and shall carry out such execution at a time most likely to provide such exposure.

Mr. McCLELLAN. I yield 2 minutes to the distinguished Senator from Florida.

Mr. CHILES. Mr. President, we understand the motives of the Senator from Iowa and his strong feelings of being against the bill. I intend to vote for the bill on final passage, but I will not do it with any great satisfaction. I am not completely sure of that.

I think we are in a time of great terror. It is a question upon which men have differed for a long time, and we will continue to differ as to whether or not it is a deterrent. But because of the situation that now exists, when we see acts of terrorism, and in an attempt to protect the citizenry of this country, some of us feel we have to vote for this measure, if it is a deterrent. Certainly, our vote is as sincere as the vote of the Senator from Minnesota, who feels that his daddy was right and who feels that he is right in casting a vote against the bill.

But this amendment, in spite of what the Senator from Iowa is attempting to do, is a bad amendment; because this amendment says that we are going to show on television, in the widest coverage, public executions. So we are going to make children watch public executions. I think that is wrong. I believe that any of us who conscientiously think of this, in spite of the well-meaning motives of the Senator from Iowa and the junior Senator from California, will realize that we do not want to consign children to this, that it is going to be on television, that children are going to watch this.

We need only think back to our childhood and the feelings with respect to public executions then, and we will know the kind of impression it makes.

In spite of what is attempted to be done in this kind of an amendment, to cause some public revulsion, it will cause a very serious and a very dangerous thing to be shown to children. It is something they are not equipped to handle. They are not equipped to engage in the debate we are in today and the pros and cons of whether or not we should have capital punishment. It would be totally unfair to consign them to that.

I hope the Senate will reject the amendment.

Mr. HUGHES. Mr. President, I agree with everything the Senator from Florida has said. We have no disagreement. It is a repulsive thing. I would not want my children to see it. Nevertheless, if that is the decision of their parents, then I think they ought to know what we are voting for. They ought to know what we are insisting on; and perhaps by their calling on us, they can eventually get rid of this barbarism in our society, the murderous intent buried deep in the hearts of all of us, whether in the name of the State or anyone else. I have no disagreement morally with what the distinguished Senator from Florida says. I certainly have disagreement with the overall intent of the bill.

Mr. McCLELLAN. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. McCLELLAN. I will not use it. I just wish to make an observation.

The author of the amendment agrees that it is repulsive. I think it is repulsive to all of us, and we ought to reject it unanimously.

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

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Iowa. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Montana (Mr. MANSFIELD), the Senator from Minnesota (Mr. MONDALE) and the Senator from Wisconsin (Mr. NELSON) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT), the Senator from New Hampshire (Mr. COTTON), the Senator from Colorado (Mr. DOMINICK), and the Senator from Oregon (Mr. HATFIELD) are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "yea."

The result was announced—yeas 10, nays 81, as follows:

[No. 71 Leg.]

YEAS—10

Abourezk	Inouye	Tunney
Clark	Kennedy	Weicker
Hart	McGovern	
Hughes	Proxmire	

NAYS—81

Aiken	Ervin	Moss
Allen	Fannin	Muskie
Baker	Fong	Nunn
Bartlett	Goldwater	Packwood
Bayh	Gravel	Pastore
Beall	Griffin	Pearson
Bellmon	Gurney	Pell
Bentsen	Hansen	Percy
Bible	Hartke	Randolph
Biden	Haskell	Ribicoff
Brock	Hathaway	Roth
Brooke	Helms	Schweiker
Buckley	Hruska	Scott, Hugh
Burdick	Huddleston	Scott, William L.
Byrd, Harry F., Jr.	Humphrey	Sparkman
Byrd, Robert C.	Jackson	Stafford
Cannon	Javits	Stennis
Case	Johnston	Stevens
Chiles	Long	Stevenson
Church	Magnuson	Symington
Cook	Mathias	Taft
Cranston	McClellan	Talmadge
Curtis	McClure	Thurmond
Dole	McGee	Tower
Domenici	McIntyre	Williams
Eagleton	Metcalf	Young
Eastland	Metzenbaum	
	Montoya	

NOT VOTING—9

Bennett	Fulbright	Mansfield
Cotton	Hatfield	Mondale
Dominick	Hollings	Nelson

So Mr. HUGHES' amendment was rejected.

Mr. KENNEDY. Mr. President——

Mr. HUGHES. Mr. President, will the Senator yield for 30 seconds?

Mr. KENNEDY. I yield.

Mr. HUGHES. I would like to point out to my colleagues that on national television tonight, as a matter of entertainment, there will be an excellent show entitled "The Execution of Private Slovik." I suggest that all of you who do not believe in your children watching executions not watch that show tonight.

I thank the Senator from Massachusetts for yielding.

Mr. KENNEDY. Mr. President, on behalf of the Senator from New York (Mr. JAVITS) and myself, I call up my amendments No. 1020.

The PRESIDING OFFICER. The clerk will state the amendments.

The legislative clerk proceeded to read the amendments.

Amendments No. 1020 are as follows:

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 handguns and ammunition.
"'934. Penalties.
"'935. Disposition of firearms to Secretary.
"'936. Rules and regulations; periods of amnesty.
"'937. Disclosure of information.
"'938. Assistance to Secretary.

"'§ 931. Definitions

"'As used in this chapter—

"'(1) 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.

"'(e) 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 regisration 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 (a) 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. Disposition 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 marketing 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 therefor 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 this 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 Secrtary 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 handgun 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 handguns 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 parts and their application to other persons or circumstances shall not be affected thereby.

"SEC. 502. No provision 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 title II, III, and IV of this Act shall become effective ninety days after the date of its enactment."

Mr. KENNEDY. The first provision of my amendment will require the registration of every civilian-owned handgun in America. All handguns in this country will be processed through a standardized registration system.

The second provision of my amendment directs the Secretary of the Treasury to establish and maintain a nationwide system to license every American who owns a handgun.

And the third provision of my amendment effectively begins to reduce the number of handguns in civilian ownership, by outlawing the production of cheap handguns. In addition to requir-

ing registration and licensing, the bill also bans all handguns except those intended for sporting purposes. Gun manufacturers put nearly 2 million cheap handguns into the marketplace each year. We must halt the output of those deadly little devices—commonly called "Saturday night specials."

Effective restraints on the massive proliferation of the cheap hand weapon that is used only for killing people or for intimidating them must be enacted. This Senate must adopt the controls in this amendment. This amendment is an appropriate and logical complement to S. 1401 because it is designated to launch a systematic approach to curbing the easy access to guns in America, and therefore it seeks to reduce the toll of indiscriminate deaths. As with the other amendments I offered to S. 1401, this one would provide safeguards to prevent innocent people from dying.

This is only the second day this Senate has devoted to the grave matter of the death penalty. If we spend no more time on the death penalty, that will be a telling commentary on the value we place on human life in this country. Yesterday, Senator HUGHES eloquently described all the reasons why the death penalty ought not be imposed under the laws of this land. I share his views. And I believe that our national view of human life is mirrored in the insistence to permit the Government to permit criminal offenders to be executed.

At the same time, it is critical to note that human life in America is relegated to a low level because we allow so many people to possess guns. We make it too easy for children, incompetents, addicts, and, indeed, our loved ones and our neighbors to obtain weapons without adequate justification.

When we are successful in restraining the public's easy access to concealable hand weapons, we can begin to reduce the deaths, the injuries, the fear, and the violence that matches our high gun ownership rate.

Municipal health records grimly reveal that the toll of gun deaths parallels the rapid rise in gun ownership. Each year the figures get bigger, but we have not enacted laws to stem the tide of gun deaths.

As one who morally opposes capital punishment, I feel that S. 1401 is too serious to dismiss lightly. Of utmost concern for all of us is the protection of the innocent. For, not even in the vastly technical society of America have we devised ways to insure that innocent victims would escape the penalty of death if wrongly accused. And so, I am deeply concerned that if S. 1401 is destined to pass, that it include all safeguards possible to save lives.

Therefore, it seems quite appropriate to amend that bill with a handgun control measure that can begin to save lives by reducing the widespread access to these deadly devices that have no justifiable use beyond their role in crime.

My amendment No. 1020 to S. 1401 is designed to control handguns—the weapons that are responsible for over 73 percent of all police killings. The weapons that make up only 25 percent of all firearms, but account for 54 percent of all homicides. The weapon that is used in one-third of all robberies.

Let us then turn to the measures I propose to restrain the massive proliferation of handguns and the needless tragedies for which they are responsible.

Under my 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 imprisonment for up to 5 years, or a fine of up to $10,000 or both.

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 compensation 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.

Finally, 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 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—of information bearing upon his eligibility for a Federal handgun license.

At least six highly regarded panels including criminologists, legal technicians, law enforcement authorities, and other distinguished citizens have called for restraints on handguns of the kind included in my amendment. Each of these panels believes we must nullify the devastation and killing inflicted upon the American public each year.

In fact the Brown Commission on reform of Federal criminal laws, which included Senators HRUSKA, MCCLELLAN, and ERVIN, recommended a complete "ban on the production and possession of, and trafficking in, handguns, with exceptions only for military, police and similar official activities."

In 1968, the Internal Revenue Service reported the domestic manufacture of 2,449,286 handguns. Only 598,649 handguns were produced in 1962. At that rate, nearly 10 million handguns would be produced by the end of this year. Yet, there is no system that attempts to standardize the control of these deadly devices in the hands of our citizens. Smith Hempstone believes "the greedy manufacturers and importers of handguns and handgun ammunition" must share the blame with the Congress, State legislators, and the judicial system, for the national failure to stem gun violence.

Does any industry deserve to draw its profits from the blood shed by victims of violent assaults? Will we stop making cheap handguns only after there is at least one in every home in America? Unless we redefine the role of firearms in our society, the unbridled access to guns may eventually lead to a massive nationwide shootout. Before the two-gun family becomes as commonplace as the two-car family, I would hope that sensible restraints will be enacted and enforced. Already many serious and responsible citizens have begun campaigns to halt the illogical fascination produced by handguns. In February 1973, in my own State, the publisher of the Boston Globe banned all handgun advertising in that newspaper. Radio station WMAL in Washington, D.C. broadcasts persistent editorials at least twice each week that eloquently implore the Congress "to get the guns off the streets." And in Cleveland, Ohio, the president of a retail sporting goods chain has refused to sell handguns for over 3 years. These are admirable examples of useful attempts to reform the distortions caused by too many guns in a civilized society. These examples must lead the way for others to join in the demand to stop the carnage we inflict on each other.

Each year the toll of gun deaths in this country leaps higher than the tally of the year before: For 1969, the total was 19,000. By 1973, the total was over 24,000. One-half of the gun deaths in 1973 were homicides, and according to a sample FBI survey, in at least one-fourth of the gun homicides, the cheap handgun—the Saturday night special—was the weapon of choice. Even more alarming figures were compiled in an Associated Press survey for the week of March 4, 1973. In that one week, 345 men, women, and children were shot to death in the United States.

No less than 128 of those deaths were caused by handguns. Handguns were responsible for 41 percent of the homicides. They were used in 26 percent of the suicides. And 21 percent of the accidental

deaths were caused by handguns during that week.

Shortly after the senseless shooting of Senator JOHN STENNIS, the junior Senator from Idaho introduced a bill to repeal the 1968 Gun Control Act. He claimed that the 1968 law was "passed at a moment of national hysteria" and that it "has proved to have no adverse effect on anyone other than the law-abiding citizen." The Senator from Idaho bemusingly asserted that the shooting of Senator STENNIS "is being viewed as an opportunity for another round of firearms legislation." On that point, the Senator from Idaho is absolutely right. Shamefully, the Congress is urged to respond to the devastation caused by guns only when a public figure is assaulted. But each of us is dutybound to enact that legislation which will best preserve and protect the welfare of our constituents. To repeal existing gun laws would be a blatant violation of that duty. For, at least one American is shot to death every half hour in this country. If it is not sufficiently shocking that we act to restrain gun violence only when the victim is a public figure, then perhaps, we should remember that guns kill 55 Americans every day. Guns kill our neighbors and our loved ones, not because the 1968 gun law adversely affects the law-abiding citizen, but because we in the Congress have failed to enact even more effective controls to minimize the abuse and misuse of firearms.

Fully one-half of all gun deaths are homicides. Accidents and suicides complete the gun death picture—claiming as many lives as murders. Does it not make sense to isolate those devices of death that are equally lethal in the hands of a criminal, an enraged parent, a despondent business executive, or a curious child? Associated Press researchers discovered that 37 percent of the weapons used to kill people that week last March were handguns. In the meantime, gun manufacturers continue assembling over 2 million handguns a year to glut the marketplace.

Mr. President, I want stringent handgun controls not only because too many criminals find them ideal weapons of crime; but also because strong gun legislation would begin to curb the needless killing caused when a gun is handy and emotions erupt unchecked. "Most murder in real life comes from a compound of anger, passion, intoxication, and accident—mixed in varying proportions. The victims are wives, husbands, girl friends, boy friends, prior friends, or close acquaintances. The quarrels which most frequently trigger murder might well result in nothing more than bloody noses or a lot of noise, absent a deadly weapon—handy and loaded. The Honorable Edmund Brown made that statement September 13, 1971.

As the attorney general and then Governor of California, he estimated he has had contact with 500 murderers. But not one fit the pattern of the evil, ruthless killer concocting a long-range plot to kill someone. So this measure is not intended simply to stem the tide of criminal gun assaults, that account for less than one-third of all gun murders. But it would seek to curb both the crime of intent and the crime of the moment.

Stiff penalties for crimes committed with a firearm ought to be issued to those convicted of such acts. I have supported measures of that type in the past and I intend to continue doing so. But I also feel it is equally important to impose a ban on handguns that will begin to remove those weapons from access to people who do not need them. When effectively enforced, gun laws can remove certain weapons from the hands of civilians.

The National Firearms Act of 1934 has prevented the public use of machineguns and other automatic weapons of mass death. Now, after nearly 40 years experience with that law, machineguns and other automatic weapons are simply not available to the public. We ought to realize the wisdom of enacting direct controls and adopt a handgun law to eliminate another weapon that serves no justifiable role in modern society.

I am firmly convinced that enactment of effective handgun controls will substantially reduce the enormous number of tragedies caused by guns. Those who argue that more gun laws would be useless in the fight against gun violence choose to ignore a fundamental weakness in the existing system. Current gun laws vary so widely from State to State, and even within States, that a gun purchaser need only cross county or State lines to get the weapon denied him in his home location. Under my proposal, nationwide standards, imposed and enforced equally across the country would effectively deny cheap handguns to all. It is my hope that such action would comply with the assertion made to the Judiciary Committee, in September 1971, by Eugene Rossides, that officials in the Treasury Department "share the committee's objective of banning the Saturday night special." At that time, Mr. Rossides was Assistant Secretary of the Treasury for Enforcement and Operations. He offered the administration's cooperation in working with the Congress, to find appropriate solutions to the handgun menace. by enacting this measure, the Congress will establish its commitment to act responsibly on this critical matter. Indeed, we will be carrying out the recommendations of six Presidentially appointed commissions that have thoroughly studied the modern gun problem in America.

Gun registration and licensing requirements will produce a significant advance in the struggle to inaugurate a standardized, nationwide Federal firearms control system.

The facts are clear. The statistics are alarmingly impressive—24,000 deaths each year by gunfire: 11,000 murders—10,000 suicides—3,000 accidents.

In American communities that have effectively enforced gun controls, firearms violence occurs much less frequently than in communities with minimal or no controls. And, compared to other nations of the world, America's bloody pool of death by gunfire is an appalling monument to man's capacity to want only to destroy his own kind. A tally of gun deaths in all civilized nations shockingly ranks the United States as No. 1. We are not only ranked No. 1 but No. 2 lags so far behind that the sum of gun murders in every other nation probably would not equal the number of Americans killed by guns in 1 year.

A handgun is the most deadly weapon available to the average citizen. For a few dollars, the easily concealed, lethal weapon in the palm of a hand can snuff out life, inflict permanent injury, or empower the meekest citizen with unwarranted and enormous power over others.

If we are serious about controlling gun violence then let us get on with the business of enacting and enforcing effective laws that will keep handguns away from people who will use them in a fit of rage, or leave them within reach of young, unsuspecting children.

Too many Americans fear the specter of a hulking figure crouched in a dark shadow, with a gun in hand, waiting to ambush an unsuspecting passerby.

Too many people are panicked by the news of an armed robbery, or a report about the invasion of a comfortable suburban mansion by intruders who slaughter every living creature. For many citizens, such reports of gun abuse and violence are reason enough to obtain a gun for personal protection. And so, it is, that more and more people are buying guns to protect themselves against more and more people who are buying guns.

Conservative estimates indicate that in 1968 there were 90 million firearms in civilian hands in the United States in 60 million households. Other estimates place the current tally of firearms as high as 200 million. By any count, these are drastically exorbitant numbers.

Though many gun owners insist they own a gun for protection against intruders, the gun is much more likely to be used against a friend or a loved one. Federal Bureau of Investigation uniform crime reports show that over 70 percent of the people killed by guns knew the person who shot them. While the popularized view of a killer conjures up the image of a stealthy impassionate criminal, the fact is, that two times out of three, the gun killer in American homes is the father or the wife; the mother or the brother; the coworker; the lover; the teenage neighbor, or the son of the dead victim.

People use handguns to settle arguments. They use handguns to display power. They use handguns because American industry is coldly efficient in mass producing these weapons of death. Yet, we still have not enacted comprehensive controls over the millions of devices that exist for the sole purpose of putting a bullet through something. Each year armorers in this country produce more than five billion rounds of ammunition for use in civilian owned guns. There is little doubt, that at least that many words have been uttered about the gun control issue.

Mr. President, if we in the Congress would stop talking about handguns and take action to effectively control them, we would perform the most useful and rewarding service to the American public

that any Congress has dared. American people want meaningful gun controls.

The proposal that I am offering as Amendment No. 1020 to S. 1401 is the kind of measure that will accomplish the goals that time and time again our people have asked for. Licensing and registration requirements can be the most effective step toward restraining the abuse of handguns.

A principal purpose of handgun registration is to provide an improved system for law enforcement agencies to trace who commit crimes with firearms. Police authorities have used registration information to apprehend many fugitives despite the weaknesses in the currently incomplete coverage of municipal and State registration laws. A nationally standardized registration system would greatly improve existing efforts to curb criminal handgun usage.

Handgun registration will tell us how many handguns there are, where they are and who owns them. I am convinced that it makes no sense for guns 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.

The Nation's police departments are constantly confronted with stolen weapons, many of which have been used in crimes. In April, 1972 police authorities reported 500,000 contraband weapons that had been reported stolen. The actual number of all stolen guns is anybody's guess.

Through a system of registration, these guns could be traced to their proper owner and with effective public awareness and information programs legitimate gun owners could be advised and assisted in establishing adequate security for their weapons.

Though gun control critics drown out the explosive fusillade of annual firing with their indignant outcries against gun confiscation, it is noteworthy that owners voluntarily turn in their guns when given the chance.

For that reason the gun registration title of my proposal also includes a period of amnesty for gun owners to voluntarily turn in any weapons they wish to surrender, and to receive reasonable compensation from the Department of the Treasury for their weapons.

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 Assissi.

In England and Wales, the public is periodically invited to turn in weapons and ammunition that may have been hidden or forgotten for a long time. Since 1933, the British Government has held seven gun amnesties providing the public with opportunities to safely remove firearms from homes or places where they may be stolen or where accidents may occur.

The number of firearms and ammunition that British citizens turned in is impressive:

Year:	*Firearms*	*Ammunition*
1933	16,000	26,000
1935	8,000	151,000
1937	14,000	144,000
1946	76,000	2,500,000
1961	70,000	2,000,000
1965	41,000	1,694,000
1968	25,000	795,163

Since the presence of overwhelming numbers of guns is the single most causative factor in our Nation's widespread abuse of firearms, I believe that a comprehensive system of controls must provide for any handgun owner, to voluntarily turn in his weapon and ammunition without fear of reprisal.

The title of my amendment, requiring every handgun owner to obtain a license before he may be entrusted with a gun—is fundamental in guarding against the hazards of indiscriminately allowing criminals or other unreliable citizens to obtain firearms.

A gun is such a terribly vicious weapon, that members of a civilized society should mandate gun owners to prove that they are not disqualified from having access to these instruments of death.

I intend for this amendment to provide appropriate assistance to the provision of S. 1401 in stemming our shamefully high rate of gun deaths, accidents by gunfire, and the unbelievably awesome rate of assaults, robbery, and intimidation accomplished with guns.

Firearms legislation is in demand because the Nation needs direction as well as legal authority to suppress the lawlessness aggravated by the existence of so many guns. The gun mystique is borne in the valiant traditions that spawned the American dream. But today, American families no longer face the perils of a frontier wilderness. For the American family in 1974, fear, apprehension, mistrust, anguish, prejudice and pain are the dreaded products of our national firearms history.

People who oppose meaningful restraints on the use of firearms rely on six mindless arguments that are almost as old as the Republic:

First. Opponents of gun control insist "their right to bear arms" is borne in the Constitution. The argument is extended to claim that gun controls deprive them of their right to pursuit of happiness with guns free of government limits. But the courts have said that the Constitution does not interfere with the power of the government to regulate deadly firearms.

Since we mean to enact legislation that will halt the abuse of firearms those who find happiness in guns will just have to subordinate that pleasure to the right of all Americans to live free from the death and violence that the American gun mania has brought us.

Second. Many people make the argument that because lawless citizens will feel no obligation to be bound by gun restrictions, gun controls will simply disarm those who abide by the law. I am convinced that strict enforcement of licensing and registration laws will serve to isolate precisely those citizens who flaunt the law, to subject them to prosecution for gun violations before they commit other crimes with their guns.

Third. Critics of gun control have insisted that laws cannot control access to guns. Yet, the records show that even the limited provisions of the 1968 Gun Control Act have severely altered the flow of one kind of weapon—the imported handgun. And the National Firearms Act of 1934 essentially eliminated civilian access to machineguns, sawed off rifles and shotguns, mufflers and silencers.

Fourth. Another common refrain against firearms control is that "guns don't kill, people do." But a quick look at the statistics and commonsense tell us that it is when guns are in hand that two-thirds of the people who kill other people do so; and it is when guns are in hand that over 100,000 robberies a year are committed, and it is when guns are in hand that one-quarter of the Nation's 300,000 aggravated assaults are committed.

Rarely does an attacker make a deliberate choice of a gun over a knife. But because the fatality rate of knife wounds is about one-fifth that of gun wounds, it may be concluded that using a knife instead of a gun might cause 80 percent fewer deaths.

Fifth. Modern critics of gun control express a show of outrage at the vaulting gun crime rate. These protagonists insist that we do not need more gun laws. Instead, they say, we should enact long-term mandatory penalties for crimes committed with guns. Even if our penal system were not already beleaguered with the problems of outrageous overcrowding, this proposal may be counted upon to produce undesirable results. Penalties do not deter an angry person from reaching for a gun.

Generally, courts respond to the viciousness of crimes committed with firearms by imposing stiff penalties. If penalties were made much stronger the extra punishment would probably encourage an armed robber "to leave no witnesses." Thus, it is likely that stricter penalties would cause more gun deaths.

Sixth. It may be that the greatest number who protest gun controls do so on the basis that the administrative requirements for registration are cumbersome and inconvenient. Some believe such requirements are "unfair and punitive in that the persons really affected so adversely are law abiding citizens who pursue shooting as a hobby or as a form of recreation." I believe that any measure we might adopt which will substantially reduce the misuse of firearms will at the same time, enhance whatever pleasures that may be derived from these so-called recreational pursuits.

If the only price of firearms record-keeping requirements is the inconvenience of gun users, then, with my amendment, the American public will have been delivered a special bargain.

This list includes the core of the objections vehemently raised and expertly used by the National Rifle Association and other gun advocates to force the Justice Department and the Department of the Treasury to turn the administration's

attention away from serious efforts to put restraints on guns.

In December 1963, a witness for the gun lobby defiantly testified before the Senate Commerce Committee.

> Now we realize that there is a problem when we own guns. Somebody is going to get shot. This is part of the price of freedom that we are going to have to pay in order to have freedom to own guns. And I am willing to take this chance.

Mr. President, it is precisely that kind of eroding philosophy that stimulates officials in the Department of Justice and Treasury—to tell the House Ways and Means Committee that the ammunition recordkeeping requirements of the 1968 Gun Control Act are burdensome and unnecessary.

To properly serve the public interest, officials in the Department of Justice and in the Treasury Department should enforce existing laws to control ammunition sales, instead of recommending ways for the Congress to weaken such laws.

The only public action on guns this administration has attempted, was to commission a private firm to test handguns and to select those least likely to explode in the hands of the shooter. Presumably, survivors of people shot by weapons tested and bearing the U.S. Treasury Department safe seal of approval will be comforted to know the assailant was not at risk as he pulled the trigger killing his loved one.

Mr. President, until we have an administration that can reject such a philosophy, neither the American people nor the Congress will have the strength of national leadership demanded by those who want to stop the killing by gunfire.

When I introduced amendment No. 1020 yesterday, I reminded the Senate that my proposal to register handguns and to license handgun owners is in no way a plan that requires new studies, indeed, if there is any issue Senators understand, it is the matter of strong handgun laws. Each Member of the Senate is fully aware that six commissions appointed by the President have recommended stronger gun laws to reduce gun killing. The Commission on Crime in the District of Columbia in 1966 called for registration and licensing of all handguns in the Nation's Capital.

In 1967 the Kerner Commission on Civil Disorders recommended "That all State and local governments should enact gun control legislation." The final commission report asserted that—

> We believe that Federal legislation is essential in order to make State and local laws fully effective, and to regulate areas beyond the reach of State government.

The Eisenhower Commission on the Causes and Prevention of Violence in 1968 concluded that "the only sure way to reduce gun violence is to reduce sharply the number of handguns in civilian hands in this country. We recognize this will be a massive and expensive task. But, the price is one that we should be prepared to pay"; and in 1971, the Brown Commission on Reform of Federal Criminal Laws called for "a ban on the production and possession of, and trafficking in, handguns, with exceptions only for military, police and similar official activities; and registration of all firearms."

The Katzenbach Commission on Law Enforcement and Administration of Justice reported in February 1967 that—

> Strict controls by state or city are nullified when a potential criminal can secure a firearm merely by going into a neighboring jurisdiction with few controls, or none at all.

Because the existing patchwork system of controls is ineffective, the Commission recommended that each State should require the registration of all handguns, rifles and shotguns. And in the absence of meaningful State laws, the Commission proposed the enactment of Federal registration requirements within 5 years. As we debate this serious national problem today, the Commission's schedule has expired, the waiting period is over. Now is the time to improve our gun laws.

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.

In summary, it is clear that the overwhelming weight of the statistics that gun violence produces, and the needless distraction caused by guns, are sufficient to justify ways to strengthen our current procedures for coping with the national epidemic of death by gunfire.

On its merits, the demand for strong laws is easily understood by reasonable people. But it is obvious that we will need more than statistics to resolve the problems of controlling the misuse and abuse of firearms. We will also need a national firearms policy that can redefine the proper role of firearms in our society. A gun has one function and one function only. No man deserves to hold the power of ending another man's life because of the indiscriminate use of such a lethal device. So far, we have not learned how to control that power, even through substantial evidence concludes such power can be controlled. Profs. Geisel, Roll, and Wettick reported in the Duke University Law Journal that of the 15,000 people killed by guns in 1965, as many as 6,400 of them would not have been gun victims if the Nation had a system of gun control as strong as that in New Jersey. On that basis maybe 10,000 of the 24,000 gun deaths in 1973 would have been averted.

Ramsey Clark, who served as Attorney General under President Johnson, suggests our only alternative is to remove guns from the American scene. If this is not feasible we may be obliged to place strict bans on the production and distribution of ammunition. No bullets, no shooting. Such bold approaches may be where we shall end up.

I believe that gun registration and licensing can curb the phenomenally high rate of gun crime. And I urge the Senate to adopt amendment No. 1020.

Mr. President, as I understand, there is a time limitation on this amendment of 2 hours, evenly divided between the proponents and opponents of the amendment. Am I correct?

The PRESIDING OFFICER (Mr. BARTLETT). The Senator is correct.

Mr. KENNEDY. Mr. President, I yield myself such time as I may use.

It is entirely appropriate that a bill that is considering the death penalty and the mandatory application of the death penalty should provide some safeguards against the killing of the innocent. There will probably be those who will argue this afternoon as to whether the amendment which is proposed in behalf of the Senator from New York and myself is really germane. I believe it is not only germane but absolutely consistent with the alleged purposes for which the legislation is supported by the proponents of it.

Amendment No. 1020 protects against continuing deaths due to gunfire. It has three purposes: First of all, it bans cheap handguns. Second, it provides registration for all handguns. Third, it provides for the licensing of all handgun owners.

As I mentioned when I submitted the amendment yesterday, there probably has not been a subject which has been as carefully studied as gun control legislation. In the 11 years that I have been in the Senate we have had before the Juvenile Delinquency Subcommittee some 43 days of hearings and 12 days of executive sessions. Many of those executive sessions just droned on until there was a lack of a quorum and they broke up. One hundred eighty-six witnesses appeared before the Juvenile Delinquency Subcommittee. There were 4,000 pages of testimony.

The thrust of this amendment cuts no new ground. The thrust of this amendment includes provisions which have been considered by this body time and again in the past. We can say this is an old issue, but certainly a relevant and important issue. It is an issue which has brought forth the support of former Attorneys General. As a matter of fact, three former Attorneys General of the United States have testified in favor of either this or similar types of legislation, although none have testified in favor of it in recent times under this administration.

It is a proposal whose general thrust and scope have been embraced by six Presidential commissions. I think all of us are aware of how Presidential commissions have been appointed at different times in the course of our history. In most instances these Presidential commission reports have been gathering dust, which were in part an attempt to defuse what was a hot political or emotional problem. Yet these six Presidential commissions all considered the question of gun control legislation.

These Presidential commissions—the Eisenhower Commission, the Brown Commission, the Katzenbach Commis-

sion, the Kerner Commission, the Criminal Standard and Goals Commission, the Commission on Crime and Violence in the District of Columbia—each and every one, in varying degrees, with majority and minority reports, all made the point of the close correlation between crimes of violance and criminal activity and the availability of guns. They have recommended for the most part that we develop model legislation to be introduced and that the States be given a reasonable period of time in which to develop State legislation, but if a State then failed to develop such legislation, Federal legislation goes into effect.

The reason for all this, Mr. President, is very clear and very compelling. It is because they recognize the role of handguns and hand weapons and the fact that their relationship to crimes of violence and homicide have been so closely connected.

Here on the floor this afternoon we will hear it said, that what we really need is State laws and State action. If this is a problem, let the States do it, but do not cram Federal legislation or laws down the throats of the respective States.

But, of course, the fact remains that where we have had effective local legislation in terms of registration in some of the major urban areas of this country or where we have had effective legislation at the State level, time and time again we have heard from the district attorneys, chiefs of police, and commissioners from those areas who reply time and time again that they have found that the criminals are obtaining guns outside of their jurisdiction, in jurisdictions that are weak or lacking in any type of gun legislation.

If we are interested in doing anything about crime and violence in this country, I think we ought to take the recommendations made by distinguished penologists and others involved in the fight against crime and the distinguished citizens who have composed these various Presidential commissions. I do not mean that we should say that because the Presidential commission says it is so, it is so. However, because we have had six Presidential commissions that have all virtually unanimously recommended that there be this type of action, I believe that it is time that we in the Senate give our attention to this matter.

As to statistics, on gun tragedies, there have been 3,000 accidental gun deaths. There have been 11,000 suicides. There have been 20,000 gunshot injuries. There have been 71,000 assaults. There have been 113,000 gun robberies.

Those are the statistics. However, of course, the statistics themselves do not begin to measure the pain, suffering, and anguish associated with those that have been involved in these experiences.

Mr. President, I hope that the Senate will approve this legislation. We are not in any way in our legislation making it apply to long guns, even though the best information we have is that there are at least 60 million long guns in civilian ownership. It was in 1968 that we had the figure of 60 million long guns. I think that with the gradual increases in production since that time, the best estimate that can be made is that there are approximately 100 million long guns in the country today.

This amendment is not touching those guns in terms of registration or licensing, although I personally favor, and have favored in the past, that type of legislation.

We are dealing here with a rather simple but nonetheless effective legislation device to do something about the broad proliferation of handguns. The only purpose of the handgun amendment that we are dealing with at this time is to deal with the handguns that are used for one purpose and one purpose only, and that is the shooting of other people.

We provide in the legislation for authority for the Attorney General to exclude those particular hand weapons that would be useful for sporting purposes.

The only thrust of this amendment is to deal with those weapons which can be used effectively in the shoooting of individuals. This legislation, therefore does not concern the sportsmen. This amendment does not pertain to any long gun regulations, no licensing, no registration, no restrictions on manufacturing or destruction of long guns. It does not infringe upon the sportsmen who own long guns. It does not in any way inhibit their opportunity to own them. It does not affect those who want to use shotguns for sporting purposes.

All it does is single out those easily concealable weapons, and there are millions of these weapons, whose only purpose is the taking and destruction of life.

So, Mr. President, I think this amendment is one that is necessary. I think it could have a very significant impact on reducing gun deaths in this country, on those deaths that are the result of passion, accidental death, and even of suicides. It will have a real impact in those particular areas and I think in the area of crime as well.

I think it is also of some interest to know that there are statistics covering the people in the front lines of defense, the law enforcement officials of this country. It might be interesting to review the statistics on gun deaths as they apply to the law enforcement people who have been killed or shot in the line of duty.

In 1970 there were 100 police killed. Seventy-three of these were killed with handguns.

In 1971 there were 121 police killed. Ninety-four of these were killed with handguns.

In 1972 there were 112 police killed. Seventy-four were killed with handguns.

In 1973 there were 131 police killed. Ninety of these were killed with handguns.

We are attempting in this amendment to meet this particular problem and many of the other problems suggested by the broad proliferation of hand weapons in our country.

Mr. President, will be glad to yield to the distinguished Senator from New York whatever time he might need, but first yield briefly to the Senator from California.

Mr. CRANSTON. Mr. President, I ask unanimous consent that, during the further consideration of the amendment and during the rollcall votes on the legislation, Michael Stern have the privilege of the floor.

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

Mr. JAVITS. Mr. President, this amendment deals with the serious matter of the availability of handguns. And let me emphasize that we are talking only about handguns and not about rifles or other long guns. It relates strictly to handguns.

I call that especially to the attention of my colleagues on the Republican side because the whip notice spoke of this amendment which we are now debating as "establishment of a nationwide system to license all gun owners."

That is untrue, Mr. President. We seek only to license those owners of handguns within the boundaries set out in the amendment.

The reason I am deeply interested in this matter, aside from the impressive arguments which have already been made very eloquently by the Senator from Massachusetts, is that we have in force in New York a very strict law controlling handguns and requiring the registration of them, and so forth. We have found that, while it helps, it is not really as effective as it should be, precisely because there is no Federal law regulating handguns.

We feel very deeply—based upon a study which I will refer to in a moment—that if there is a Federal law, it will help localities and States which have their own laws to make them truly effective.

Mr. President, the matter of guns in America has greatly disturbed me since I came to Congress more than 25 years ago. The suffering and distress which flow from the almost unrestricted access to handguns in our society constitutes the single most serious and pervasive threat to the safety of ordinary Americans. If this is so, is it not the duty of the Senate to approve legislation that would make the handgun less available?

And shocking as it may seem it is hardly more difficult for anyone—be he madman, murderer, or petty thief—to obtain some sort of gun today than it was at the time of the assassination of President Kennedy or for that matter, the assassination of President Lincoln. In recent years, Congress has passed some important gun control legislation, but we have yet to come to grips with this critical and complex handgun problem.

As the Senate debates the moral, legal, and philosophical implications of the death penalty, I think it is entirely appropriate that the Senate consider the enormous problem of death in another, but inevitably related context. That is the death associated with unrestricted access to handguns—reflected most tragically in the random shooting of policemen and innocent citizens by criminals and deranged assailants.

Even if some criminals could obtain handguns, the rest of society would be safer if we did not possess them. The fact is that the bulk of homicides committed each year do not even involve criminals attacking strangers, but rather involve family and acquaintances. Hand-

guns are rarely used successfully by law abiding citizens for self-protection.

Each year more than 20,000 are killed or injured by guns. Between 1964 and 1972, armed robberies increased 230 percent, with about 63 percent of these robberies committed with guns. Sixty-five percent of all murders in this period were committed with guns. Too often, the handgun is the instrument of death—easily obtained and concealed, it is responsible for the murder of increasing numbers of law enforcement officers.

We believe that there are as many as 40 million handguns, which are now being manufactured and pumped into the civilian population at the rate of more than 2.5 million a year.

That means that a new handgun is sold in the United States every 13 seconds. And one is used every hour of every day to murder one of our citizens.

Let us note that legal restrictions on the distribution of these weapons are almost nonexistent.

In 42 States no license is required to purchase a handgun.

The only restriction on buying handguns in these 42 States is a provision in the Federal Gun Control Act of 1968 which requires that the purchaser fill out a form giving his name and declaring that he is not a minor, and has no history of alcoholism, mental disorder, or felony conviction. But this requirement is almost worthless since it mandates no verification—such as fingerprints and a police background check—to substantiate the purchaser's identity and his declarations. Hence it is really almost worthless.

And while the act of 1968 banned the importation of cheap handguns—known as Saturday night specials—it allowed for the importation of their parts and their domestic assembly and distribution. And so, 1 million cheap handguns that can have no conceivable sporting purpose and cannot be used for anything other than killing human beings at close range were put together and sold in the United States last year—with no real controls on their distribution.

Nowhere are the numbers more frightening and our disregard of them more tolerable than in the category of police killings.

In 1967, there were 57 policemen killed in the United States. By 1972, the death toll reached 112, of whom 108 were killed with firearms and 74 were killed with handguns.

From 1966 through 1972, 621 policemen were killed across the United States. Ninety-five percent were killed with firearms, and 7 out of 10 were killed with handguns.

Indeed it is the policeman on the beat who has the most to fear in a gun-crazed society. He is trained and equipped to defend himself. But there is little he can do about the bullet that greets him as he chases a suspect down an alley, interrupts a holdup, or comes between a husband and wife in a family dispute.

That is why police leaders—including the later J. Edgar Hoover—have long supported stringent gun control.

Our per capita gun ownership rate is between 5 and 30 times that of any other free country. And in 1969, the last year for which we have statistics, our murder rate was 16 times that of Finland, 120 times that of Sweden, and 360 times that of Norway.

New York City has the Nation's most stringent State and local gun controls. And, in 1973, New York's murder rate ranked 9th among the 10 largest cities.

In New York City, every gun is required to be registered and every owner licensed. To get a license, an applicant is first fingerprinted and his background is carefully checked by the police department, to weed out those with histories of alcoholism, mental disorder, or felony convictions. In addition, to get a license to carry a handgun in New York City, he must also prove to the police that he has a specific, legitimate need for the handgun.

The answer is that of our huge population of 8 million, only 24,000 New Yorkers having handguns were licensed. We know that this system works because only a handful of those 24,000 who were licensed ever used their weapons to commit a serious criminal offense.

But just as New York City shows how gun control can be effective, our experience there also demonstrates how even the best State and local controls are tragically undermined by the absence of stringent Federal firearms control.

Although New York ranks 19th in crime among the largest 25 cities, the number of assaults and robberies involving firearms is rising sharply. And the city's chief medical examiner attributes almost the entire increase in murder in recent years to the increased availability of guns.

These are crimes that are almost always committed with illegal guns, not by our licensed owners. Crime guns always come from jurisdictions outside the State of New York.

It has been established, in fact, that these guns are coming to us by the thousands through black-market "gunrunning" networks. These operations thrive on the absence of strict Federal standards, which makes it possible for a gunrunner to walk into a store in the South, give a false name and address on the Federal form, and exchange cash for several hundred handguns. In one case, for example, one man in South Carolina purchased 600 handguns in 1 day so that he could resell them in northern cities.

Under the strong leadership of the former mayor of New York City, John V. Lindsay, and under the present mayor, as well, because I am sure that he knows of the condition; and of former Police Commissioners Patrick V. Murphy and Donald F. Cawley, a major effort was undertaken to deal with this problem.

By increasing the pressure of local law enforcement and working with the Bureau of Alcohol, Tobacco, and Firearms, of the Department of the Treasury, they have uncovered some extraordinary facts about the origin of some 3,000 handguns seized by New York City police from persons arrested with such weapons.

In its recently released "Project Identification," "A Survey of Handguns Confiscated in Crime in New York, Detroit, Atlanta, and New Orleans from July 1, 1973, through December 1973," the U.S. Treasury Department found that of the 2,546 guns traced in New York City, 2,048 came from 46 States and the District of Columbia.

Of the out-of-State guns—that is, guns from outside New York State—500 came from retail outlets in South Carolina, and 124 of the 500 were a part of the 40,000 small, inexpensive handguns estimated to have been illegally delivered to New York City in the 1969–72 period. Following South Carolina as a source of supply for guns in the New York City study were Florida, 273—Georgia, 214—and Virginia, 169.

I am not in any way being invidious in naming these States. We are dealing solely with facts, facts which bear upon the possibility of any State or major city getting obedience to its own laws, in view of a wide open sieve, which is a lack of Federal gun control.

Because of the strict New York City gun control law, trafficking in guns is highly profitable. This is shown by documented cases in South Carolina where cheap handguns selling for $20 each in volume were sold to persons in New York City for as much as $150 each.

Mr. President, I ask unanimous consent that a table outlining these statistics and contained in the report be printed in the RECORD.

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

FIGURE 4.—*Sources of New York City handguns—Project I*

South Carolina	500
Florida	273
Georgia	214
Virginia	169
New York	103
Texas	83
North Carolina	80
Ohio	73
Pennsylvania	47
California	47
Alabama	46
Kentucky	41
Illinois	34
Connecticut	33
Maryland	32
New Jersey	28
Tennessee	28
Louisiana	27
Mississippi	26
West Virginia	22
Missouri	19
Arizona	11
District of Columbia	11
Indiana	11
Michigan	10
Colorado	9
Oklahoma	9
Arkansas	7
Maine	7
Kansas	6
Massachusetts	6
New Mexico	6
Nevada	5
Utah	5
Iowa	4
Oregon	4
Washington	4
Delaware	3
Wisconsin	3
Alaska	2
Minnesota	2
Montana	2
Nebraska	2
Vermont	2
New Hampshire	1

FIGURE 4.—*Sources of New York City handguns—Project I*—Continued

North Dakota	1
Rhode Island	1
Hawaii	0
Idaho	0
South Dakota	0
Wyoming	0
Total	2,048

Mr. JAVITS. Mr. President, last December, Mayor Lindsay reported that a gun running operation uncovered by a joint Federal-city investigation reflects in broader terms what this interstate traffic means. The defendants in this case are alleged to have brought 200 handguns in just one shipment from South Carolina to New York—and the New York City Police Department has already seized 169 of them from persons arrested for attempted murder, assault and armed robbery.

In my judgment what all of these facts indicate is a strong case for Federal gun control.

The amendment Senator KENNEDY and I urge today would if enacted severely restrict the availability of handguns, the weapon used in 52 percent of all murders. It would substantially reduce the personal dangers and fatalities caused by the criminal behavior of those who lawlessly misuse firearms by requiring:

One. The registration of civilian owned gun in the United States;

Second. The licensing of all persons who own guns, and

Third. A ban on the domestic output of hand-held firearms that are not suitable for legitimate sporting, military and law enforcement or protective purposes.

Registration will provide an improved system for law enforcement agencies to trace and apprehend those who commit crimes with firearms. It will tell us where the guns are and in whose hands they are held. A privately owned firearms will be identified by their physical characteristics and by the name of the person applying for such registration. The National Crime Information Center of the FBI will maintain these registration documents to enable law enforcement officers throughout the country to trace ownership of any firearm.

Under the bill, a violation of this provision is punishable by imprisonment for up to 5 years, a fine of up to $5,000, or both. The Secretary has authority to declare periods during which previously unregistered weapons may be registered without penalty. Any intentional falsification of registration information is punishable by imprisonment for up to 5 years, or a fine of $10,000 or both.

The licensing provision would require all hand gun owners to possess an adequate State permit or a Federal gun license. If a State fails to adopt a firearms permit system that meets minimum standards specified in the bill, Federal licensing applies until the State adopts an adequate permit system. No person—whether a licensed dealer or a private individual may sell firearms or ammunition to an individual who does not have either an adequate State permit or a Federal gun license. In addition, no one may possess a firearm 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 adequate permit systems, 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—of information bearing upon his eligibility for a Federal gun license.

The sale or possession of firearms or ammunition in violation of the licensing and permit provisions of the bill carries a maximum sentence of imprisonment for 5 years and a fine of $5,000.

The third purpose of the bill is to ban the domestic output of cheap hand-held firearms. 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 15,000 homicides in 1969 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. During 1969, handguns were used in 81 percent of the murders of police officers killed by criminal assaults. For the period 1960–69, 78 percent of the weapons used in police murders were handguns.

State control of hand-held firearms has been 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.

Mr. President, our fellow citizens are alarmed by the rise of violent crime in the United States, and with good reason. Personal injury and death occur more often in our country than in any other industrial nation in the world. Firearms are the primary instrument of injury and death in American crime.

The current annual toll of 20,000 gun deaths—10,000 murders, 7,000 suicides and 3,000 accidents—is a national scandal that demands congressional action. A nationwide system of firearms licensing and registration can effectively assist Federal and State governments in their efforts to reduce that toll.

Law enforcement agencies support strong gun control legislation as the single most important way to control violent crimes. In 1967, the late J. Edgar Hoover, Director of the FBI, in testimony before the House Appropriations Committee, supported the need for legislation, requiring the registration and licensing of civilian firearms. Police Commissioner Patrick J. Murphy of New York City and others support these proposals while being increasingly apprehensive about the safety of our uniformed policemen.

As fear of crime increases, handgun sales increase; as the number of loaded guns increases, the use of firearms in crime increases; as gun use increases, the death rate from violent crime increases; when this happens, citizen fear of crime increases still more.

The self-defense aspect of this "vicious circle" deserves further attention. Even though the great majority of handguns are kept for household self-defense, it is provable that the handgun in the home is more likely to kill innocent people than to save their lives. In Detroit more people died in 1 year from handgun accidents alone than were killed by home-invading robbers or burglars in 4½ years.

The opponents of gun control maintain that we cannot limit the supply of guns enough to reduce the incidence of violent crime. It is said that criminals will still be able to obtain handguns through illicit channels. We all are aware that the problem of criminal misuse of firearms will not be fully solved by passing this bill or any other gun control legislation. But the enactment of this bill will very definitely reduce the availability of firearms, and consequently reduce the amount of criminal firearms violence.

We have sought to cope with conflicting interests. We have sought to find a way to deal with the illegitimate uses of guns, without at the same time placing undue restrictions on legitimate uses.

Mr. President, action is long overdue. We must act to protect the lives of citizens and police officers who every day confront a tide of fear and very real danger—brought about by so many who use these illegal weapons.

Mr. President, throughout the extensive debates on gun control in this chamber over the years, we have heard the claim again and again that the New York City gun control laws are not effective. As I have previously stated, former Mayor Lindsay and our police officials in New York have made a major effort to rebut this argument

Before leaving office, the mayor prepared an important report entitled, "The Case for Federal Firearms Control." It provides the most accurate information available regarding firearms production and availability, firearms thefts, firearms and police murders, and the correlation between the strength of firearms regulations and the rate of violent crime.

Although it is a somewhat lengthy document, I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

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

[See exhibit 1.]

Mr. JAVITS. For all of those reasons, Mr. President, I hope very much that, at long last, we will be able today—this very afternoon, in the Senate Chamber—to strike the greatest single blow that can be struck by Congress against the epidemic of crime which is so oppressing our people, especially in our metropolitan cities.

Mr. President, we reserve the remainder of our time.

EXHIBIT 1

THE CASE OF FEDERAL FIREARMS CONTROL

I. THE PROLIFERATION OF FIREARMS IN THE UNITED STATES

A. The firearms market

There are an estimated 210 million firearms in the United States. This includes 25–40 million handguns, with an additional 2.5 million handguns sold every year.

Current estimates, based primarily on studies undertaken in 1968 by the President's Commission on the Causes and Prevention of Violence (The Eisenhower Commission) indicate that there are probably as many as 210 million firearms in the United States. This includes 25–40 million handguns, which the Eisenhower Commission reported are being manufactured and introduced into the civilian population at the rate of 2.5 million a year.

Today a new handgun is sold at the rate of one every thirteen seconds, and used ones are traded at the rate of two a minute.

A Staff Report to the Eisenhower Commission, entitled "Firearms and Violence in American Life," found that the number of firearms—both long-guns and handguns—*added* to the civilian market has been increasing rapidly over the years:

[*In millions*]

1959	2.2
1960	2.2
1961	2.1
1962	2.2
1963	2.2
1964	2.5
1965	3.1
1966	3.6
1967	4.1
1968	5.3

The report found the greatest increase was in handguns:

[*Million per decade*]

1899–1948	2.7
1949–1958	4.8
1958–1968	10.2

Another indicator of the increasing proliferation of firearms, especially handguns, is that from 1962 to 1968:

Annual rifle sales doubled;

Annual shotgun sales almost doubled;

Annual handgun sales quadrupled from 600,000 to 2.5 million.

And, our best information indicates that since 1968 this trend has accelerated.

It should be noted that none of these numbers or those that follow can be exact; for neither the federal government nor any other body keeps an exact count of gun production or ownership.

(Note: Throughout this memorandum, the terms "guns" or "firearms" will mean long-guns *and* handguns. "Handguns" will be used to describe those guns which can be concealed and used with one hand, i.e., a pistol or revolver. Handguns pose the greatest problem in terms of crime, while long-guns create a serious risk of accidents and suicides.)

B. The legal availability of firearms in the United States

There are few legal restrictions on the availability of firearms in the United States. The 1968 Federal Gun Control Act is weak and unenforceable, and 42 States have no restrictions whatsoever on who may buy a handgun.

The Federal Law

The Federal Gun Control Act of 1968 banned the interstate and mail order sale of firearms and ammunition. It also contained a provision requiring that anyone buying a firearm of any kind must fill out an identification form giving his name, address, description, and a description of the gun.

Although well-intentioned, the 1968 Gun Control Act is a sadly inadequate compromise law, riddled with holes. Among the major loopholes are:

1. Under the Act, a resident of a state can purchase a gun anywhere in the state provided he meets certain minimum requirements, such as not having a jail record and being over a specified minimum age. However, no verification is required of this information by the purchaser. The purchaser need only sign his name to a form stating that this is indeed his real name and that he is not a lunatic, a felon, or a minor. No fingerprints are required and no background or identity check of any kind is made by the local or state police.

2. Although the 1968 Act banned the importation of cheap handguns known as "Saturday Night Specials," they can still be manufactured domestically and their constituent parts can still be imported and then assembled here. Thus, 1,000,000 "Saturday Night Specials"—guns that can have no conceivable sporting purpose—were assembled and sold in the United States in 1970.

3. Under the 1968 Act any legal purchaser of a gun can resell or give the gun away in his own state to anyone he chooses, as long as the person is thought to be over age and not known to be a convicted felon. There is no regulation or monitoring of these transactions, and no record of such sales or transfers are required.

STATE AND LOCAL LAWS

A digest of state and local firearms laws prepared by the National Rifle Association in 1971 illustrates the lack of minimum uniform standards of firearms control.

For example, a permit or license is required to purchase a handgun in only eight states, so that the weak provisions of the 1968 Gun Control Act are the only restrictions that exist in 42 states. In 21 states no license is needed to carry a handgun. And in only three states (Illinois, New Jersey, and Massachusetts) and two cities (New York and Washington, D.C.) is a license or identification card needed to acquire a rifle or shortgun.

C. Gun thefts

Hundreds of thousands of guns are stolen each year, many during bulk shipment. Only New York City requires security measures to protect against thefts.

Another aspect of gun over-availability has to do with stolen guns. It has been estimated that there are 500,000 guns stolen each year in the United States. And many of these guns may end up in the hands of organized crime.

Except in New York City, there are no laws mandating specific security measures for the protection of firearms from theft. The federal government does not even have a cumulative record of the number of guns that are reported stolen each year, and has no organized effort to investigate these thefts and stimulate preventive measures against reoccurrences.

A New York Daily News article in 1971 reported one ramification of this laxity of control and information:

"In recent months, a shipment of 3,000 .38 calibre pistols consigned to a western dealer was stolen from the Brooklyn piers. The guns became part of the local crime family's arsenal, according to police theory . . . Several guns picked up on Joe Columbo's body guards were traced to a stolen Kennedy Airport shipment . . ."

D. The United States compared to other nations

The United States stands practically alone in its failure to limit the availability of guns.

Almost every European country requires a license to carry a firearm or registration of firearm ownership, or both. Italy, West Germany, France, Belgium, Britain, and the Soviet Union all have stringent gun laws. And, five European countries and Japan totally prohibit the private possession of handguns. Even Israel, on the brink of war and foreign invasion, has a civilian firearms ownership rate that is about 1/15 that of the United States.

The following table, prepared by the Staff Report to the Eisenhower Commission, shows how the United States stands compared to other countries in terms of handgun ownership.

Estimated handgun ownership per 100,000

Ireland	—500
Finland	—500
Netherlands	—500
Greece	—500
Great Britain	—500
Switzerland	—500
Yugoslavia	500–1,000
Israel	1,000
Austria	3,000
Canada	3,000
United States	12,000–20,000

II. GUNS AND VIOLENCE IN AMERICA

A. Gun deaths

An average of 69 people are killed each day by guns—25,000 each year by murder, accident, or suicide.

A total of 25,000 people are now killed each year by firearms in the United States.

This includes 2,900 from gun accidents, 10,000 from gun suicides, and more than 12,000 from gun homicides.

In any given day an average of 69 people in the United States will be killed by firearms.

That means annual fatalities equal to more than half the number of all combat deaths in the U.S. suffered in Vietnam.

Forty percent of all firearms fatalities involve children between the ages of one and nineteen.

B. Gun crimes

There were almost 200,000 gun crimes committed in 1972—or almost 600 a day.

Approximately 63% of the more than 250,000 armed robberies committed in 1972 were committed with a firearm. This statistic is especially alarming because the FBI has found that firearms are seven times more lethal than any other weapon.

Of the 18,520 murders committed in the United States in 1972, 54% were committed with handguns and another 12% with long-guns. This is a slight increase over 1971 when 51% of all murders were committed with handguns. In 1972 murder increased in the United States by 5%, as compared to a *decrease* in overall crime of nearly 2%.

This means that about 10,000 people were murdered with handguns in 1972, an average of 27 per day, more than one per hour. In an average 39 hours more Americans will be murdered by handguns than were murdered by all firearms in England in 1972.

C. Police killings

There has been an alarming nationwide increase in police killings in the past eight years, with 108 police officers killed by firearms in 35 different States in 1972.

There were 112 police officers killed in 1972 in the United States—as compared to 86 in 1969, 64 in 1968, 57 in 1966, and so on.

One hundred eight of the 112 policemen murdered in 1972 were killed with firearms and 74 were killed with handguns.

From 1966 through 1972, 621 law enforcement officers were murdered. Ninety-five percent were murdered with firearms and 72% were murdered by handguns.

Police killings are a national problem, affecting almost every major city and State. From 1966 through 1972, police officers were killed by firearms in 22 of the 25 largest cities:

Cities	Total	Fire-arms	Hand-guns
New York, N.Y.	28	23	21
Chicago, Ill.	36	36	29
Los Angeles, Calif.	8	8	6
Philadelphia, Pa.	9	9	8
Detroit, Mich.	17	17	14
Houston, Tex.	8	7	7
Baltimore, Md.	8	7	6
Dallas, Tex.	5	5	4
Indianapolis, Ind.	0	0	0
Washington, D.C.	8	7	7
San Diego, Calif.	2	2	2
Cleveland, Ohio	9	9	6
Milwaukee, Wis.	3	3	1
San Francisco, Calif.	10	9	6
San Antonio, Tex.	3	3	2
Honolulu, Hawaii	1	1	1
Memphis, Tenn.	0	0	0
Boston, Mass.	3	3	3
St. Louis, Mo.	5	5	4
Phoenix, Ariz.	1	1	0
New Orleans, La.	4	4	3
Columbus, Ohio	2	2	1
Jacksonville, Fla.	1	1	1
Denver, Colo.	1	1	1
Seattle, Wash.	1	0	0
Total	173	163	133

POLICE OFFICERS KILLED BY FIREARMS IN 34 DIFFERENT STATES IN 1972

State	Total	Fire-arms	Hand-guns
Alabama	3	3	1
Alaska	1	1	0
Arkansas	3	3	1
California	6	6	4
Colorado	1	1	1
Delaware	2	2	2
Florida	5	5	4
Georgia	6	6	6
Idaho	1	0	0
Illinois	3	2	2
Indiana	3	3	2
Kansas	1	1	1
Kentucky	2	2	0
Louisiana	5	5	3
Maryland	2	2	1
Michigan	5	4	4
Minnesota	4	4	3
Mississippi	1	1	1
Missouri	5	5	2
New Jersey	1	1	1
New York	5	5	5
North Carolina	7	7	6
Ohio	7	7	5
Oklahoma	4	4	2
Pennsylvania	7	7	4
South Carolina	1	1	1
South Dakota	1	1	1
Tennessee	2	2	1
Texas	10	9	5
Vermont	1	1	1
Virginia	2	2	2
Washington	1	1	1
West Virginia	2	2	1
Wisconsin	1	1	0
Wyoming	1	1	0
Total	112	108	74

1973 has thus far shown a continuation of this trend. As of November 1, 111 police officers had been murdered, 73 with handguns and 104 with firearms. And, as of November 1, in New York City six officers have been killed, all with handguns. (This includes New York City Housing and Transit Police.)

The Staff Report to the Eisenhower Commission concluded:

"The policeman, himself armed, is capable of defending against violent attack. He is trained and equipped to ward off attacks with blunt objects, knives, or fists, and his firearm is usually sufficient to overcome his attacker, even if surprised at close range. It is, therefore, the capacity of firearms to kill instantly and from a distance that threatens the lives of police officers in the United States."

III. GUNS AND VIOLENCE IN NEW YORK CITY

Local gun controls in New York City have worked to curb violent crime, but it is apparent that they are undermined by the absence of uniform Federal gun control.

A. The law in New York

New York City has the Nation's most stringent local gun controls.

To own a long-gun or handgun in New York City you must have a license. To get such a license, an applicant is fingerprinted and his background is investigated in detail over a period of several weeks. Those with histories of mental disorder, felony convictions or drug or alcohol abuse are automatically denied licenses. To own a handgun the applicant must pass the same kind of vigorous background check and also show specific, legitimate need for the weapon. Only 28,000 civilians are licensed to own handguns in New York, of whom almost 4,000 are target shooters allowed to use their weapons only at the firing range.

In addition, the City tightly controls retailers and wholesalers of firearms and is the only jurisdiction that imposes specific theft-prevention security standards on firearms dealers. In December of 1972, the City enacted a law prohibiting the manufacture of cheap handguns ("Saturday Night Specials") in New York.

B. Gun control has worked in New York

New York's stringent gun control laws have been effective in limiting gun crimes.

Of the nation's ten largest cities, New York's murder rate is the second lowest. The murder rate in cities such as Dallas and Atlanta where there are no state and local gun controls is appreciably higher than New York's.

The percentage of crimes committed with firearms in New York City is considerably lower than the national average. The Eisenhower Commission Staff Report found that in 1967, 40% of New York's murders were committed with guns as compared to 63% in the nation, and 57% for the other largest 8 cities. The Report also found that 13% of all robberies in New York were committed with firearms as compared to 37% nationally and 44% in the other 8 largest cities.

C. The effect of the absence of national gun controls on New York's local controls

The absence of national gun controls has undermined New York's local controls.

The easy availability of firearms throughout the United States has critically limited the effectiveness of our local controls.

In 1972, more than 51% of the murders in New York City involved the use of firearms as compared to 25% in 1965. In fact, the increase in murders in New York City in recent years can be almost completely attributed to the increase in firearm murders. The City's Chief Medical Examiner has noted that several other categories of homicide, such as strangulation, assault, arson, and infanticide had remained fairly constant over the last decade while shootings have increased rapidly.

In 1972, there were 4,362 assaults in New York involving guns as compared to 2,711 four years before. In 1972, there were 21,576 robberies involving guns as compared to 12,285 four years before.

With the exception of a few rare incidents, *all of these crimes—the murders, robberies, and assaults—were committed with unregistered firearms by persons not licensed to possess them in New York City.*

These firearms, mostly handguns, were brought into New York to be borrowed or sold on the black market from other jurisdictions that do not have New York's strict laws. These black market operations are responsible for bringing literally thousands of guns each week into New York City.

In response to this interstate traffic in firearms, in 1973, the City's police began working on an ongoing basis with the Alcohol, Tobacco and Firearms Unit (ATF) of the Treasury Department. A joint survey was undertaken of the approximately 3,000 handguns seized by New York City Police in the first six months of 1973 from persons arrested on charges of murder, assault, robbery and violation of the City's gun laws. ATF is tracing these guns to the last point of known transfer, whereupon ATF and the City police will try to determine how the gun then made its way into the possession of the person arrested with it in New York City.

Though the results of the survey are not yet complete (as of November 1, 1973,) they promise to confirm our worst fears about the way in which the absence of strict national gun controls undercuts New York's tough local laws:

—Ninety-seven percent of these handguns have thus far been traced to retail sales outside of New York. (The remainder, about 3%, were guns bought legally in New York City but then either stolen from licensees or, in a handful of instances, abused by the licensees themselves.)

—Almost 70% of the guns came from four states in the South: South Carolina, Georgia, Florida and Virginia—with South Carolina accounting for an alarming one-third of the total. These states have weak or non-existent state gun controls and the only real restriction on handguns is the federal form that a purchaser must sign, swearing he is a resident of the state and is not a felon, lunatic, drug abuser or alcoholic.

Illustrative of the tragic consequence of this interstate traffic is one case in which a joint ATF–City Police effort uncovered a black market operation alleged to be "running" hundreds of handguns a week into New York. Of the 200 guns in just one shipment that defendants in this case are known to have bought in another state and sold illegally in New York, 169 have already been seized by our Police Department in connection with arrests for attempted murder, armed robbery, and assault.

On the other hand, in the last two years less than one-tenth of one percent of the 20,000 people licensed to carry handguns in New York City have used their guns to commit a murder or a robbery.

That, in short, is the case for federal gun-control.

D. Police killings in New York City

Since 1966, 33 police officers in New York City have been killed, 29 with firearms; 26 with handguns.

The month of June, 1973, tragically provided more than enough evidence of the relationship between police assaults and guns, especially handguns. In a 15 day period beginning Saturday, June 2, seven police officers were assaulted with handguns, and one was attacked with a shot-gun. Three of the officers were killed, all with handguns. None of the handguns has yet been identified as a "Saturday Night Special." (A fact which emphasizes that a mere "Saturday Night Special" law will not solve our gun control problems.)

Here are the important facts about each shooting:

1. June 2: A patrolman was killed in a bar with a handgun during a hold-up.

2. June 4: A Transit Authority patrolman, on duty, was shot in the arm with a .38 handgun.

3. June 5: A patrolman, on duty in Brooklyn, was shot in the arm, leg and abdomen while responding to a complaint of shots fired. Three perpetrators were involved using .32 and .22 handguns.

4. June 5: A Transit Authority patrolman, on duty at a subway station in the Bronx, was shot three times by four perpetrators. He died at 5:15 a.m. from a wound from a 9mm handgun.

5. June 6: A detective, on duty, was shot in Central Park. A 9mm handgun was used.

6. and 7. June 17: A patrolman responding to a call that a distraught man was waving

a handgun in a bar was shot to death by the man. His partner was seriously wounded.

None of the handguns used in these shootings were legally registered.

IV. THE CORRELATION BETWEEN GUN CONTROL AND GUN CRIMES

A. The United States vs. other countries

There is solid evidence of the correlation between the restrictions a country places on firearms and its murder rate.

In England, where there are stringent controls on who may own firearms, 19 policemen were killed in the 21 years from 1946 to 1967 as compared to 1,014 American police officers during the same time. And, English police officers are not armed.

In England and Wales, where the combined population is 48.8 million, there were 399 homicides in 1970; in Detroit, where the population is 1.5 million, there were 550 murders in 1970.

In Tokyo, stiff gun laws are credited with making crime a relatively minor problem. It is illegal in Japan to own a handgun, and according to the New York Times, the police feel that the resulting absence of handguns is crucial in keeping the murder and robbery rates as low as they are. Thus, in Tokyo, the world's largest city, three people were murdered with handguns in 1970. During the same year in New York City 538 people were killed with handguns. And, in Detroit, a still smaller city but one with gun laws that are less effective than New York's, there were 550 murders. As for the argument that would-be killers would merely use alternative weapons if guns were made available, there were a total of 217 murders in Tokyo last year as compared to 1,117 in New York City, which has 30% less people.

In 1969, the murder rate in the United States was 7.2 per 100,000 residents as compared to .4 per 100,000 in Finland, .02 in Norway, and .06 in Sweden—all countries with strong gun laws.

The rate of homicides due to firearms in the United States is eight times that of the country with the second highest rate (Canada), 42 times that of England, and 23 times that of West Germany. All of these countries have strong gun laws.

Thus, the United States not only ranks number one among the nations of the world in the number of gun deaths, but number two lags so far behind that the total of gun deaths in all free nations does not equal the total for the United States alone.

B. The correlation between local gun control laws and violent crime within the United States

Even within the United States, in States and localities where gun laws are strong, the murder rate, as well as the percentage of murder committed with firearms, is lower than in areas where gun laws are weak.

The variations shown above between the United States and other countries cannot be dismissed as mere functions of a particular American culture of violence. Rather, the gun laws seem to be a key variable in rates of crimes of violence in the United States. Every available comparison between localities *within* the United States indicates that where gun control laws are stringent, the murder rate, as well as the percentage of murders committed with firearms, is lower than in areas where gun laws are weak or non-existent and which, therefore, have a greater number of guns per capita.

The three states generally thought to have the toughest gun laws—New Jersey, Massachusetts, and New York—are among the five states with the lowest percentage of murders committed with firearms, according to the FBI.

On the other hand, Alaska, the most sparsely populated state, and Texas, both with weak controls, were among the highest in 1968 in murder rates. And, in terms of percentages of murders committed with firearms, the following figures from the Eisenhower Commission Staff Report tell a clear story:

Alaska, 71.4%; Texas, 68.7%; and New York, 31.8%.

Regionally, the South has the highest rates of gun ownership and generally the weakest laws in the nation. And, the South leads the nation in the percent of homicides committed with firearms and in the rate of accidental gun deaths per 100,000. This is illustrated by the following tables prepared by the Eisenhower Commission Staff Report.

Similarly in September of 1973, the Washington Post reported that:

"An absence of gun control legislation in Southern cities may be one reason why those metropolitan areas are dominating the nation's murder statistics . . .

"FBI data show Atlanta leading the nation in 1972 with a rate of 23 slayings per 100,000 population, followed by Gainesville, Fla.; Little Rock, Ark.; Greenville, S.C.; Columbus, Ga.; Tuscaloosa, Ala.; Richmond, Va.; and Savannah, Ga. . . .

"Out of 53 metropolitan areas that reported 12 or more homicides per 100,000 population, 42 were in a 12-state Southern region . . . "If I had my way they would take every handgun ever made and throw them in the river," said Georgia Division of Investigation Director William Beardsley."

The Staff report to the Eisenhower Commission prepared the following two tables which further illustrate the correlation between firearms laws and firearms crimes. (NOTE: New York and Boston are the two major cities in the United States with strong state and local gun laws.)

C. Can gun control be effective?

The slogan, "If guns are outlawed, only outlaws will have guns," is contradicted by all available evidence.

This is an argument frequently used by opponents of gun control. It implies that strict gun laws would disarm the law-abiding citizen while not affecting criminals at all. There are several counter-arguments:

1. Federal gun control does not mean that guns would be outlawed; at most, effective legislation would ban handguns not owned for a specific, legitimate need.

2. Total enforcement of any gun law would indeed be impossible. However, such laws could be enforced effectively enough to make a tremendous difference. If strict accounts were kept on all guns, beginning in the factory and moving on from there, and if there were uniform national standards, gun laws would be enforceable. As J. Edgar Hoover put it: "While it is true that a hardened criminal might possibly obtain a gun regardless of statutes in force, most authorities agree that controls would make acquisition much more difficult and less likely."

Also, a strong gun law facilitates increased control of criminals by providing police with an important ground for arresting armed citizens. In 1968, Leonard Reisman, then a New York City Police Department Deputy Commissioner, testified that the State's Sullivan law had enabled the police "to make many arrests for the illegal possession of pistols and revolvers before the possessor had had the opportunity to commit a crime of violence."

3. Restricting the availability of guns even to law-abiding citizens would in fact be an important step in curbing violent crime. Guns in the hands of outlaws are not the main cause of gun violence and civilian slaughter in the United States. There were 2,900 accidental gun deaths last year, 200,000 accidental gun injuries, and 10,000 gun suicides. None of these involved outlaws having guns. Most involved guns being too readily available.

Thus, in 1968, the Staff Report to the Eisenhower Commission, in considering the argument that civilians need firearms for self-protection, found that for every robber stopped by a homeowner with a handgun, four homeowners or members of their family were killed in handgun accidents.

Similarly, a study done in Cleveland in 1973 found that a firearm purchased to protect a family against an intruder is six times more likely to be used to kill a family member or friend.

More important, the FBI tells us that most murders (73% in 1972) are committed by previously law-abiding citizens committing impulsive gun-murders while engaged in arguments with family members or other acquaintances. In these cases, a readily available gun is what turns an assault into a murder.

V. SUGGESTED FEDERAL FIREARMS CONTROL LEGISLATION

Guns should be treated like motor vehicles.

Based on our experience with firearms abuse in New York, we would include the following in a model federal firearms control bill:

1. A requirement that all firearms be registered.

2. A requirement that all owners of firearms be licensed and that no one receive a license until his identity has been verified and it is certain that he is not a minor and has no history of felony conviction, mental disorder, or alcohol or drug abuse.

3. A strict limitation on licenses for the ownership of handguns so that only those demonstrating a specific, over-riding legitimate need for a handgun can get one. Presumably police officials in urban centers would interpret this requirement of over-riding legitimate need to mean that few, if any, civilians could own handguns in a crowded, urban environment, except for target shooters, who might be required to store their handguns at the shooting range.

4. A total ban on the domestic manufacture, assembly or sale of handguns not suitable for sporting use ("Saturday Night Specials").

It should be emphasized that a ban on "Saturday Night Specials" is only a part of our overall proposal. This is because the experience in New York and elsewhere indicates that while these cheap handguns are an important aspect of the handgun abuse problem faced by law-abiding citizens and police officers, eliminating them will not come close to fully eliminating the problem. Recent surveys conducted by the New York City Police Department of guns seized from arrested perpetrators determined that less than 30% of the firearms seized were "Saturday Night Specials." Similarly, a survey of all handguns seized in the first six months of 1973 in the City's highest crime precinct found that even in this poverty neighborhood, approximately half of the classifiable handguns used by alleged perpetrators were high-quality, expensive weapons. And, none of the seven New York City police officers assaulted with handguns during June, 1973 were assaulted with "Saturday Night Specials."

5. A requirement that gun manufacturers, wholesalers, retailers, and transporters take appropriate security measures to guard against firearms thefts and that they be required to report all such thefts immediately to the police and the federal government.

6. To help end the damage caused by years of uncontrolled firearms distribution and ownership, the federal government would for a two-year period buy back all firearms from civilians who want to turn them in at a price at least equal to their current market value. this "buy-back" option would be available to all who surrender their guns voluntarily to state, local or federal police officials. For these two years subsequent to the passage of federal gun controls there would be no prosecution for violation of the new law for

all who so surrender their guns voluntarily. The federal government would destroy all such firearms.

This "buy-back" option would not only make the other elements of the new law more realistically enforceable; it would also remove from circulation those thousands of guns now kept "lying around" by law-abiding citizens who don't really need or want them. Police experience indicates that these guns often become weapons in accidents, spur-of-the-moment assaults, murder, and suicides; and that they are often stolen in burglaries, then ending up in the hands of criminals.

This proposed system of firearms control essentially parallels the system of motor vehicles control now used by the 50 states: vehicles are registered and drivers are licensed. It should be noted that there is no reason why this legislation could not take the form of federally imposed standards that the states or localities could enforce. This would provide some flexibility for the "overriding need" standard proposed for the granting of handgun licenses.

Mr. CHURCH. Mr. President, the able Senator from New York has spoken of the stringent gun laws that apply in New York City, where it is necessary for anyone who would legally possess a handgun to be licensed by the city, to have his fingerprints taken, to have his background checked by the city police, and then to show a legitimate need for the weapon, as required by the ordinances of the city.

This is an extremely stringent law, so much so that the Senator himself has acknowledged that only 24,000 people in a city of more than 7 million have qualified under the law to possess a firearm legally.

This, in itself, demonstrates the futility of attempting to fight crime by registering particular kinds of weapons, or licensing their owners. For the gun crime rate in New York City is very high indeed—one of the highest in the country.

The Senator from New York attempts to explain this away by saying that other States do not have equally stringent laws and, therefore, many thousands of handguns come into New York illegally from such States as South Carolina, Virginia, Florida, and others.

Well, Mr. President, if we were to enact a Federal law of the kind advocated by the Senator from New York, what would prevent the flow of weapons from coming in from sources outside the United States, from Canada, Mexico or the Caribbean?

Obviously, the laws of New York have not prevented the illicit influx of weapons from outside the State. If we were to enact a Federal law, we would face the same problem. The underground, the Mafia, would immediately grab hold of the "hot" gun traffic, and criminals would be as well supplied with unlawful handguns as they are today.

You see, Mr. President, the part of the case that has never been proved by gun control proponents is how, in fact, their controls would reach the criminal.

Oh, to be sure, law-abiding citizens would have to go through the registration process, the fingerprinting, the background check by local police, the licensing and the registering. But who in the world assumes that the criminal element will pay the slightest heed to such registration laws?

The only effect will be further harassment of law-abiding citizens, while the criminals continue to ignore the law. As the Senator from New York admits, the laws of New York notwithstanding, their effect on the criminal element has been nil.

Mr. McCLELLAN. Mr. President, is there any evidence whatsoever to indicate that the New York statute is enforced in New York now?

Mr. CHURCH. The statute is being enforced as rigorously as the State of New York is able to enforce it.

Mr. McCLELLAN. All right. The Senator says only 24,000 handguns are registered.

Mr. CHURCH. Yes.

Mr. McCLELLAN. I wonder whether any are registered by the Mafia and these other people that commit these crimes?

Mr. CHURCH. Of course not.

Mr. McCLELLAN. Of course not.

Mr. CHURCH. Furthermore, I would say to the Senator that there are undoubtedly hundreds of thousands of handguns owned by people in New York City who keep them for their own protection—guns which are not registered and which the law has failed to reach.

Mr. HRUSKA. Mr. President, we had before the Judiciary Subcommittee the person of the chief of police, Mr. Pat Murphy, who was the chief of police in New York and his estimate of handguns illegally possessed in the city of New York, that is to say not registered, was 500,000.

The New York Times researched the matter and also made an estimate. It estimated that there were 1 million such guns illegally owned and possessed by citizens and residents of the city of New York.

I believe these statistics strikingly prove the point the distinguished Senator from Idaho is making.

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

Mr. CHURCH. I yield.

Mr. McCLELLAN. Is there any interference with the city of New York enforcing the law?

Mr. CHURCH. None whatever.

Mr. McCLELLAN. If they cannot enforce this law, how would they enforce the Federal law?

Mr. CHURCH. The Senator makes a cogent point. The argument that we need a Federal law is simply not borne out by the facts, nor by a careful examination of the experience of those States and cities that have stringent gun laws of their own and cannot enforce them.

Mr. McCLELLAN. They have the opportunity to demonstrate that it can be made effective, but they are unable to demonstrate it.

Mr. CHURCH. The Senator is correct. The only conclusion that can be drawn from the experience of those States that have attempted to combat crime through gun control laws is that it has failed. Why we should assume that it will not fail if we adopt laws of larger scope, at the Federal level, escapes me.

In fact, Mr. President, if this amendment were to be adopted, it would mark the commencement of a Federal intrusion in this area that would go far beyond handguns. Once the Federal Government asserts the right to license, to fingerprint, and register the possession of handguns, it is inevitable that the next step will extend that control to every other form of weapon—to long guns, to sporting guns, and to every other kind of firearm. That is why we must not permit Federal intrusion to begin at all.

From the start of this argument over gun controls—and I have consistently opposed Federal gun controls in my 18 years in the Senate—I have stressed that this is a field that should be reserved to regulation by State and local governments. Crime conditions vary greatly from State to State. Therefore, each State should be free to deal with its own crime problem in its own way.

The worst thing would be to enact Federal laws designed to deal with the crime problems in Cincinnati, Cleveland, Chiago, and New York, and then try to live with those laws in Arkansas or in Idaho, where the condition of life is quite different and where the people keep guns in their homes because they most often do not have access to police around the corner.

In many a county in my State, you cannot get instant service from the sheriff, even if you can reach him by phone. It might take him an hour to reach you. People in Idaho keep guns for their own protection, and everyone knows it—and the crime rate is exceedingly low, incidentally, as a result. To tell the people of my State that they cannot possess guns without Federal permission is to tell them that they are no longer sovereign. To tell the people of my State that the Federal Government may step in and force them to be fingerprinted and examined by the police before they may own a gun is simply to ask for open defiance.

For that reason, Mr. President, I say that we ought to be mindful that this is a big country; it is a big continent; the problems and conditions of life vary greatly from one region to another, from State to State, and from locality to locality. The control of guns should be left to State and local governments; it is not a proper place for Federal intrusion.

Mr. McCLELLAN. Mr. President, I yield 5 minutes to the distinguished Senator from Alaska.

Mr. STEVENS. I thank the Senator from Arkansas.

Mr. President, I am happy to join the Senator from Idaho in opposing this amendment.

Senator KENNEDY's amendment to S. 1401 would require a registration and permit system for all handguns. This amendment makes no attempt to distinguish between "Saturday night specials" and sidearms used for target practice or hunting.

I believe that a handgun is not an inherently evil instrument. A piece of hardware cannot do anything the user does not make it do. Violent crimes are committed by criminals—not handguns alone. A handgun is both a necessary and

respected item for many of the citizens of Alaska.

Proponents of gun control would lead us to believe that crime and guns are synonymous. The facts not agree. The Law Enforcement Assistance Administration estimates approximately 100 million guns are in private hands in the United States. The total number of crimes involving firearms in 1971 was approximately 353,000. That means that only .0035 percent of all guns were involved in crimes; and that does not include those guns that were used twice or more.

The FBI reported that in 1971, one-fourth of the 364 cases of aggravated assaults involved guns. The knife, far oftener than the gun, is the weapon used in assaults. I would like to add one more example: The Eisenhower Task Force Study on Firearms found that, while sales of long guns doubled between 1962 and 1968, the sale of handguns quadrupled. The Task Force concluded that the fear of crime, violence, and "perhaps the anticipation of stricter firearm laws" appears to have stimulated handgun sales.

The facts show that crime and guns are not synonymous and, in fact, controlling guns may have the opposite effect. Many people in their anger against the criminal have turned on guns as the scapegoat. We must redirect this strong anger back toward the real culprit, the person who would use a gun to harm another human being. The fight should be to strengthen our police, streamline our courts, and remodel our prisons so crime control is a reality and gun control is a moot reality.

A further objection which I have to the amendment now being considered by the Senate is a lack of distinction between the States it affects. The use of handguns in Alaska differs significantly from the use of handguns in other States; those primarily composed of urban areas. I am convinced that gun control legislation requiring registration should not be enacted at the Federal level, but is more appropriately a matter for State legislation. The problems facing citizens of the large inner cities, such as Detroit and New York are vastly different from the problems facing the citizens of rural States such as Alaska.

In many Western States much of the rural areas are still frontier. For example, when an Alaskan goes out into the bush to hunt or fish, he nearly always carries a handgun for his own protection, and to be protected from large animals, such as bears and wolves. I feel, therefore, that it would be inappropriate to deprive the citizens of Alaska of weapons that are necessary for their own preservation. Many States and localities have enacted comprehensive systems of law to make punishable certain criminal acts perpetrated with firearms. There is no need for blanket legislation at the Federal level.

The people in the bush areas of my State need firearms to provide food, clothing, and other necessities of life. The administrative requirements of this amendment would be unduly burdensome on the law-abiding citizens of my State. The remoteness of Alaskan villages and the lack of appropriate administrative contacts would make it extremely difficult for those people to acquire handguns which are necessary, in many instances, for their survival.

Alaska may be considered the sportsman's paradise of the United States. The amendment presently under consideration makes no distinction between handguns used for sporting purposes and the use of handguns for illegal purposes, and I am convinced that the right of law-abiding citizens, and especially sportsmen, to purchase and own handguns and ammunition without burdensome administrative procedures and restrictions should be preserved. This can only be done on a State-by-State basis where each State is permitted to determine its own needs and requirements in the area of registration of handguns. Alaska and New York, or any other large metropolitan State, are vastly different in their needs, and this difference must be recognized and considered in the passage of any firearm legislation at the Federal level.

I cannot overstate my opposition to this amendment.

Mr. President, the interesting thing about this amendment is that it is going to provide a shopping list for those who are already obtaining their weapons illegally. They will know just where to go to steal more guns.

The Senator from New York has pointed out that of the vast percentage of the crimes committed in New York, as I recall, only a handful were committed by those who had legally registered their guns or obtained licenses for them.

What we are really talking about here is an amendment that would place a tremendous burden on those who legally possess the 40 million guns throughout the country. The estimate is that 25 percent of all the households in the United States have guns today. So we are going to tell all those who legally possess their guns that they must come in and register them. And why? In order to try to control those who already illegally possess weapons and have the weapons in their hands for the purpose of committing a crime.

An interesting study was conducted in Texas. It was a study of the criminal and his weapon. I find it very interesting that the study indicated that of 491 adult male felons in Texas and Louisiana, the principal and major source of the weapons they had used was theft.

Now we come up with a concept that we are going to require the registration and licensing of guns, and anyone can go to the local police station and find out if I own a weapon and what kind it is. What an invitation to more crime.

I cannot understand that approach to crime control. It is really punishing those who have their weapons lawfully, in order to try to get those people who are already committing crime to comply with another law.

It is difficult for me to understand the registration provision, which gives a person who now lawfully has a gun 180 days within which to register his gun; and if he does not do so, he becomes a felon. Yet, the people who have the guns that the sponsors of this amendment seek to control are those who already illegally obtained them. They are already felons—do you really think they will register their guns.

The guns that the Senator from New York mentioned, which were acquired in South Carolina and transported to New York, are already in violation of Federal law. That transaction would be in violation of existing Federal law. What has that Federal law done to control the interstate trafficking in weapons destined for criminal hands? They go into New York, and they are sold to people who are violating the laws of New York as they exist today.

I believe that the real problem about this matter is that the proponents of gun control continue to try to tell us that crime and guns are synonymous, that guns commit crimes, not people. It is like telling a person in a business that the typewriter made the mistake, not the stenographer. I do not quite understand that approach to an instrument such as a gun.

In my State of Alaska, guns, including handguns, are an absolute necessity for many people. To put on my people the burden of registration and licensing would mean that many of them would have the duty to travel literally hundreds of miles to go to a Federal official to register their guns. And for what?

As a practical matter, in the areas where the licensing laws and registration laws exist today, the rate of crime is higher. Where there are no such laws and where there is a preponderance of guns today, the studies that have been conducted indicate that crime rates are lower. Where more guns are in private hands, crime rates are lower.

I cite, for example, a pamphlet prepared by New York Law School, under the New York Law Forum, entitled "A Controlled Look at Gun Controls." It states that five States—Iowa, North Dakota, Vermont, Washington, and New Hampshire—have an average homicide rate of 1.8 percent. That is extremely lower than those States that have strong gun control laws. Some people would say, "Well, that's because these are low population density States." One can look at the State of Rhode Island, for instance. It had a very low homicide rate of 2.2 percent, despite its very high density, and it had no gun control laws in effect at the time.

The study ends with this statement, which is very interesting, and which I would like to read for the RECORD:

> The furor over the gun control issue accurately reflects its emotional content, which is high for both gun owners and gun haters, but sober analysis of the problem must inevitably lead to the conclusion that whether we have gun controls or not, the pattern of criminal activity in this country will be unaffected and there will be no significant difference in the number of victims. If we remove guns from the homicide environment, there will be no homicides with guns, but as we have seen, there will be substantially as many homicides. In any case, advocates of gun controls must face the problem as it exists, not as they wish it might be. This is a country where a quarter of the citizenry may already own enough guns to arm every

single inhabitant; where, unlike other countries where gun ownership has always been restricted, firearms are as common, and as easy to obtain, even illegally, as good whisky—and sometimes cheaper. The American ethos has been that no task is too hard for us, but gun control, like victory in Vietnam, whether or not possible, is not worth the cost.

Mr. President, that is the last question I would raise: The cost of attempting to register the 40 million guns in private ownership to try to control that .0035 percent of guns in this country that are used illegally annually.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "The Armed Citizen."

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

THE ARMED CITIZEN

After two windows were broken simultaneously in her Elyria, Ohio, home, Mrs. Mary Farkas got a .22 revolver, entered the kitchen, and found a man peering in. Meanwhile an accomplice climbed in a front window, Mrs. Farkas fired a shot that sent both men fleeing, one leaving behind a machete. Police apprehended three men later and charged two with malicious entry. (The Chronicle-Telegram, Elyria, Ohio)

When one of two armed bandits grabbed Harry Dillion's wife and pressed a gun to her temple, the Philadelphia shoe store owner pulled a .38 pistol, killed one robber and wounded the other. (The Philadelphia Inquirer, Philadelphia, Pa.)

Dr. Barney Benedictson of Yakima, Wash., awakened by barking dogs early one morning, observed two youths loading a pickup truck in front of a neighbor's home. While his wife phoned the sheriff. Benedictson blocked the suspect's truck with his car, then pulled a gun and held the burglars. (The Yakima Herald Republic, Yakima, Wash.)

A Florissant, Mo., housewife, Mrs. Beverly Barrett, investigating noise at the rear of her house, saw two youths removing a porch screen. She got a shotgun and, when one of the intruders stepped onto the porch, she ordered him to lie down. The other youth fled. (St. Louis Globe-Democrat, St. Louis, Mo.)

A young man made a purchase in Robert Hindman's Waukegan, Ill., service station, then grabbed a fistful of money from the startled manager and bolted out the door. Hindman got a pistol, ordered the thief to stop, and held him for the police. An alleged accomplice waiting in a car was arrested also. (The News-Sun, Waukegan, Ill.)

Porterville, Calif., storeowner William Baker attempted to hide when an armed masked man came into his shop. When the man began firing, Baker returned the fire, wounding his assailant. Baker eluded a second masked robber and went for help. The body of the wounded bandit was later found in a driveway, apparently dumped there by his companion. (The Fresno Bee, Fresno, Calif.)

Acting on a phone call reporting a prowler at his Dolphin, Va., general store, Keith Hargrave got a gun and went with his son to investigate. They found a man inside the store who immediately surrendered when he saw the Hargraves were armed. (Richmond Times-Dispatch, Richmond, Va.)

A man with a stocking over his head walked into Bert Curtis' Thousand Oaks, Calif., store and, wielding a gun, demanded money. Curtis reached for a gun under the counter and fired two shots that sent the bandit fleeing. (The Press-Courier, Oxnard, Calif.)

Ralph Kelley, manager of a restaurant in Detroit, Mich., grabbed a .38 revolver after a robber pulled a .22 pistol and announced a holdup. The bandit fired twice, missing Kelly both times. Kelly then shot and wounded him. (The Detroit Free Press, Detroit, Mich.)

Arriving at her Fairview, Alaska, home, Fay Purnell found a man inside. He chased her around to the rear of the house where she produced a pistol and fired. The suspect, wounded, jumped into a car and drove off. He soon was apprehended by police. (Anchorage Daily News, Anchorage, Alaska)

Surprised by four armed men in the backyard of his Montclair, N.J., home, Dr. William L. Cassio pulled his own gun and fired three times. The men, one believed to have been wounded, fled the scene of the thwarted hold-up. (The Star-Ledger, Newark, N.J.)

Roy's Speed Shop in Shamokin Dam, Pa., had been the object of multiple break-ins, so owner Roy Cressinger decided to spend the night on the premises. When three youths broke in, Cressinger was ready. He held a 12-ga. shotgun on them and called the police. (The Daily Item, Sunbury, Pa.)

A man armed with a meat cleaver entered the Spirit House liquor store in Meriden, Conn., and ordered manager Stanley Zajac to "give me all the money." Instead Zajac pulled a pistol from under the counter and shot the would-be robber in the leg. (The Morning Record, Meriden, Conn.)

Mr. HRUSKA. Mr. President, will the Senator from Arkansas yield?

Mr. McCLELLAN. I yield to the Senator from Nebraska.

Mr. HRUSKA. Mr. President, a while ago I stated that Mr. Pat Murphy appeared before our Subcommittee on Juvenile Delinquency of the Committee on the Judiciary. He gave us the statistic that the illegal guns, those that were not registered, numbered 500,000, and that the law requiring the registration of the guns had been on the books for 50 years or so. He also gave the statistic that only 22,000 or 24,000 permits were registered.

The point is that New York with 30,000 of its finest policemen were not able to enforce and have not been able to enforce that permit law in New York City. The point is that the law enforcement officials have not been able to enforce that law.

The argument is made however that, "In New York we can control our own but we cannot control the guns that are shipped into New York State or New York City from all the jurisdictions." Yet, as pointed out by the Senator from Alaska, such interstate shipments are already against the law unless they are made to federally licensed gun dealers, wholesalers or jobbers, as the case may be. So really what is being asked for here is another Federal law when one which is on the books now is not being enforced and apparently is incapable of being enforced.

This body went on record only 2 years ago, in 1972, I believe it was, when there were 11 votes cast in favor of the so-called Kennedy amendment and 79 were cast against it. I do hope that this body will have good sense to make a similar disposition of the amendment that is before us today.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. McCLELLAN. Mr. President, I yield 2 additional minutes to the Senator from Nebraska.

Mr. HRUSKA. I thank the Senator.

I do not know whether the point has been made or not yet in the consideration of this matter, but there have been no hearings on this measure. The amendment has been pending in committee for a long time and no request has come to me for a hearing on this particular measure or the details of it. It is said that this is a well-debated issue. No issue is well-debated until we get down to specific words arranged in a specific sequence and a check of all provisions in the language of the bill we are asked to pass. It seems to me the best way to approach this problem once again, as I said before, is to have stricter enforcement of the Federal law we have, the imports, the licensing of manufacturers, importers, wholesalers, and dealers. These matters are well treated in legislation already adopted. If any further control of firearms is desired, it should be at the State level where it will be tailored for local needs and circumstances and where there will be a better capability for enforcement.

Mr. President, I reserve the remainder of my time.

Mr. KENNEDY. Mr. President, how much time do we have remaining?

The PRESIDING OFFICER. The Senator from Massachusetts has 28 minutes remaining.

Mr. KENNEDY. Mr. President, I yield myself such time as I need.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, in listening to the comments that have been made here by my colleague from Idaho about the possibility of Federal legislation, that people in Idaho are able to take care of their problems so why cannot the people in Massachusetts look after their problems, we have addressed ourselves in Massachusetts to the issue. We have strong gun control legislation. But as I stated before, the Commissioner of Public Safety said that 86 percent of the guns used in crimes and acts of violence in Massachusetts come from outside the State of Massachusetts, they come from northern tier States of Maine, New Hampshire, and Vermont.

We are trying to help protect ourselves in Massachusetts and throughout the country, as well as the southwestern part of the United States where there is a heavy use of guns in crimes of violence. We want to make sure they do not buy guns in Idaho and the southwestern part of the United States and use them in the northeastern part of the United States.

We are talking about minimum standards. There are laws for hunting and fishing in Idaho and we are not asking that there be placed more than a minimum burden on individuals who also want to use handguns.

I am very much aware of the emotions in this debate. I remember campaigning in Idaho not long ago and being in a hotel room before going down to make a talk at a luncheon. I flicked on the television set and on that television set there was an advertisement that one candidate was using to get elected to public office in the United States. It showed a rifle being tucked into a sportsman's arm and the caption read "The three boxes that made America great

are the jury box, the ballot box, and the cartridge box. Vote for So and So for office." It went over overwhelmingly.

Those of us who support the amendment are aware of the situation.

Too often the facts are misconstrued, and the whole gun situation has been misrepresented. The issue has been, I think, in many instances deliberately misconstrued; and as a result the people are confused and we as a body have failed to come to grips with this particular issue.

I hear my colleague from Nebraska talk about hearings. I remember when I used the argument not long ago. That is a marvelous argument to use around here and it is really only applicable when Senators have the votes they need to carry forward their proposal or proposition. We had an authorization of $10 billion for the Law Enforcement Assistance Administration, and we had 2 days of hearings on that. A number of us wanted to have that bill referred or to shorten the period of time in terms of yearly authorizations, and we ended up with that LEAA legislation after approximately 4 or 5 days of hearings with an 8- or 9-year application of that legislation. That was an approximately $10 billion bill.

Now we hear the argument about whether we had hearings on this proposal. In 1969 we had 3 days of hearings on firearms registration and licensing and heard from 10 different witnesses.

These arguments have been used time and time again, I realize, by the opponents of this proposal.

I think it should be of interest to this body to know that in 1962 there were 598,649 handguns produced. In 1968, 2,500,000 handguns were produced—a 500-time increase from 1962 to 1968. Now the estimates reach as high as 5 million guns produced in 1 year. And the American people want to know what they can do about crime and violence in this country. They can vote for this legislation—598,000 handguns were produced in 1962 and 2,500,000 in 1968, and there are about 5 million now, and people wonder what they can do about crime and violence.

We have a very simple, legitimate legislative remedy to try to cope with the problem of the proliferation of weapons, and it is about time we come to grips and face up to this issue.

Mr. President, I have here some additional material that responds in detail to the six major arguments that have been mentioned generally during the course of the debate—the constitutional argument, the right to bear arms, and the responses to that argument, the fact that because lawless citizens feel no obligation to be bound by gun restrictions or gun control, we will simply disarm those who abide by the law.

I am convinced that stricter enforcement of licensing and registration will serve to isolate the people who flout the law and subject them to prosecution for gun violations before they commit other crimes with their guns.

The argument is made that gun control laws cannot control access to guns. Yet the records shows that even the limited provisions of the gun law of 1968 have limited handgun importation. The National Firearms Act of 1934 essentially eliminated civilian access to machine guns, sawed-off rifles and shotguns, mufflers and silencers. It had an impact in the dramatic reduction of the availability and access to these weapons.

Another common refrain we hear against firearms control is that guns do not kill; people do. Yet statistics show that when guns are in hand, two-thirds of the people who kill do so in that manner. One hundred thousand robberies a year take place with guns in hand. One quarter of the Nation's 300,000 aggravated assaults occur with guns. Rarely does one make a deliberate choice of a gun over a knife, but because the fatality rate of knife wounds is about one-fifth that of the gun wounds, we can conclude that use of the knife rather than a gun would result in 80 percent fewer deaths.

There is the argument that the opponents are outraged at the climbing crime rate. They say they do not need a gun law, but they say we should have longer jail terms for those who commit crimes with them. It would not surprise me if we had a substitute amendment to lengthen the period of the jail sentence for use of guns in crimes of violence. That is what usually happens. They will vote against this amendment, and then Members of the Senate are frightened that somehow they will be looked upon as being soft on crime and they will extend the length of sentences for people who use such weapons in crime of violence.

Even if our penal system were not already beleaguered with problems, that kind of legislation might be depended upon to produce undesirable results. Generally courts respond to crimes of violence by imposing a stiff penalty. If the penalty were made stronger, it would encourage the armed robber to leave no witness. If the penalty were extended much further than it is, obviously the criminal is going to feel there is a reason for leaving no witness, and it obviously would have an undesirable result.

It may be that the greatest argument against this proposal is on the basis that the requirements for registration and licensing are cumbersome and inconvenient. Some believe such requirements are unfair and punitive, and that the persons adversely affected are the innocent people who pursue the hobby of hunting and recreation. I believe that legislation which would reduce the misuse of arms would enhance at the same time whatever pleasure may be derived from recreational pursuits. But are we to balance the inconvenience of someone who has to license and get registered or how someone can shoot a moose or a deer, in my part of the country or other sections, against the saving of lives?

It is said that if we go ahead and pass this licensing and registration provision, we might be able to save a few lives—we do not know how many—but think how inconvenient it is going to be to our sportsmen. There will be some who will say that, though we can make an absolutely convincing argument that there will be the saving of human lives with the substance of this amendment, it is too much of a burden on individuals.

Mr. President, just in conclusion, one of the old political adages was "A car in every garage." I think unless we are going to take some important legislative steps such as this amendment, we are going to find two, three, and four guns in every home, with all of the attendant acts of violence and tragedy that will spring from it.

Mr. JAVITS. Mr. President, will the Senator yield me 5 minutes?

Mr. KENNEDY. I yield.

Mr. JAVITS. Mr. President, I think the Senator from Massachusetts (Mr. KENNEDY) certainly has presented the facts and figures most admirably, and I shall not repeat them, but there are two arguments here that are very critical and seem to me invalid.

One argument is that because it will be inconvenient and they do not need it in Nebraska and Alaska, it should not be the national rule. In the first place, there are a lot of things that Alaska and Nebraska do need that we make the national rule. that other States have no interest in it whatsoever, and I voted for them many times. So we, who come from States that need it, think it is high time that those Senators help us, in the interest of achieving a more orderly and peaceful country.

Second, what inconvenience are we putting on those States? They are going to have the local doctor and the local police chief certify to getting a local license. You and I know it is not going to be the same as getting a license in New York, Boston, Chicago, Los Angeles, and San Francisco.

It will be an easy matter because that is the way of life in those areas of the country. It will not be an onerous requirement at all. But to us it will mean a matter of life and death and, in many cases, the life and death of police officers.

This is a key point. We will be denied something that we urgently need for crime control. If we are without it, it really will not mean terribly much to those who say that they do not need it and can live without it.

It does have an effect. In my great State, the city of New York is down at the bottom of the list and not at the top in homicides committed with firearms, in robberies committed with firearms, and in aggravated assaults committed with firearms.

The same is true in Boston, the major city in the State of Massachusetts. That State also has a tight gun control law. Notwithstanding the fact that it is not tight enough in terms of number of weapons which are sent in from other places, it nonetheless is having some effect and will have more effect if we can dam up this stream.

Finally, the opponents say that there will not be shipments to recognized dealers. The flow of these weapons will continue just the same, even though there are Federal and State licensing requirements. Certainly this will shore up one part of the problem which is now difficult, the obtaining of guns for criminal

purposes locally. Guns can be obtained locally, the opponents say, and the laws cannot ever be fully effective. This is true of any law. Why do we not repeal all drug laws? Drugs are flowing in this country. Yet we are the toughest country in keeping the drug laws on the books.

We are the one country in the world that allows such unrestricted gun ownership. We have high homicide rates and high rates in burglary, robbery, and aggravated assaults. They are so high that many of the other countries of the world look upon us as being the crime center of the world.

Mr. President, there must be some accounting for the very low crime rates in other countries. The facts show that one of the major factors for their lower crime rates is the fact that they are strict and tough on guns, especially handguns.

Mr. President, for all of those reasons, I join completely with the Senator from Massachusetts in his statement that if we are really sincere in wanting to do something—which we can do—to make it tough for the criminal, this is one thing we can do.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KENNEDY. Mr. President, I yield the Senator 1 additional minute.

Mr. JAVITS. Mr. President, it is entirely within our own control and would cause no real inconvenience to anyone in the country who feels his area or State does not need it. It will be of tremendous benefit to the part of the country where more than 20 percent of the people now live, in the great cities of the country.

I hope, Mr. President, that the Senate will agree to the amendment.

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

Mr. McCLELLAN. Mr. President, I yield 3 minutes to the Senator from Arizona.

Mr. GOLDWATER. Mr. President, I would like to ask a question of my friend, the Senator from New York, concerning the registration process. For example, on page 4 of the amendment, line 17, I note that it says:

> (2) the name of the manufacturer, the caliber or gage, the model and the type, and the serial number of the handgun; * * *

The question I want to ask concerns the fact there are many of us in this country who collect guns and have collected them for years. In my collection, I doubt that half of them could be identified by manufacturer. At least half of them carry no serial number. This has always caused me to wonder how a gun collector who collects guns not to shoot the guns, but for the purpose of collecting the guns, could register them. If a man cannot register the guns, would he be in violation of the amendment?

Mr. JAVITS. Mr. President, I have been trying to follow the Senator very carefully. The pertinent thrust of the amendment is to register operable guns. I do not think that we are arguing here about gun collections where one does not have operable guns. If all the guns are operable, then they would be covered. However, I do not think we intend to cover guns that are not in operable shape. We do not have any intention to cover them.

Mr. GOLDWATER. Mr. President, I remind my friend, the Senator from New York, that while these guns are not used, they are operable. They are muzzle-loading guns. They fire from cap or from flint. They fire a ball.

There is no question of a license. No license is required. There are, I believe, hundreds of thousands of such guns in this country. While they are unwieldy, nevertheless, they would come under this law if the amendment is agreed to.

That gives me concern. We would be in violation of the law for not registering the guns. Yet, there is no way of determining the manufacturer or the serial number, which is usually the way one registers a gun.

Mr. JAVITS. Mr. President, I would like to call to the attention of the Senator something that has just been called to my attention. On page 13 of the amendment, lines 13 through 22 inclusive, the statement is made:

> Such exemptions may take into consideration not only the needs of police officers and security guards, sportsmen, target shooters, and handgun collectors . . .

There is wide discretion here. I think it is fair to say that the thrust of the amendment is designed to reach the guns that are operable which can be identified through some reasonable process.

Mr. GOLDWATER. Mr. President, I thank the Senator for calling this language to my attention.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield to the Senator from Michigan.

Mr. HART. Mr. President, sooner or later we are going to do more than talk about the necessity of removing the tools of violence from the bureau drawers or the lunch boxes. We will probably wind up the day just talking.

The proposal of the Senator from Massachusetts is a useful, desirable, and significant step in the direction that I think we should eventually go. For that reason, I shall support the proposal.

In my own book, I think the need is to prohibit ownership of handguns by private citizens in this country except only for law enforcement personnel and to permit a citizen to own a handgun if he is a member of a licensed and recognized gun club and if he keeps it on the premises of the gun club.

We are told that if good citizens turn their handguns in, there will remain only the handguns in the possession of the criminals and by and large that happens to be true.

The point is that criminals get them from us, the good guys. Let us dry up the reservoir from which the hoodlum gets his gun.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KENNEDY. I yield the Senator 1 more minute.

Mr. HART. Then we will have made a first step.

The second big hangup is that if I am required to give my gun up, I am therefore more subject to the whims and the violence of the criminal. Mr. President, every study I have seen, including the studies we made in connection with the Commission on Violence, suggests to me that you are safer if you do not have a handgun. You are safer without a handgun even if five bad guys in the neighborhood each have one.

If these propositions can only be broadly understood in this country, good people will say, "Yes, my security is advanced and my safety is increased by turning in my handgun."

Long guns are something else. It will be a long day, I suppose, before we get to the business of outlawing long guns, and I am not sure that today we are about to require the registration and licensing of handguns, but I hope that the amendment of the Senator from Massachusetts will receive very strong support.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I am prepared to yield back the remainder of my time.

The PRESIDING OFFICER. Does the Senator from Arkansas yield back his time?

Mr. McCLELLAN. Mr. President, I yield myself such time as I may require.

Mr. KENNEDY. Then I reserve the remainder of my time.

Mr. McCLELLAN. Mr. President, I do not think it necessary to discuss the merits of this amendment. Others have already discussed it who are probably more familiar with the amendment than I, and who have heretofore joined in the battle in opposition to it.

This amendment is not something new. It is actually, if I am not mistaken, the same as S. 982, the bill introduced by the Senator from Massachusetts and others on February 22, 1973.

Mr. KENNEDY. The Senator is correct, with one important exception, and that is that it does not apply to long guns.

Mr. McCLELLAN. I understand the Senator made that change. With that exception, Mr. President, it is the same.

I would like to call to the attention of the Senate that S. 982 was introduced on February 22, 1973, a little more than a year ago. It was introduced about a month before S. 1401—the bill now pending in the Senate. I make note of the fact that the bill which is now the amendment being proposed by the Senator from Massachusetts was referred, when it was introduced, to the Committee on the Judiciary, and referred by that committee to the Subcommittee on Juvenile Delinquency. It has been there ever since. It has been more than a year in process. Incidentally, the distinguished Senator from Massachusetts is a member of that subcommittee, which is composed of Senator BAYH, Senator HART, Senator BURDICK, Senator KENNEDY, Senator COOK, Senator HRUSKA, Senator FONG, and Senator MATHIAS.

If this proposal is all-important, and if it has real merit that will commend it to this body, the proper procedure is to proceed with the bill, process it, and bring it before the Senate, so that it can be voted on on its merits. It should go through the process of a report and examination with respect to amendments

that might be appropriate to it. After the measure has gone through the proper, regular processing, let it come up here and stand on its own.

For that reason, Mr. President, I hope that the Senate will reject this proposal, which has been languishing in committee for over a year, a committee of which the distinguished Senator from Massachusetts is a member, a committee which could be active if this bill had merit.

Comparable measures have not met with very favorable consideration in the Senate in the past. This amendment is almost identical to the amendment that was offered in the Senate to S. 2507 in August 1972. Substantially the same amendment was offered, as I recall, by the Senator from Illinois (Mr. STEVENSON), and the vote in the Senate on that amendment was 75 to 16. It was rejected by that margin.

This amendment, or a comparable amendment, was also offered in the Committee on the Judiciary when it considered S. 2507 in June 1972 and it was rejected by the committee by a vote of 10 to 4.

So this proposal, wherever it has had consideration heretofore, has not been very favorably received.

I think we should have this proposal processed in the regular way. Let the bill come up here and stand on its own merits.

There is considerable argument for gun control legislation by those who conscientiously believe that that is a way to help reduce crime in this country. There are others who are just as vehement in their position that gun control legislation, in the first place, would not tend to reduce crime, but would put the law-abiding citizen who keeps a gun for his protection, and who would obey the law and would register his gun, at a disadvantage, while the Mafia, the gangster, the robber, the murderer, would not register their guns. We would have a comparable situation to that which obtained in prohibition days. The law-abiding citizen would again be placed at a disadvantage, and the malicious user of the gun as a weapon to aid him in committing crime would never register.

I say to the Senate that States which have laws requiring registration today cannot enforce them. If they cannot enforce those laws—and apparently they cannot; there are an estimated 500,000 unregistered guns in the city of New York—why pass another law here that simply puts the law-abiding citizen on the spot?

Mr. President, I do not think this amendment belongs on this bill. I think it ought to be rejected out of hand—without prejudice, of course, so that it can be processed in the usual way. I do not know what hearings have been held on it. Some hearings were held in 1932, I mean, in 1972. Perhaps, on that bill, before that measure was brought up.

Mr. KENNEDY. The Senator is right. We have been having hearings since 1932.

Mr. McCLELLAN. The Senator kindly reminds me of a slip of the tongue, which I have already corrected. I thank him.

Mr. President, I do not think, as I say, that this amendment is appropriate on this legislation. It is an amendment that deserves consideration, because it has some support, by the regular committees which have jurisdiction of it, and by those processes by which we establish the merits of a measure. It should be voted up or down by the Senate on its own merit—not attached to the pending measure. I therefore hope the amendment will be rejected.

Mr. KENNEDY. Mr. President, on the basis of the merits, I think the arguments of the Senator from Arkansas have been responded to. But I want to make one point in terms of procedure. I remember being a member of the Judiciary Committee after we passed the 1968 Gun Control Act, and there was considerable concern about the restrictions that were attached to that act as it applied to the .22-caliber rimfire ammunition. So a number of Senators sent amendments to the desk to amend the 1968 act. What happened at the desk? Then they sent it to the Judiciary Committee for further consideration. Then what happened? For some reason, we could not get action in the Judiciary Committee, and some Members who had legitimate concerns about making it easier to purchase .22-caliber rimfire ammunition asked for hearings. So, what happened then? The proponents of the amendment withdrew it from the Judiciary Committee and sent it to the Finance Committee, with not 1 day of hearings. Then what did we find? That it was added to the interest equalization tax bill.

I urged Members and made the same arguments just made by the Senator from Arkansas; that is, why do we not follow the procedures of the Senate and go ahead and have some hearings, listen to the witnesses, and all the rest. All we got out of that was about 12 or 14 votes when I argued that we should follow the procedures of the Senate.

That goes to show, Mr. President, that we see in this body time and again that it is those who have the votes who are going to decide the issue. But we should not confuse it with procedures followed by the Senate because we have seen whether those who have stood in favor of altering or changing gun control laws are willing to follow any procedures of the Senate and whether it comes down to direct amendments on legislation, or no hearings, or whatever it may be. We have had all the hearings, as I have mentioned earlier in debate, on these particular provisions. It is not a new issue but one which has been heavily debated and discussed. I would hope that this bill will not be tied up on the question of procedures. It is a simple, a fundamental, and straightforward amendment that has been debated and discussed and on which there have been days and hours of hearings. Senators can make the decision on how they will vote on that basis.

Mr. President, I am prepared to yield back my time if the other side is.

Mr. McCLELLAN. Mr. President, I want to make one observation, that if the Senator is having difficulty getting his bill out of committee, and apparently he is, he does have a remedy. He may make a motion and let the Senate work its will on whether it wants to discharge the committee and bring the bill to the floor of the Senate. The Senator is not prevented from getting the bill to the floor if a majority of Senators want it here. It will be easy enough to get it here.

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

Mr. KENNEDY. Mr. President, let me yield myself 30 seconds to say that I am happy with the way we have got it right now—we are going to have a chance to vote—the Senate will have a chance to exercise its will and a majority will support it. I am prepared to yield back my time.

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

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

The PRESIDING OFFICER (Mr. BIDEN). All time on this amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Massachusetts (Mr. KENNEDY).

Mr. McCLELLAN. Mr. President, I move to table the amendment.

Mr. KENNEDY. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Arkansas to table the amendment of the Senator from Massachusetts (Mr. KENNEDY).

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Montana (Mr. MANSFIELD), the Senator from Minnesota (Mr. MONDALE), and the Senator from Wisconsin (Mr. NELSON) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT), the Senator from New Hampshire (Mr. COTTON), the Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), the Senator from Oregon (Mr. HATFIELD), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "yea."

The result was announced—yeas 68, nays 21, as follows:

[No. 72 Leg.]

YEAS—68

Abourezk	Byrd, Robert C.	Gurney
Aiken	Cannon	Hansen
Allen	Chiles	Hartke
Baker	Church	Haskell
Bartlett	Clark	Helms
Bayh	Cook	Hruska
Beall	Curtis	Huddleston
Bellmon	Dole	Jackson
Bentsen	Domenici	Johnston
Bible	Eagleton	Long
Biden	Eastland	Magnuson
Brock	Ervin	Mathias
Buckley	Fannin	McClellan
Burdick	Goldwater	McClure
Byrd, Harry F., Jr.	Gravel	McGee
	Griffin	McGovern

McIntyre	Schweiker	Taft
Montoya	Scott, Hugh	Talmadge
Moss	Scott, William L.	Thurmond
Nunn	Sparkman	Tower
Pearson	Stafford	Weicker
Proxmire	Stennis	Young
Randolph	Stevens	
Roth		

NAYS—21

Brooke	Inouye	Pell
Case	Javits	Percy
Cranston	Kennedy	Ribicoff
Hart	Metcalf	Stevenson
Hathaway	Metzenbaum	Symington
Hughes	Muskie	Tunney
Humphrey	Pastore	Williams

NOT VOTING—11

Bennett	Fulbright	Mondale
Cotton	Hatfield	Nelson
Dominick	Hollings	Packwood
Fong	Mansfield	

So Mr. MCCLELLAN'S motion to lay Mr. KENNEDY'S amendment on the table was agreed to.

H.R. 11864—REQUEST FOR JOINT REFERRAL

Mr. MOSS. Mr. President, I send to the desk an amendment to H.R. 11864, together with a report thereon from the Committee on Aeronautical and Space Sciences.

I ask unanimous consent that H.R. 11864 be jointly referred to the Committee on Commerce, the Committee on Banking, Housing, and Urban Affairs, the Committee on Labor and Public Welfare, and the Committee on Interior and Insular Affairs for 30 days, and if not reported in that time, that the bill be considered as having been discharged from said committees and placed on the calendar.

The PRESIDING OFFICER. Is there objection?

Mr. GRIFFIN. Mr. President, reserving the right to object, would the Senator restate the unanimous-consent request?

Mr. MOSS. The unanimous-consent request was that the measure just filed be referred to the four main committees for 30 days and if they have not taken action in 30 days that it go on the calendar.

Mr. GRIFFIN. Has this been cleared with anybody on this side of the aisle?

Mr. MOSS. Oh, yes. It was discussed with the chairmen of the committees involved, and I assume it is cleared.

Mr. GRIFFIN. What is the bill?

Mr. MOSS. The solar energy bill.

Mr. GRIFFIN. Mr. President, for the time being, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MOSS subsequently said: Mr. President, I wish to renew a unanimous-consent request that I made earlier today.

By way of explanation, I might say that H.R. 11864 was reported by the House Committee on Science and Astronautics, was passed by the House, was referred to the Senate, and was referred to the Committee on Aeronautical and Space Sciences. Public hearings were held on the bill, a report was filed earlier today, and the bill was reported to the floor.

On the basis of conversations I had had with members of other committees of the Senate, because this has to do with solar energy—heating and cooling—a number of other committees expressed interest in the bill; and in an attempt to accommodate those committees, in collaboration with my colleagues on the committee, I am willing that other committees have an opportunity to consider the bill before the matter goes to the calendar.

Therefore, Mr. President, I ask unanimous consent that H.R. 11864 be jointly referred to the Committees on Commerce, Banking, Housing and Urban Affairs, Labor and Public Welfare, and Interior for 30 days and, if not reported within that time, the bill will be considered as having been discharged from said committees and that the bill be placed on the calendar, and that a report of any committee be considered a further report on the bill; that if any of the above-mentioned committees request additional time for consideration of the bill, such time, not to exceed 30 additional days, shall be granted.

Mr. GRIFFIN. Mr. President, reserving the right to object—and I shall not object—I thank the distinguished chairman of the Committee on Aeronautical and Space Sciences for his understanding.

Earlier, when the request was made, I was not aware that the ranking Republican member of the committee, the Senator from Arizona (Mr. GOLDWATER), had agreed to this request. Since then, I have also been able to consult with Senator JAVITS, the ranking Republican member of the Committee on Labor and Public Welfare; Senator TOWER, the ranking member of the Committee on Banking, Housing and Urban Affairs; Senator PEARSON, in the absence of Senator COTTON; and Senator FANNIN. All agree that this is an acceptable and workable arrangement, particularly in light of the additional provision that an additional 30 days would be granted if one of the committees found it necessary.

I thank the distinguished Senator from Utah for his understanding and cooperation.

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

REORGANIZATION AND CONSOLIDATION OF CERTAIN FUNCTIONS OF THE FEDERAL GOVERNMENT IN A NEW FEDERAL ENERGY ADMINISTRATION

Mr. ERVIN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 11793, a bill to reorganize and consolidate certain functions of the Federal Government in a new Federal Energy Administration in order to promote more efficient management of such functions.

The PRESIDING OFFICER laid before the Senate H.R. 11793, a bill to reorganize and consolidate certain functions of the Federal Government in a new Federal Energy Administration in order to promote more efficient management of such functions.

Mr. ERVIN. Mr. President, I ask unanimous consent that the bill considered as having been read twice and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Is there objection? The Chair hears none and it is so ordered.

Mr. ERVIN. Mr. President, the Senate passed by an overwhelming majority a bill to establish a Federal Energy Administration. The House did not act on the Senate bill but passed a bill of its own on the same subject.

I move to strike all after the enacting clause and insert in lieu thereof the text of S. 2776, as passed by the Senate.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from North Carolina.

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 11793) was read a third time and passed.

Mr. ERVIN. Mr. President, I move that the Senate insist on its amendment, request a conference with the House of Representatives, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to: and the Presiding Officer appointed Mr. RIBICOFF, Mr. ERVIN, Mr. JACKSON, Mr. MUSKIE, Mr. METCALF, Mr. PERCY, Mr. JAVITS, and Mr. GURNEY conferees on the part of the Senate.

CAPITAL PUNISHMENT

The Senate resumed the consideration of the bill (S. 1401) to establish rational criteria for the mandatory imposition of the sentence of death, and for other purposes.

Mr. HATHAWAY. Mr. President, I have an amendment at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. HATHAWAY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

On page 18, line 12, strike out the quotation marks.

On page 18, between lines 12 and 13, insert the following new subsection:

"(i) In any case in which a jury finds the existence of any factor set forth in subsection (g) or (h) of this section and finds that none of the factors set forth in subsection (f) exists, the court shall, if it determines such findings with respect to subsection (f), (g), or (h) to be clearly erroneous, set aside the special verdict of the jury and impose a sentence other than death.".

Mr. HATHAWAY. Mr. President, this amendment allows the court in the sentencing procedure to direct a verdict under the same circumstances as it would at the stage of determining guilt.

The PRESIDING OFFICER. The Sen-

ator will suspend until the Senate is in order. The Senator deserves to be heard. The Senate will please be in order.

The Senator may proceed.

Mr. HATHAWAY. Mr. President, this amendment allows the court to set aside an erroneous determination in the sentencing hearing in the same manner in which the court can set aside a verdict of guilt at the criminal trial.

I understand the chairman of the committee, the Senator from Arkansas, is in agreement with the amendment.

Mr. McCLELLAN. Mr. President, I have examined the amendment and I have discussed it with the Senator.

Mr. PASTORE. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. Senators will please take their conversations to the cloakroom.

The Senator may proceed.

Mr. McCLELLAN. Mr. President, I have examined the amendment and I have also discussed it with the distinguished Senator from Nebraska (Mr. HRUSKA), the ranking minority member of the subcommittee that reported the bill and processed it. I do not think the amendment does any real violence to the bill and I think that, possibly, as a matter of principle, it should be a part of the law. I think it is already the law, but whether it is or is not it does not hurt to place it in this bill. I am ready to accept it unless someone wishes to speak further.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. HATHAWAY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. McCLELLAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, I intend in just a few minutes to make a motion to recommit this legislation to the Committee on the Judiciary. I have had an opportunity to talk with members of the Committee on the Judiciary who have expressed during the course of debate their very serious reservations. I have also spoken with other members, including the distinguished Senator from New York. I think a number of troublesome questions and issues are raised by this legislation.

The Senate has acted on a number of things this afternoon with respect to aggravating conditions, sections (g) and (h), and also about the effect of mitigating circumstances. We have also amended legislation to provide some discretion to be considered by the court in considering release of various hostages.

As one who was an opponent of some of those amendments I think the standard that was established by the Supreme Court in terms of vagueness and generality which struck down the death penalty before could be raised again in future considerations.

I would hope that the majority of Senators would give consideration to sending the bill back to the Judiciary Committee for additional time to consider the constitutional questions and also the range of different crimes included and considered within this legislation.

At an appropriate time—I would expect within the next very few moments—I will make such a motion to recommit.

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

Mr. KENNEDY. I yield.

Mr. JAVITS. Mr. President, I shall vote to recommit. As I said a little while ago, if it was not moved by Senators who have been very active in this matter, like the Senator from Massachusetts (Mr. KENNEDY), I would move it myself.

My reasons can be stated very briefly.

The deterrent value of the death penalty is called into serious question by the available statistics, and by the evidence of modern psychology.

1. THE STATISTICS

A leading study of the deterrent impact of the death penalty was prepared by Thorsten Sellin in a report for the Model Penal Code project of the American Law Institute in 1959. Sellin analyzes the four ways in which the deterrent value of capital punishment would be statistically evident if it exists, but, in fact, the evidence is to the contrary and indicative of no measurable deterrent value. First, studies of the homicide rates in contiguous jurisdictions with and without the death penalty show that both States with and without the death penalty have virtually identical murder rates and trends. Second, those studies conducted to determine, if the homicide rate in a given jurisdiction increases with the abolition of the death penalty and decreases with its restoration, show that there is no correlation between the status of the death penalty and the homicide rate. Third, on the assumption that a well-publicized execution should have the greatest deterrent effect in that locale, studies have been made to test the effect of executions on the capital crime rate in the community where the executions occurred. These studies show that there was no significant decrease—or increase—in the murder rate following an execution. Fourth, studies to determine if law enforcement and prison personnel are afforded greater protection by the death penalty show that police and prison homicides are virtually the same in abolition States as in death penalty States. From these studies in the four above areas, Sellin concludes:

> Any one who carefully examines the . . . data is bound to arrive at the conclusion that the death penalty, as we use it, exercises no influence on the extent or fluctuating rates of capital crimes. It has failed as a deterrent.

2. THE PSYCHOLOGY OF DETERRENCE

Murders are either premediated or they are not. In the case of unpremeditated murders, no punishment can be effective as a deterrent. Considerable evidence exists that a great percentage of those who commit violent crimes are likely to be suffering from some form of mental illness or have acted in a fit of passion. Therefore, they are undeterrable and it is pointless to threaten such offenders with death.

Finally, there are presumedly those persons who are sane and cautious enough to weigh the risk of punishment—that is, life versus death sentence—and able to decide that while the risk of death is too great in consideration of the anticipated gain from the crime, protracted imprisonment is not such a great risk. But, how many such persons are there in the total population? Those who oppose the death penalty believe it would be most exceptional for a man to be insufficiently sane and normal to be deterred by the risk of a sentence of protracted imprisonment but yet sufficiently sane and normal to be deterred by the risk of his own execution, when both risks are at a level of contingency which he is doing his utmost to avoid.

Mr. President, I also oppose capital punishment because its ultimate effect is to cheapen the value of human life and because I am deeply troubled about the racially discriminatory impact of the death penalty. And as we consider this extraordinarily serious matter, Mr. President, we cannot forget that there is no way to right the enormous wrong which would occur in the case of an unjust execution.

On the question of determining mitigating circumstances, I think it is particularly important to call to the Senate's attention the fact that in his dissent to Furman against Georgia, Chief Justice Burger emphasized that "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." That is precisely what S. 1401 attempts to do.

I voted against the amendment offered by the Senator from Iowa (Mr. HUGHES), but it was properly aimed at holding the mirror up to our own eyes to see what capital punishment means, and to test the argument that the State may take life on a deterrent theory. If there is no real deterrence—and there is no affirmative proof that there is; it is just an idea we are asked to accept—then we should reject this bill. In view of the Supreme Court decision and the additional likelihood that it may strike this law down, and on the ground that it is cruel and inhumane punishment we should reject this bill. With death being as final as it is, with the value of the legislation being as doubtful as it is, this bill should go back to committee, and I hope the committee will dispose of the bill afterwards.

CERTAIN BENEFITS UNDER TITLE 16 OF THE SOCIAL SECURITY ACT — UNANIMOUS - CONSENT AGREEMENT

Mr. LONG. Mr. President, I have sent to the desk a committee report on H.R. 13025, and I would like to explain to the Senate that this is a matter which has considerable urgency about it. In view of the fact that the Senate is not planning to be in session tomorrow, I would hope we could obtain unanimous consent that this measure could be considered before the Senate leaves tonight.

The PRESIDING OFFICER. The report will be stated.

Mr. LONG. Mr. President, I am not asking that it be called up at this moment. I simply point out to the Senate that this measure has an expiration date this month. Unless the Senate acts and the bill becomes law this month, 160,000 people who are regarded as disabled persons would be required to be removed from the supplemental security income rolls because the administration for that program has not been able to examine those people and pass on their disability, as is required in a changeover from State to Federal law.

In addition to that, there is also an expiration date at the end of this month on the unemployment insurance program for the 13 additional weeks in those States suffering a high degree of unemployment. Senators from those States are very much affected from the standpoint that there would be just as much an emergency about that item from their point of view as there is for the disabled people, because in each case these are people who would be very much disadvantaged, contrary to what I am sure would be the judgment of Congress, by failure of the Congress to act timely.

I hope we will be able to obtain unanimous consent that after consideration of the pending measure, this measure could be called up and considered.

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

Mr. LONG. I yield to the Senator from Nebraska.

Mr. CURTIS. I thank my distinguished chairman.

In the absence of the ranking Republican Member, the distinguished Senator from Utah (Mr. BENNETT), I have been in touch with the Department of Labor and the Department of HEW.

This is an urgent matter. It is important that the bill before us, sent over to us by the House, be passed, because it will create a great many problems in our several States if it is not passed.

So I join my chairman in the request that it be considered today. After it is up for consideration, I will have a further brief statement concerning the unemployment amendment, to state the position of the administration in reference thereto, but I hope that the bill can be disposed of tonight.

Mr. LONG. Mr. President, I ask unanimous consent that the committee report be received and that it be in order to proceed to the consideration of this measure after the disposition of the pending measure.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

CAPITAL PUNISHMENT

The Senate continued with the consideration of the bill (S. 1401) to establish rational criteria for the mandatory imposition of the sentence of death, and for other purposes.

Mr. McCLELLAN. Mr. President, has the Senator from Massachusetts made his motion?

Mr. KENNEDY. No, I have not made the motion yet.

Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk proceeded to read the amendment.

Mr. KENNEDY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

Mr. McCLELLAN. Mr. President, I have not seen the amendment.

Mr. KENNEDY. I will be glad to explain it.

The PRESIDING OFFICER. Is there objection to the request? Does the Senator from Arkansas request to hear the amendment?

Mr. GOLDWATER. Mr. President, I object. I want the amendment read.

Mr. McCLELLAN. Mr. President, how long is it?

The PRESIDING OFFICER. It is 11 pages long.

Mr. McCLELLAN. Mr. President, if we are going to be here tonight, we may as well be here tonight. Read it.

The PRESIDING OFFICER. The clerk will read.

The legislative clerk proceeded to read the amendment.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection?

Mr. McCLELLAN. Mr. President, reserving the right to object, I did not know what the amendment was. I did want some identification of it. Now we know what it is. How many pages is it?

The PRESIDING OFFICER. Eleven pages.

Mr. McCLELLAN. I will withdraw my objection to the request to dispense with further reading of the amendment.

The amendment is as follows:

TITLE V—HANDGUN CONTROL

SHORT TITLE

SEC. 501. This title may be cited as the "Handgun Control Act of 1974."

AMENDMENTS TO TITLE 18, UNITED STATES CODE

SEC. 502. (a) Section 921(a) of title 18 of the United States Code is amended by inserting after paragraph (20) the following:

"(21) The term 'handgun' means a firearm designed to be fired by the use of a single hand. The term also includes a combination of parts in the possession or under the control of a person from which a handgun can be assembled. The term does not include antique firearms.

"(22) The term "handgun model" means a handgun of a particular design, specification, and designation."

(b) Section 922 (b) of title 18 of the United States Code is amended by

(1) striking out at the end of paragraph (4) thereof the word "and";

(b) striking out at the end of paragraph (5) thereof the period and inserting in lieu thereof a semicolon;

(c) adding after paragraph (5) thereof the following:

"(6) any handgun model unless such handgun model has been approved by the Secretary pursuant to section 922(n) of this title."; and

(d) deleting the final sentence, which begins with the words "Paragraph (4) of this", and inserting in lieu thereof the following:

"Paragraphs (4) and (6) of this subsection shall not apply to a sale or delivery to any research organization designated by the Secretary. Paragraph (6) of this subsection shall not apply to the sale or delivery of any firearm to the United States or any department or agency thereof, or to any State, department, agency, or political subdivision thereof, or to any duly commissioned law enforcement officer of the United States or any department or agency thereof or of any State, department, agency or political subdivisions thereof (including but not limited to members of the Armed Forces and police officers) properly authorized to carry such firearms in his official capacity. Paragraph (6) of this subsection shall not apply to the sale or delivery by a licensed importer, licensed manufacturer, or licensed dealer to a licensed dealer of any firearm intended to be sold or delivered to any government or agency thereof or person entitled pursuant to this paragraph to have such firearms sold or delivered to him. Paragraph (6) of this subsection shall not apply to the sale or delivery to a licensed collector or licensed dealer of any firearm which is a curio or relic, as the Secretary shall by regulation define. Paragraph (6) of this subsection shall not apply to occasional, sporadic sales of single handguns by a licensed collector who is not a dealer, as defined by section 921(a) of th s title."

(c) Section 922 of title 18 of the United States Code is amended by adding at the end thereof the following new subsections:

"(n) The Secretary shall not approve for sale or delivery by a licensed dealer, licensed importer, licensed manufacturer, or licensed collector any handgun model unless he has caused to be evaluated and tested representative samples of such handgun model and has found that:

"(1) in the case of a pistol, the handgun model:

"(A) has a positive manually operated safety device; and

"(B) has a combined length and height in excess of 10 inches with the height (right angle measurement to the barrel without the magazine or extension) being at least 4 inches and the length being at least 6 inches; and

"(C) attains a total of at least 75 points under the following criteria:

"(i) Overall length: one point for each one-fourth inch over 6 inches;

"(ii) Frame construction: (a) 15 points if investment cast steel or forged steel, (b) 20 points if investment cast HTS alloy or forged HTS alloy;

"(iii) Pistol Weight: one point for each ounce, with the pistol unloaded and the magazine in place;

"(iv) Caliber: (a) zero points if the pistol accepts only .22 caliber short or .25 caliber automatic ammunition, (b) three points if the pistol accepts either .22 caliber long rifle ammunition or any ammunition within the range delimited by 7.65 millimeter and .380 caliber automatic, (c) 10 points if the pistol accepts 9 millimeter parabellum ammunition or over, (d) in the case of ammunition not falling within one of the classes listed above, such number of points not greater than ten (following the classification schedule above as nearly as is practicable) as the Secretary shall determine appropriate to the suitability for sporting purposes of handgun models designed for such ammunition;

"(v) Safety features: (a) five points if the pistol has a locked breech mechanism, (b) five points if the pistol has a loaded chamber indicator, (c) three points if the

pistol has a grip safety, (d) five points if the pistol has a magazine safety, (e) 10 points if the pistol has a firing pin block or lock; and

"(vi) Miscellaneous equipment: (a) two points if the pistol has an external hammer, (b) 10 points if the pistol has a double action firing mechanism, (c) five points if the pistol has a drift adjustable target sight, (d) 10 points if the pistol has a click adjustable target sight, (e) five points if the pistol has target grips, (f) two points if the pistol has a target trigger;

"(2) in the case of a revolver, the handgun model:

"(A) has an overall frame length of four and one-half inches measured on a line parallel to the barrel; and

"(B) has a barrel length of at least three inches; and

"(C) has a safety device which, either (i) automatically in the case of a double action firing mechanism or (ii) by manual operation in the case of a single action firing mechanism, causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge. Once activated, such safety device must be capable of withstanding the impact of a weight, equal to the weight of the revolver, dropped a total of five times from a height of 36 inches above the rear of the hammer spur onto the rear of the hammer spur with the revolver resting in a position such that the line of the barrel is perpendicular to the plane of the horizon; and

"(D) attains a total of at least 45 points under the following criteria:

"(i) Barrel length: one-half point for each one-fourth inch that the barrel is longer than 4 inches.

"(ii) Frame construction: (a) 15 points if investment cast steel or forged steel, (b) 20 points in investment cast HTS alloy or forged HTS alloy;

"(iii) Revolver weight: one point for each ounce with the revolver unloaded;

"(iv) Caliber: (a) zero points if the revolver accepts only .22 caliber short or .25 caliber ACP, (b) three points if the revolver accepts .22 caliber long rifle or ammunition in the range between .30 caliber and .38 S&W, (c) four points if the revolver accepts .38 caliber special ammunition, (d) five points if the revolver accepts .357 magnum or over, (e) in the case of ammunition not falling within one of the classes listed above, such number of points not greater than five (following the classification schedule above as nearly as practicable) as the Secretary shall determine appropriate to the suitability for sporting purposes of handgun models designed for such ammunition;

"(v) Miscellaneous equipment: (a) five points if the revolver has either drift or click adjustable target sights, (b) five points if the revolver has target grips, (c) five points if the revolver has a target hammer and a target trigger; and

"(3) the handgun model also meets such additional standards as the Secretary may by regulation promulgate, after consultation with the Chief of Army Ordnance and the Secretary of Commerce, if the Secretary has determined that changes in the technology or manufacture of handguns, or actions tending to circumvent the intent of this subsection (which is to allow the approval of only those handgun models which are generally recognized as particularly suitable for sporting purposes), have rendered inadequate the standards set forth in paragraphs (1) and (2) of this subsection: *Provided*, That under no circumstances may any such regulation be promulgated which would permit the approval for sale or delivery of any handgun model which could not have been approved in the absence of such regulation.

"(o) It shall be unlawful for any person to reduce the length of the barrel or the overall length of a handgun previously approved by the Secretary for sale and delivery if as a result of such modification the handgun no longer meets the standards for approval set forth in subsection (n) of this section.

"(p) The Secretary shall give written notification of the results of evaluation and testing conducted pursuant to subsection (n) of this section to the licensee submitting samples of a handgun model for such evaluation and testing. If any handgun model fails to meet the standards for approval, the Secretary's notification shall state specifically the reasons for such finding. Any such notification of approval or failure shall be published in the Federal Register. At least once each year the Secretary shall compile a list of all handgun models which are then approved for sale or delivery under subsection (n) of this section, which list shall be published in the Federal Register and furnished annually to each licensee under this chapter.

"(q) Any licensee submitting to the Secretary for testing a handgun model which is subsequently found not in compliance with relevant standards shall have ten days from receipt of notification of noncompliance within which to submit in writing specific objections to such finding and a request for retesting such model, together with justification therefor. Upon receipt of such a request the Secretary shall promptly arrange for retesting and thereafter notify the aggrieved party of the results, if he determines sufficient justification for retesting exists. Should he determine that retesting is not warranted, the Secretary shall promptly notify the aggrieved party as to such determination. In the event that upon retesting the Secretary's finding remains adverse, or that the Secretary finds retesting is not warranted, the aggrieved party may within sixty days after the date of the Secretary's notice of such finding file a petition in the United States district court in the district in which the aggrieved party has his principal place of business in order to obtain judicial review of such finding. Such review will be in accordance with the provisions of section 706 of title 5, United States Code."

(d) Section 925(d)(3) of title 18 of the United States Code is amended to read as follows:

"(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954; is not a surplus military firearm; and if a handgun, has been approved by the Secretary pursuant to section 922(n) of this title; or"

(e) Sections 926, 927, and 928 of title 18 of the United States Code, and all references thereto, are redesignated as sections 927, 928, and 929, respectively.

(f) Title 18 of the United States Code is amended by inserting after section 925 the following new section:

"§926. Compensation for reasonable value of handguns voluntarily transferred to law enforcement agencies

"(a) A person may at any time transfer to any Federal, State, or local law enforcement agency designated by the Secretary any handguns owned or possessed by such person.

"(b) In the case of transfer pursuant to subsection (a) of a handgun model which the Secretary has evaluated and tested pursuant to section 922(n) of this title and not approved for sale or delivery by a licensee under this chapter, the person transferring such handgun shall, upon proof that such handgun was lawfully acquired and lawfully owned by such person prior to enactment of the Handgun Control Act of 1972, be entitled to receive from the United States a payment equal to the reasonable value of such handgun, such value to be determined as of the day before enactment of the Handgun Control Act of 1974."

AUTHORIZATIONS OF APPROPRIATIONS

SEC. 503. There are authorized to be appropriated such sums as may be necessary to carry out the amendments made by this title.

On page 65, line 5, strike out "Title V" and insert in lieu thereof "Title VI".

On page 65, line 7, strike out "Sec. 501" and insert in lieu thereof "Sec. 601".

On page 66, line 2, strike out "Sec. 502" and insert in lieu thereof "Sec. 602".

On page 66, line 10, strike out "Sec. 503" and insert in lieu thereof "Sec. 603".

On page 66, line 17, strike out "Sec. 504" and insert in lieu thereof "Sec. 604".

On page 66, after line 24, insert the following:

(c) Title V of this Act shall become effective on the date of enactment of this Act, except that the amendments made by sections 502(b) and 502(d) shall take effect 60 days after the date of enactment of this Act.

Mr. KENNEDY. Mr. President, I think we will be prepared to vote in just a few moments on this amendment. It is a very simple one. It is a proposal that has been considered at another time by this body and has been accepted at another time by this body. This is the Saturday night special amendment. This particular amendment eliminates registration, it eliminates licensing, but it prohibits the manufacture of the Saturday night special.

It is a very simple amendment. It has been considered by this body at other times.

Members of the Senate have expressed concern that they share the view of many of us who support handgun legislation and the registration and licensing of handguns. This amendment is targeted not just broadly to handguns, which I think should be included, but those that are designated as Saturday night specials.

It has been debated before and adopted before. It is an issue which is well understood. I am prepared to vote.

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

Mr. KENNEDY. I yield.

Mr. JAVITS. Mr. President, I ask unanimous consent that my name be added as a cosponsor.

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

Mr. JAVITS. Mr. President, is this the so-called Bayh bill? Am I to understand that it is essentially the Bayh bill?

Mr. KENNEDY. The Senator is correct.

Mr. JAVITS. Mr. President, I thank the Senator.

Mr. GOLDWATER. Mr. President, will the Senator yield for a question?

Mr. KENNEDY. I yield for a question.

Mr. GOLDWATER. I am in the dark about the Bayh bill. Based upon the Senator's memory, what is the definition of a Saturday night special?

Mr. KENNEDY. The same criteria that is used by the Treasury Department at the present time. On the question of imports, that is anything less than 6 inches.

Mr. GOLDWATER. Any gun less than 6 inches?

Mr. KENNEDY. The Senator is correct.

Mr. GOLDWATER. Does that include automatics?

Mr. KENNEDY. It includes automat-

ics. The language is in existence at the present time. It is applicable to importation. The revolver must have at least a 3-inch barrel.

Mr. GOLDWATER. It is just the revolver that must have a 3-inch barrel?

Mr. KENNEDY. The Senator is correct.

Mr. GOLDWATER. The amendment will prohibit the manufacture in this country?

Mr. KENNEDY. The Senator is correct. It prohibits the manufacture.

Mr. GOLDWATER. The importation is already prohibited. Is that correct?

Mr. KENNEDY. The Senator is correct. The description is in existence, and it is 6 inches long.

Mr. SPARKMAN. Mr. President, I recall that when we voted on this measure before, we passed such a prohibition. However, that did not prohibit the importation of parts. Therefore, the parts were brought in and the guns were manufactured here. There was no way of keeping the parts out.

Mr. KENNEDY. That has been the effect of the 1968 legislation which barred importation of the cheap handguns. That has been circumvented by the importation of parts for those weapons ever, there has been a holding down of the importation. This would prohibit the manufacture of hand weapons into the United States. This would put a halt on any weapons with over a 3-inch barrel. It covers a barrel at least 3 inches. In the case of a revolver or handgun, it has an overall 4.5-inch measurement, and on a barrel it is a length of 3 inches. It has a safety device, and that is described.

This, as we mentioned, was passed overwhelmingly by the Senate in August 1972.

Mr. STEVENS. Mr. President, would the Senator yield?

Mr. KENNEDY. I yield.

Mr. STEVENS. Mr. President, is this amendment in the same language in S. 2507 which passed the Senate?

Mr. KENNEDY. This is identical language.

Mr. STEVENS. I am trying to locate in the Senator's amendment the amendment that was adopted by the Senate at my request to include in it sporting firearms suitable for sporting purposes.

Mr. KENNEDY. The Senator is right to make that observation. It would not include that. This is the legislation that came out of the committee. So the Senator has correctly observed it is not in this measure. The amendment would not be included in this amendment.

Mr. STEVENS. Mr. President, the amendment of the Senator from Massachusetts is as reported by the committee. It does not include the amendment made on the floor to S. 2507.

Mr. KENNEDY. The Senator is correct.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second (putting the question)?

The yeas and nays were ordered.

Mr. STEVENS. Mr. President, we spent a considerable time on the bill. It has been in the House for some time past, as I recall.

I am very hesitant on voting on the language as originally reported from the committee without an opportunity to determine which of the amendments that were made on the floor have been eliminated.

I say to the Senator from Massachusetts that I think that if an amendment is to be offered at this late hour, it should be in the text of the amendment that was finally agreed upon by the Senate, even though some Senators disagreed with the final version. Some perfecting amendments were made previous to passage.

I cannot accept the concept of taking such an amendment and eliminating everything that we did on the 3 days previous when considering the matter of Saturday night specials.

I would hope that the Senate would reject the amendment. This eliminates the amendment and all discussion which the Senator from Indiana and I had concerning the Saturday night specials and the amendments that were made at the time.

Certainly none of us support the concept of people owning guns that are more dangerous to the user than to the person whom they are pointed toward.

This is an improper way to proceed. As far as I am concerned, I am hesitant to take it up at this time. I urge that the Senate not take it up at this time.

Mr. President, unless someone else wants to speak on the matter——

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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, I intend to make one statement and then I will make a motion to table.

This bill passed the Senate by a very substantial vote, I believe, in 1972.

Mr. KENNEDY. The Senator is correct.

Mr. McCLELLAN. And the bill would probably pass the Senate again if brought up and presented in the regular way. I have no doubt of that.

The House did not take the bill before. I do not know whether they would take it this time or not. However, I think they would prefer, and I know that I would prefer, and I think that upon reflection we would all prefer to treat it as a separate measure. The Senator can resort to this tactic if he wants to kill the pending bill. If that is the Senator's purpose and he wants to vote for this amendment, that it is one way to do it.

I am confident the Senate would pass this measure if it came up on its own. It would go to the House again. If it is added to the death penalty bill, however, it might have a harmful effect on that bill by hurting its chances of being passed.

I hope that the Senate will vote to table this amendment so that we could have S. 1401 go over there on its own. It is in pretty good shape.

I did not necessarily favor one or two amendments that were agreed to. However, the bill is in pretty good shape. If one favors capital punishment in the most extreme and horrible and cruel cases of murder—and that is what is involved—he should vote for the bill. If one does not favor capital punishment under any circumstances, he ought to vote against the bill. He might also want to load the bill down with an amendment of this kind. However, I would think that everybody would come out better if we voted to table this amendment and let it come to the Senate in the proper form, as it was before the Senate before.

I hope the Senate will take that action. Therefore, Mr. President, I move to lay on the table the amendment of the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, will the Senator withhold his motion for a moment?

Mr. McCLELLAN. I withhold it.

Mr. KENNEDY. I would just like to remind the members of the committee that this is the legislation which came out of the Committee on the Judiciary by a vote of 12 to 2, and this is the same Judiciary Committee that, when we considered the handgun legislation on licensing and registration, upon which we just previously voted, rejected it by a vote of 10 to 4. But a vote of approval of 12 to 2 was the way this legislation came out of the Committee on the Judiciary, so it had the overwhelming support of the members of the committee.

Some amendments were included, but this amendment represents, in the main, the product of the committee's recommendation and due deliberation. There was substantial support for that proposal by the Committee on the Judiciary. It pertains only to the question of the 3-inch barrel gun, the Saturday night special. It is absolutely limited, in effect, to only half the number of handguns in civilian ownership. It prohibits the manufacture and distribution of those weapons with barrels 3 inches or less in length. So I would hope we could have an up or down vote on it at this time.

Mr. GRIFFIN. Mr. President, will the Senator yield for a question?

Mr. McCLELLAN. I yield to the Senator from Michigan.

Mr. GRIFFIN. Am I correct, on the basis of his earlier statement and votes, that the Senator from Massachusetts is against the bill before us relating to capital punishment?

Mr. KENNEDY. The Senator is correct.

Mr. GRIFFIN. If the amendment he now offers is adopted, what would then be the position of the Senator from Massachusetts on the bill as amended?

Mr. KENNEDY. I would still vote against it.

Mr. GRIFFIN. I thank the Senator.

Mr. McCLELLAN. Mr. President, I think we all know what the picture is. I would like for us to bring the matter to a conclusion. So, in order to try to expedite

the procedure, I hope the Senate will observe what is generally the routine and regular procedure under the rules. They can vote down there in the committee to bring it out of the committee and bring it to the floor of the Senate at any time, and I am sure the leadership will give them a vote on it. But this, in my judgment, is a maneuver to kill this bill. So, Mr. President, I——

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

Mr. McCLELLAN. I yield.

Mr. SYMINGTON. I shall vote for the capital punishment bill as presented by the distinguished senior Senator from Arkansas. But when we are talking about the Saturday night special with the 3-inch barrel, I would certainly support the position of the Senator from Massachusetts on that amendment, even though I intend to vote for the bill.

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

Mr. McCLELLAN. I yield.

Mr. STEVENS. The Senator from Indiana and I labored long and hard to work out some amendments that made that Saturday night special bill, while not completely acceptable, more acceptable to the sporting community, in particular by the definition of what is a gun designed for sporting purposes, which is not in the proposed amendment, as it was in the bill when it was passed by the Senate and sent to the House of Representatives in 1972. This is not the bill that received the overwhelming vote in support of the regulation of Saturday night specials.

Therefore, Mr. President, I hope the chairman will insist on his motion, and that we will again have an opportunity to consider that bill as it passed the Senate, and not as it was reported out of the committee before the Senate as a whole considered and amended the legislation.

Mr. McCLELLAN. Mr. President, it is up to the Senate, if Senators want to take this method of killing the bill rather than having an up-or-down vote on it.

I now move to lay on the table the amendment of the Senator from Massachusetts, and I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. BIDEN). The question is on agreeing to the motion to lay on the table the amendment of the Senator from Massachusetts. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Montana (Mr. MANSFIELD), and the Senator from Wisconsin (Mr. NELSON) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT), the Senator from New Hampshire (Mr. COTTON), the Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), the Senator from Oregon (Mr. HATFIELD), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "yea."

The result was announced—yeas 58, nays 31, as follows:

[No. 73 Leg.]

YEAS—58

Abourezk	Eastland	Montoya
Aiken	Ervin	Moss
Allen	Fannin	Nunn
Baker	Goldwater	Pearson
Bartlett	Gravel	Proxmire
Bellmon	Griffin	Randolph
Bentsen	Gurney	Roth
Bible	Hansen	Schweiker
Brock	Hartke	Scott, Hugh
Buckley	Haskell	Scott,
Byrd,	Hathaway	William L.
Harry F., Jr.	Hruska	Sparkman
Byrd, Robert C.	Huddleston	Stafford
Cannon	Johnston	Stennis
Chiles	Long	Stevens
Church	McClellan	Taft
Curtis	McClure	Talmadge
Dole	McGee	Tower
Domenici	McGovern	Weicker
Eagleton	McIntyre	Young

NAYS—31

Bayh	Hughes	Pastore
Beall	Humphrey	Pell
Biden	Inouye	Percy
Brooke	Jackson	Ribicoff
Burdick	Javits	Stevenson
Case	Kennedy	Symington
Clark	Magnuson	Thurmond
Cook	Mathias	Tunney
Cranston	Metcalf	Williams
Hart	Metzenbaum	
Helms	Muskie	

NOT VOTING—11

Bennett	Fulbright	Mondale
Cotton	Hatfield	Nelson
Dominick	Hollings	Packwood
Fong	Mansfield	

So the motion to table the Kennedy amendment was agreed to.

The PRESIDING OFFICER (Mr. BIDEN). The bill is open to further amendment.

Mr. KENNEDY. Mr. President, I have no further amendments. As I mentioned earlier, at an appropriate time I will make a motion to recommit the bill. I would ask for the yeas and nays.

Mr. ROBERT C. BYRD. Mr. President, will the Senator allow us to go to third reading before making his motion?

Mr. KENNEDY. Certainly.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

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

Mr. ROTH. Mr. President, violent crime is a constant threat in the lives of all Americans. Many persons fear that we no longer have an ordered society in which peaceful citizens can attend to their own concerns in safety and security.

To reduce the danger which crime poses to the peaceful citizen, we must make crime so dangerous for the criminal that he will refrain from committing it. Since no penalty can present the criminal with as dangerous a prospect as the death penalty, I believe that the proposed mandatory death penalty can make a significant contribution in the fight against crime. I urge the Senate to approve of S. 1401.

Our enactment of S. 1401 will register our support for the action currently being taken by many States with regard to the death penalty. Since the Supreme Court in Furman against Georgia held that discretionary imposition of the death penalty had led to unconstitutional arbitrariness, at least 15 States have made mandatory death penalty statutes effective either legislatively or by judicial decree. Several other States are considering similar moves. In Delaware, the State's supreme court has affirmed the constitutionality of the mandatory provisions of the State death penalty statutes. I suggest that we follow the wise lead of the States and make a mandatory death penalty available in Federal as well as State cases.

In considering this important issue, a vital question is whether the death penalty is a more effective deterrent to crime than life imprisonment. I believe that it is.

I realize that many critics of capital punishment disagree with me on this point. They present elaborate statistical evidence comparing murder rates in States with and without the death penalty and comparing periods of abolition of the death penalty with periods of restoration in the same State. However, one must remember that those persons who are, in fact, deterred by the threat of the death penalty and do not commit murder are not included in this statistical data. Moreover, since there exists no thorough compilation of "capitally punishable" crimes committed in the United States, all of the studies rest on the assumption that the rate of increase or decrease in capitally punishable murder, for instance, is proportional to the rate of increase or decrease in "homicides" or in "reported deaths by homicide."

As Hugo Adam Bedau, a leading student of capital punishment, observed in "The Death Penalty in America," the number of capitally punishable murders is small enough in comparison with the total number of homicides, that there could be an increase in the total number of capitally punishable murders while the general homicide rate showed a decline. There may be other discrepancies of this kind which are camouflaged by the apparently neat figures of these studies and I, for one, am unwilling to risk jeopardizing the security of thousands of my fellow citizens on the basis of such shaky findings.

As I have stated, the death penalty does have a unique deterrent effect. Law enforcement and prison officials report widespread evidence from candid conversations with convicted criminals showing that the death penalty does in fact influence criminal behavior. In a 1960 American Bar Association study, law enforcement officers presented extensive firsthand testimony. Criminals captured after having committed an offense punishable by life imprisonment refrained from killing their captives even

though they might have succeeded in escaping. These prisoners were willing to serve a life sentence, but unwilling to risk the death penalty.

Other criminals who refrained even from carrying deadly weapons during the commission of their offenses admitted that one reason why they refrained was to avoid use of a weapon which would lead to the imposition of the death penalty. In 1971, the Los Angeles Police Department took statements from 99 people who either did not carry a gun during the perpetration of their crimes, did not use the gun they were carrying, or carried a phony weapon. Fifty of the 99 acknowledged that they were deterred by the fear of the death penalty. Only 10 percent, by their own testimony, were undeterred.

The legislation under consideration, S. 1401, will use the deterrent effect of the death penalty to the fullest advantage. First, the proposed penalty, being mandatory, will be imposed without exception provided one or more clearly defined aggravating factors and none of several clearly specified mitigating factors is present.

Second, the proposed penalty will apply to the crimes which are most susceptible to deterrence, those involving deliberate rational premeditation. These include wartime treason, sabotage, and espionage. Moreover, in cases of hijacking, kidnaping, and robbery, the proposal gives the criminal engaged in these offenses a positive incentive not to kill his victim.

Since the moratorium on executions in 1967, the crime rate in most American cities has continued to rise. We must confront this intolerable situation with positive action. The death penalty provides the severe deterrent we need; a mandatory death penalty will be more effective than previous discretionary death penalties.

While the proposed death penalty is but part of an overall solution to the crime problem, I believe it is an essential part. I urge the Senate to adopt S. 1401 to restore the death penalty for certain enumerated crimes.

Mr. TOWER. Mr. President, as a cosponsor of S. 1401, a bill to establish rational criteria for the imposition of capital punishment, I urge the Senate to approve that bill now before us.

This is, indeed, a most serious matter since capital punishment is the most severe form of punishment a society can inflict on one of its members. In considering S. 1401, in my mind there is only one question that a Senator need face. That is simply whether or not capital punishment is, in fact, a deterrent to the committing of violent crimes and whether such a deterrent is of such a nature that it overcomes any moral consideration that a Senator may confront concerning the nature of this punishment.

This is the major question in this debate because the system under which a capital punishment sentencing hearing would be established under the bill, corrects the deficiencies in the death penalty as enumerated by the Supreme Court in Furman against Georgia.

I believe that the death penalty is a real deterrent to the committing of violent crimes. While sociological surveys seem to be split on this question, as the committee hearings and the committee report clearly point out there is overwhelming evidence from both law enforcement officials and everyday experience that the deterrent is real.

I have the highest respect for any Senator who must vote against this bill for moral reasons. In my case, it is also extremely relevant from both a practical and moral standpoint, that a legislature whether Federal or State, take appropriate action to protect the members of its society. This is the primary responsibility of any organized association formed as a governing representative in a society. Since I have concluded that capital punishment under the procedure established by S. 1401 is constitutional and would be an effective deterrent and in this respect would be a vast improvement in terms of deterrence over the type of sentencing procedure the Supreme Court found violative of the 8th and 14th amendments, I shall support and vote for this legislation.

Mr. BUCKLEY. Mr. President, the purpose of S. 1401, now before us, is to establish a procedure consistent with the constitutional requirements set forth by the Supreme Court in its 1972 ruling on capital punishment. The proposal, briefly, consists of the creation of a two-stage trial, the first part of which would deal with the question of guilt or innocence, the second dealing with the question of whether the death penalty ought to be imposed. In this latter stage, in order for the death penalty to be imposed, one or more specified aggravating factors must be present, and all of the specified mitigating factors must be absent. This scheme would replace the presently unconstitutional formula which authorizes capital punishment for some 10 crimes under Federal criminal law. These crimes include murder, treason, rape, air piracy, and delivery of national defense information to aid a foreign government.

The threshold question is one of constitutional law. The answer to the constitutional question, however, depends in large part on how one reads the nine separate opinions of the Supreme Court in Furman against Georgia. The report of the Judiciary Committee is quite correct in suggesting that the scope of the Court's decision is unclear. The authors of the committee report make a reasoned case for the constitutionality of S. 1401 within the confines of the Furman case; but Senator HART in his minority views raises certain questions on this point, questions which also find a reasoned source in the Furman opinions. As I am not a constitutional scholar, I do not feel qualified to resolve this thorny and problematic dispute, nor do I think that anyone who has not studied this question in depth is qualified to render a firm judgment. Indeed, the majority of the Court itself seemed to be of many minds on the matter. Where the case is closely reasoned on both sides, and where the proposal does no clear violence to the Constitution, I know of no other way to resolve the constitutional question than to allow the Court in appropriate future litigation to clarify its meaning.

I turn now to the equally vexing question of the substantive case for capital punishment. I would like to state at the outset that I am not in principle opposed to the death penalty for certain heinous offenses where the existence of the penalty has a deterrant effect. At the same time, I think we are all aware—and the Supreme Court took great pains to remind us—that in practice the imposition of capital punishment has at times been arbitrary, unjust, and in some cases clearly discriminatory in its impact. The bill before us proposes to insulate the death penalty against such charges. In reviewing the bill, I have been persuaded by three factors:

First, I am convinced that in certain cases, the threat of capital punishment does act as a deterrent. It is true that in the general case, it is difficult if not impossible to demonstrate any clear and direct correlation between capital punishment and criminal deterrence. We have no way of knowing, for example, how many people did not commit capital offenses for fear of being executed. There is some evidence, however, which suggests that since the de facto abolition of capital punishment there has been an alarming rise in offenses for which capital punishment would previously have been the sanction. But whether this rise can be attributed to the elimination of the death penalty, or whether it has extraneous causes, or whether both relationships hold, are, again, questions to which we are unlikely ever to have answers that are free from doubt.

But one of the things that bothers me, Mr. President, is that the public may be paying the price. We may never know for sure, for example, whether the kidnapers of Patricia Hearst would have been deterred by the certainty of a death penalty following their capture and conviction. It may well be that such fanatics would be deterred by nothing. But if we were to impose a death penalty in such cases, I do not for a moment believe that we would be brutalizing ourselves or our social order, or giving the lie to the essential justice of our criminal system. What bothers me, in short, is the haunting fear that by proscribing the death penalty more or less absolutely, for fear that we may be doing moral damage to our respect for life, we may in fact be doing a graver injustice by endangering the lives of many innocent people.

Such is not a blanket argument justifying capital punishment; but it does suggest that our solicitude for a worthy if abstract goal; namely, the attempt to remove "cruel and unusual punishment" from our criminal system—may be purchased at an excessively high and dangerous price. There are, I believe, certain classes of crimes concerning which we ought for public safety's sake to resolve our doubts in favor of protecting innocent victims of malicious action. This can be accomplished, I believe, within the confines of appropriate procedural safeguards.

While reasonable men might differ as

to what particular crimes ought to fall within such a classification, I do not find that the list proposed to be covered by S. 1401 is so arbitrary or unreasonable as to be per se objectionable, although I am, quite frankly, I have misgivings about the imposition of the death penalty in certain classes of homicide.

Second, I believe the procedural and substantive safeguards of S. 1401 represent a reasonable compromise. The scheme, as I understand it, maintains the traditional evidentiary burden upon the prosecution to demonstrate the presence of one or more of the aggravating factors which constitute conditions precedent to capital punishment, while at the same time the burden upon the defendent to show mitigating circumstances is less. That is, evidence of mitigating factors may be offered regardless of its admissibility under the rules governing evidence at Federal criminal trials; but evidence of aggravating factors must meet the stricter rules of admissibility. This procedure, combined with the provision for separate trials, one on guilt or innocence and one on the appropriate sanction, insulates the legal system against the charge that it meets out the death penalty capriciously.

Third, I am satisfied that the creation of the right of review of the sentencing procedure will provide protection against error at the trial level. Under present law, errors in sentencing are not ordinarily subject to review. Given the gravity of the sanction in capital cases, I am glad that S. 1401 provides for appellate review as a further safeguard.

Mr. President, no one in this body is so coldblooded as to enthuse over the necessity of restoring the death penalty in certain cases. No one but a sadist takes pleasure in condemning another man to death. By the same token, I believe that anyone who believes there can never be any justification for the taking of human life, would oppose the imposition of the death penalty under any and all circumstances. I believe that under carefully circumscribed procedures the restoration of capital punishment is a regretfully necessary—but necessary nevertheless—step. S. 1401 may not be a model of perfection, but it makes a sincere and reasonable effort to reach a workable compromise.

AGAINST CAPITAL PUNISHMENT

Mr. MUSKIE. Mr. President, Senate consideration today of the mandatory capital punishment bill raises the most basic of moral considerations—the value we place on human life. In judging whether or not to sanction the death penalty, we are in fact deciding whether punishment of the criminal should ever warrant the taking of life by the state.

In my view, there has been no demonstration that the death penalty is an effective deterrent to major crimes. The consequences and dangers of execution, however, are clear: the wrong of executing the innocent can never be corrected.

My own State of Maine, for instance, repealed capital punishment in 1887—after the State hanged a man later believed to be innocent.

My good friend and colleague, Senator HART, has capably analyzed the issue presented by the broad question of capital punishment, and by the specific bill before us, in his "Additional Views" accompanying the Judiciary Subcommittee report on this bill. Senator HART summarizes all the arguments against capital punishment, saying that it has not been proven to increase deterrence, that the cost of life imprisonment may be less than a capital trial and execution, that those imprisoned for life are no more likely to commit murder again, and that execution is not necessary for retribution for crimes when other severe penalties are available. He also argues convincingly that standards in the bill deserve liberalization even if capital punishment is acceptable.

Mr. President, I commend Senator HART for his thorough and persuasive presentation of the case against capital punishment and ask unanimous consent that his "Additional Views," and the appendix to them, be printed in the RECORD.

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

ADDITIONAL VIEWS OF MR. HART

(To accompany the Report of the Subcommittee on Criminal Laws on S. 1401, a bill to provide a revised federal death penalty)

I. INTRODUCTION

The Supreme Court decision in *Furman* v. *Georgia*, 408 U.S. 238 (1972), casts severe doubt on the constitutionality of existing death penalty statutes. In response, the President has proposed a new death penalty.

The constitutionality of S. 1401, itself, is unclear. If constitutional, S. 1401 would still be bad legislation—unwise and unjustified.

While I favor abolition of capital punishment, I appreciate that some of my colleagues favor retaining a carefully circumscribed death penalty. *But 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.

For all these reasons, I oppose passage of S. 1401.

Part II of these views summarizes the background of S. 1401 and its proposed scheme. Part III examines the general case made for retaining capital punishment. Part IV, *assumes* that some form of acceptable death penalty might be drafted to apply in appropriate cases, and examines the defects of the particular approach taken by S. 1401.

II. BACKGROUND AND OPERATION OF S. 1401

The Committee report outlines the decision in *Furman*. Briefly, a five-four majority held that the death penalty, as imposed under the procedures before the Court, constituted "cruel and unusual punishment" in violation of the Eighth and Fourteenth Amendments.

The full import of the decision is unclear. Each justice in the majority wrote a separate opinion. Justices Brennan and Marshall found execution a *per se* violation of the Eighth Amendment. Justice Douglas found he did not have to reach that question and held only that the present system's discriminatory impact made the punishment "cruel and unusual." But there are strong indications he would join Justices Brennan and Marshall in striking down any death penalty.

Accordingly, attention has focused on Justices Stewart and White as the critical votes for any statute which the Court might uphold. Both stressed the rarity of imposition and the arbitrary manner in which it was imposed.

Following *Furman*, the search commenced for a death penalty which might be made acceptable to a majority of the Court. Several States have taken the straightforward approach of a "mandatory" death penalty. Execution would be automatic for an enumerated list of offenses; anyone convicted of one of these offenses would be killed, regardless of the circumstances.

The problem with this approach is obvious. There is no room at all for the jury to consider mitigating circumstances or to exercise any mercy. Such a Draconian law not only revolts our sense of justice, but also would produce jury "nullification" through either conviction for a lesser-included offense or outright acquittal. Indeed, it was because of this nullification problem at the turn of the century—as society's sense of justice evolved—that mandatory death penalties largely were abandoned for the modern discretionary approach.

Apart from the impact of jury nullification on law enforcement, the barbaric nature of strict mandatory death penalties was well summed up by Justice Blackmun in his *Furman* dissent.

Such legislation is regressive and of an antique mold, for it eliminates the element of mercy in the imposition of punishment. I thought we had passed beyond that point in our criminology long ago. (Id. at 413.)

S. 1401, then, is an answer offered to both *Furman* and the criticism of mandatory penalties.

Provisions of S. 1401

How would S. 1401 work? The bill specifies a list of mitigating and aggravating factors the jury may consider, but does not permit discretion to weigh those factors or to consider others. If any mitigating factor is found, death is precluded. If no mitigating factor is found and any one of the aggravating factors is present, the sentence must be death.

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 forseeable.

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 committee treason, espionage, sabotage, skyjacking, kidnapping, 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.

The Committee Report defends S. 1401 on two levels. First, the report reasserts the traditional grounds for retaining the death penalty: that it is necessary (1) to deter other murders; (2) to indicate society's condemnation of heinous acts; and (3) to ih-

capacitate murders so they cannot strike again.

Proponents of S. 1401 also claim it meets the constitutional and policy pitfalls raised in *Furman*. They suggest that unlike other approaches, it is a fair, rational system which would permit execution only in appropriate cases and would avoid the dangers of jury nullification. I believe S. 1401 would do neither. And, of course, I challenge the basic case advanced for retaining the death penalty.

III. THE CASE AGAINST CAPITAL PUNISHMENT

The reasons why I find the arguments for capital punishment unconvincing can be briefly summarized. They are examined in more detail in the appendix to these views.

What do we know about capital punishment? We do know that mistakes will be made through human error and innocent men condemned to die. The Committee claim that this danger has passed is unconvincing.

Second, we know that those who have been sentenced to death have overwhelmingly been the poor, the minority member, and the unpopular. Rich, white Americans simply are not given the death penalty. In America, racial hostility and anxiety over personal safety are tragically intertwined by both events and design. Each of us can ask ourselves whether we really believe this discriminatory imposition in practice would be eliminated by any bill other than an absolutely mandatory one—which is unacceptable for other reasons.

Third, the very act of premeditated execution is itself a denial of the sanctity of life to which appeal is made by proponents of capital punishment. While we teach people that life should not be taken, executions, at bottom, teach that the state will sanction killing if the benefits are sufficient. Moreover executions today still involve barbaric suffering.[1] Indeed, the brutalizing effect of such horror is recognized by our insistence that men be executed privately, rather than publicly in the city square. That would be the logical way to ensure the purported deterrent effect.

There have also been cases of "suicide murders" induced by the existence of the death penalty; that is, persons who wanted to take their own lives, but were unable to do so and therefore killed so they would in turn be killed by the state.[2]

Surely, in light of these considerations, this awesome ultimate penalty by which we play God can be justified only by some significant demonstration that it is needed to protect human life where other punishments would fail. While those who favor the death penalty ask *for conclusive proof* it is not necessary, *we need only ask for any substantial evidence that it is;* none can be provided.

Deterrence

The Administration concedes that deterrence is the principal rationale for the death penalty.[3] But is it a *necessary* deterrent? An affirmative answer to that question requires more than the simplistic observation that since people fear death most, it must be an effective deterrent.

This appeal to "intuitive logic" often obscures the real issue. No one disputes that capital punishment has *some* deterrent effect. Presumably all penalties do. That simply is not the question. The point is whether it has a *sufficiently greater deterrent effect than life imprisonment*. In other words, is there any substantial demonstration that a significant number *of those murders who would be deterred by any punishment* would be deterred by death, but not by life imprisonment? If not, how do we justify imposing the ultimate penalty with its risks of irreversible injustice and its other costs to society?

No compelling case has been made that death is a greater deterrent. The evidence simply is not there. With rare unanimity, the studies show no higher criminal homicide rates in states without the death penalty than in those which retain it. In response to the possibility that figures of this kind may reflect divergent social and cultural factors other than capital punishment, more sophisticated studies have compared the rates in contiguous states where history, geography and social and economic conditions are similar. The results are the same. There is no indication the death penalty affects the rate of criminal homicide. Similarly states show no rise in murders once they abolish the penalty, nor a decline if they reinstate it. The Committee critique of the studies is fallacious.[4]

Acknowledging the absence of any data to support the death penalty, both the Justice Department and the Subcommittee Report emphasize instead "empirical evidence" based on the personal impressions of law enforcement officials and statements by individual offenders. These prove little upon closer examination.

One Administration witness, testifying before the House Judiciary Committee cited an American Bar Association study showing instances in which criminals did not carry guns, or kill potential victims because of the death penalty. In fact, no such study exists or was ever made.[5]

In a recent statement of the Department's position, Attorney General Richardson admitted that it is impossible to show with the available statistics that capital punishment has a greater deterrent effect than life imprisonment, but added:

"Statements by offenders concerning the effect of the availability or non-availability of the death penalty upon their actions *do demonstrate* that in certain instances the death penalty is, in fact a greater deterrent." [6]

With all due respect to the Justice Department, there have been no such reported statements by offenders, to our knowledge, which actually "do demonstrate" that the death penalty is a superior deterrent to life imprisonment. Not only is the motive of such statements suspect. They do not preclude the possibility that those offenders also would have been deterred from carrying loaded weapons, or taking life by the threat of life imprisonment if that had been the highest penalty then available in their state.[7] And, of course, the experience of officials is based primarily on the statements of offenders.

The Attorney General's statement goes on to add:

"Moreover, logic demonstrates that the death penalty will have a material deterrent effect on some potential offenders in some instances."

Examples are then given of such premeditated crimes as kidnapping and skyjacking. But this is to lapse into the irrelevant issue of whether it is a deterrent at all, rather than the pertinent question of whether it deters more than life sentences.

Incapacitating Offenders

Obviously, death does incapacitate, with finality, both those guilty of murder and those who might later have been found to have been innocent. But it often costs the government more to conduct a capital trial, keep a man in the special facilities on death row, and defend appeals, and then execute him, than it would have cost to have imprisoned him for life.

Moreover, despite popular myths to the contrary, the facts show that those sentenced to life imprisonment are no more likely to commit another killing than are members of the general population. Therefore, however much our emotional reactions might tug in the opposite direction, there is no more rational basis for executing someone convicted of homicide, so that he won't *kill again*, than there is to execute a bank robber or someone who has committed assault and battery, so that he will *not kill the next time*.

Retribution

It is easy to be unfair to advocates of capital punishment and to characterize their "retribution" argument as a primitive desire for blind vengance. The claim is more sophisticated. Their first point is that the death penalty offers strong condemnation by society of the most heinous criminal actions, without which expression of revulsion there would be great pressure for private reprisals and vigilante justice. Proponents also suggest that providing the most stringent penalty is necessary in order to demonstrate the intensity with which the act is condemned and thereby reinforce the internalized social restraints which help prevent others from such behavior.

There is no greater evidence of resort to private reprisal or vigilante justice in abolition states than in those with capital punishment. Moreover, the argument is a *non-sequitur*. To say society can express its utmost condemnation only by imposing its most severe penalty does not necessarily tell us what the upper limit of severity should be—or that it must be the death penalty. If life sentence with no parole were reserved for the most heinous culpable acts, then imposition of that penalty would likewise reinforce the community's internalized sanctions. Finally, the most brutal murders are quite often committed by precisely those deranged or incapacitated persons who are unlikely to be executed in any event.

This, in summary, is the case against retaining capital punishment. It rebuts the Subcommittee's assertion that "necessity" justifies the death penalty in the interest of protecting society.[8]

But a further word is in order in light of the Administration's defense of S. 1401. Even if there is more merit than I have found in the deterrence and retribution accomplishments of the death penalty, one thing is clear. Neither is plausible unless there is a substantial likelihood it will be imposed. Yet most homicides will not be capital offenses under S. 1401. The Justice Department has repeatedly emphasized that it would only apply in an extremely small number of instances.[9]

In the case of deterrence, we are concerned with homicides committed by rational persons who do premeditate and who include in their calculations the possibility of capture and punishment. Are those individuals not likely to believe that if caught, they can establish one of the mitigating circumstances in S. 1401 and escape the death penalty?[10] Similarly, we have noted that many of the most shocking homicides will not elicit the maximum condemnation of the law under any but an absolutely mandatory death penalty. In short, even the inadequate efforts in S. 1401 to prevent executions offensive to our conscience weaken further the claims of deterrence and retribution.

Thus, S. 1401 underlines the question whether advocates of capital punishment can simultaneously achieve its retention in a form which is *effective*, and *constitutional*, and *just*. An examination of S. 1401 suggests the answer may well be in the negative: that our colleagues either will have to abandon the death penalty or will have to pass a law which is constitutionally defective or one which disregards the palpable injustices that may result.[11]

But this question need not be answered conclusively before acting on S. 1401. A substantial number of our colleagues still favor retaining the death penalty for narrowly circumscribed situations if a workable, just bill can be devised. *The remainder of these views are particularly addressed to those Senators and assume such a statute is both*

Footnotes at end of article.

desirable and attainable. Even within that framework, it is clear that S. 1401 is not the appropriate vehicle.

IV. LEGISLATIVE DEFECTS OF S. 1401

There are serious policy defects in S. 1401. It excludes considerations relevant to determining whether execution is appropriate and poses a substantial risk of unjust executions. For that reason, it also encourages juries to acquit in the face of clear evidence of guilt. And it poses added dangers for those taken hostage by criminals.

Precluding considerations of mitigating circumstances

The Committee states that to "preclude the consideration of any mitigating circumstances that might justify a lesser punishment in a particular case [would be] *clearly unacceptable*". P. 14. (Emphasis added.) I agree. Yet by permitting the jury to consider only five mitigating factors, S. 1401 would do just that.

What additional mitigating factors might be relevant in a particular case? We need look no further than S. 1, the comprehensive criminal code reform bill introduced by three distinguished members of the Subcommittee, Senators McClellan, Ervin and Hruska. The death penalty in that bill, Section 1–4E1, includes several circumstances which go beyond those in S. 1401.

S. 1401 only permits the jury to consider whether the defendant acted "under unusual and substantial duress." S. 1 permits the jury to determine if:

(i) The offender acted under unusual *pressures or* influences *or* under the domination of another person. (emphasis added.)

Duress involves coercion. The provision in S. 1, which includes the impact of influence or domination, as well as "pressure," clearly permits the jury to consider far more than it may under S. 1401.

Second, while S. 1401 only permits a showing the defendant was less than 18 years of age at the time of the offense, S. 1 would permit a showing that he was emotionally immature.

Third, S. 1 permits the jury to consider the fact the offender has no "significant history of prior criminal activity." This may not be considered under S. 1401. (Prior conviction for certain offenses *may be an aggravating factor under S. 1401,* but no prior record is required to trigger the death penalty if another aggravating factor is found.)

Commenting on the greater flexibility in S. 1 for t e jury to consider these mitigating circumstances, the Attorney General did not dispute their relevance in some cases. Rather, he replied that since such considerations do not preclude the death penalty under S. 1, they "can be drawn with greater breadth," than can those in S. 1401.[12] It is true that under S. 1, the jury's findings on these considerations do not automatically dictate the sentence. But that is not the point here. The important fact is that when they introduced S. 1, Senators McClellan, Ervin and Hruska indicated their appreciation that these considerations might be relevant in some circumstances to whether the death penalty was too harsh or unjust. And the Justice Department apparently does not disagree.

Yet these considerations would be *excluded* from the jury's consideration in the sentencing proceeding under S. 1401.

In addition to S. 1, it is instructive to consider the *Report of the National Commission On Reform Of The Federal Criminal Laws,* commonly known as the "Brown Commission" after its chairman, former Governor Pat Brown of California. The Brown Commission Final Report offered alternative approaches on capital punishment: abolition of the death penalty, and a proposed death penalty statute should Congress opt for its retention. Their proposal *required* the court to impose a life sentence rather than death, whatever the jury recommendation, if the judge found:

"(c) Although the evidence suffices to sustain the verdict, it does not foreclose all doubt respecting the defendants guilt."[13]

Why was such a provision included? First, it must be remembered that jurors are instructed they may find the prosecution's case "proved beyond a reasonable doubt", even though they are not absolutely certain of the defendant's guilt and retain some ill-defined nagging doubt that the Government's version of events is the truth.

The elements of a capital offense not only may involve proof of objective facts by circumstantial evidence, but also may involve determinations about subjective states of mind and motive: To what degree were the defendant's mental capacities impaired? Did he have treasonous intent? What threat to his own life or limb did he perceive? To say the least these questions involve terribly subjective determinations for the fact finder. Even when a judge believes there is "proof beyond a reasonable doubt," in the sense that he cannot articulate clearly any specific question which remains unanswered, he may still feel a very strong sense of uneasiness that the defendant's assertions have substance. In those few cases, should the court be compelled to send the defendant to his death?

It seems clear that this is the distinction made in the Brown Commission's proposed section on grounds which would preclude the death penalty. There is no comparable provision in S. 1401.

Next we come to several mitigating circumstances which are expressly provided for in both the Brown Commission proposed statute and in S. 1 but which do not expressly appear in S. 1401. Under the Brown Commission proposal and S. 1, the jury could consider a variety of factors relating to the offender's state of mind at the time of his crime:

If he believed the circumstances morally justified or extenuated to conform his conduct to the law was impaired as a result of mental disease or defect or intoxication;

If he was under the influence of extreme emotional or mental disturbance;

If he believed the circumstances morally justified or extenuated his act and that belief was plausible by ordinary moral standards.

Together, the provisions would cover not only ongoing mental conditions but also momentary passion, extreme provocation, emotional distress, or justification. The only comparable consideration in S. 1401 is a variation on the first of these. Section (f) (2) of S. 1401 permits the defendant to show that:

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.

Since this does not require that the impairment result from a mental disease or defect or intoxication, the Justice Department claims it is broader than the corresponding provisions in other proposed statutes. It suggests that Section (f) (2) comprehends provocation, emotional disturbance, actions of passion, and a defendant's belief his action was morally justified; each might be sufficient, in appropriate cases, for the jury to find his ability to appreciate or conform his behavior had been "significantly impaired."[14] In short, the Department acknowledges these factors, too, would sometimes be relevant to a decision on the death penalty, but prefers they be weighed in the process to determining the defendant's capacity to appreciate and conform his conduct. This approach raises several problems.

Though modified, the provision closely parallels the formulations used for legal insanity and other tests of mental condition. Is it likely that defense counsel will be apprised of its intended breadth from a plain reading of the statute? And what other factors, which we may have failed to raise in our letter to the Attorney General, could defendants establish in order to invoke Section (f) (2)? Moreover, assuming defense counsel somehow learns of its intended coverage, how easy will it be to obtain a jury charge from the court based on this kind of informal legislative history, which does not, for example, appear in the Report. In fact, the Report, itself, states that the provision requires a showing the defendant's "mental capacity" was impaired. The phrase "mental capacity" connotes an ongoing mental condition even more; it hardly suggests that a plausible belief of moral justification might be sufficient, as the Justice Department contends.[15]

Finally, even assuming a jury charge which spells out the factors the Attorney General says may be considered under Section (f) (2), how is the juror to perform the mental gymnastics such determinations would require? Under this approach the juror must decide not merely whether the defendant plausibly believed the homicide was morally justified. He must simultaneously determine whether that belief was sufficient to "substantially impair" the defendant's capacity. Does that depend on the intensity with which the belief was held? On the nature of the presumed moral justification? On how "plausible" the belief was by common moral standards? Or may the jury consider a mixture of all three aspects? The complexities are overwhelming.

This last mitigating circumstance would best be left a separate element. If the standard, in the Attorney General's phrase, is "too loosely drawn", then we would revise it to read as follows: "The offense was committed under circumstances which the defendant believed to provide a moral justification, or extenuation, reasonable, in fact, by ordinary standards of morality, for his conduct."

Eliminating the reference to "plausible" and changing the standard to "reasonable" should make that consideration, in and of itself, a sufficient ground to preclude the death penalty. After all, this would not mean the offender would go free. He would face life imprisonment. It would merely mean that if he reasonably thought his behavior was morally justified or extenuated, we would not kill him.

As for the other types of considerations not expressly listed in S. 1401, they should be spelled out as examples of circumstances which might justify a finding under Section (f) (2) of impaired capacity. So amended, Section (f) (2) would read: "His capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired by (a) emotional or mental disturbance or distress; (b) provocation; (c) intoxication; (d) mental disease or defect; (e) other causes; but not so impaired as to constitute a defense to prosecution."

A third omission from the list of mitigating circumstances is the absence of any provision that the death penalty may be inappropriate because of the defendant's cooperation in releasing hostages unharmed. Death is mandatory if a homicide occurs in the course of a kidnaping, skyjacking or prison break, unless one of the five mitigating circumstances is present. Thus, any person already substantially involved in such a homicide and to whom none of the present mitigating factors apply, literally has nothing to lose. If caught, he faces automatic death.[16] (It must be remembered, the bill is premised on the offender's awareness of the penalties.) There is no incentive for him to let any hostages free or permit a plane to land safely. If acts which threaten innocent lives seem to serve his escape, there is

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no leverage for the police to convince him to release them unharmed.

The Justice Department rejects any consideration in this area, because it "appears desirable on its face, [but] might serve to encourage certain types of offenders to act with impunity, knowing that if they later . . . release a hostage, regardless of what they may have done before, the provisions of S. 1404 would require that the death sentence not apply to them." [17]

But again, one must consider a rational murderer, not subject to some other mitigating factor. Is he really likely to kill persons he otherwise would not have slain merely because he can then "gain" life imprisonment by taking and then releasing hostages? We find a different scenario far more likely: Someone is killed at the start of a prison break attempt, or a skyjacking; the perpetrators subsequently hold guards or passengers hostage and face the question whether to kill them, too—in order to delay or avoid capture—since apprehension means certain death. We leave it to our colleagues to ask themselves which situation poses the greater danger to innocent human life.

Next, there is the more fundamental question whether any enumeration can exhaust the factors which may be very relevant in a given case. Chief Justice Burger's dissent in the *Furman* case, joined by all his dissenting colleagues, emphasized the difficulty of trying to encapsulate all the mitigating circumstances a jury might properly take into account:

However, Mr. Justice Harlan's opinion for the Court in *McGautha* convincingly demonstrates that all past efforts "to identify before the fact" the cases in which the penalty is to be imposed have been "uniformly unsuccessful," 402 U.S. at 197. One problem is that "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 single formula. . . ." (citation omitted) 408 U.S. at 401.

I appreciate that the constitutional theory of S. 1401 requires an effort to spell out those circumstances insofar as possible. But Congress still can recognize its inability to cover in a short list all the factors which may cry out for mercy in some future case, even though such situations do not now come to mind. Under the Brown Commission statute, in addition to the specified list of factors, death would be precluded upon a finding: "there is some other compelling circumstance which would make sentence of death unjust."

For it to apply, a specific circumstance would have to be raised explicitly by the defense and there would have to be adequate information in the record to support a finding that the factor was present. Moreover, the jury would have to agree upon such a finding and agree that it, alone, rendered the death penalty inappropriate. This would have to be articulated in a special verdict. In contrast, the procedures involved in *Furman* provided no way of telling what factors had influenced any particular juror, to what degree it influenced him, or whether the other jurors agreed.

Finally, as to the aggravating factors listed in S. 1401, there is no requirement that they be proved beyond a reasonable doubt before the jury or judge could return a special verdict. The Attorney General rejected this suggestion on the ground that the standard presently in the bill—"preponderance of the information"—is the one used in all Federal sentencing proceedings.[18] I hope my colleagues are more willing to recognize the unique nature of a proceeding which might produce an execution.

Capital punishment is terribly irrevocable; men may be sentenced to death for murders they did not commit, *or for murders they committed under circumstances different from the good faith findings of the jury.* The possibility of error, present even when proof beyond a reasonable doubt is required, multiplies incalculably when findings which condemn a man to death need only seem more likely than not.

The same kinds of subjective determinations already noted in regard to mitigating circumstances are also involved in any finding of some aggravating factors in S. 1401. Nor is the guaranty of appellate review a significant safeguard, since findings can be overturned only if "clearly erroneous." Should we take a man's life if the fact finder is not at least sure to a moral certainty that the aggravating factor which we say warrants death is, in fact, present?

Danger of jury nullification

In its present form, S. 1401 also poses a risk of jury nullification. Where the ability of the jury to weigh mitigating circumstances is sharply restricted, any jurors determining guilt who are concerned about a possible death sentence will feel greater pressure to hang the jury, convict on a lesser charge, or even acquit despite strong evidence of guilt.

This concern could occur for two reasons: (1) jurors willing to find proof beyond a reasonable doubt according to the court's charge, may still have some malaise about the correctness of that verdict; (2) jurors confident about the verdict of guilt may feel strongly, on the basis of what they have seen and heard at the trial, that a death penalty would be unjust.

The Justice Department claims this danger is eliminated by the separate trials on guilt and punishment. It argues that since the evidence on punishment would not be offered until the second hearing stage, "this should be enough to avoid the inducement of [jury nullification]." [19]

But would it be enough? The trial jury would usually be aware it was a capital case. Either they would also be aware of the nature of the sentencing proceeding under S. 1401, or they would not.[20]

If the jury *is* aware of the sentencing procedure, then it knows it may not even sit at the second stage, given the options under Section (b). And the jurors know that if they do sit on the question of punishment, their ability to show mercy will be curtailed by the quasi-mandatory scheme of S. 1401. Thus, there would be an inducement to implement any qualms about the appropriateness of the death penalty for that particular defendant by preventing a murder conviction at the trial stage.

If the trial jury *is ignorant* of the sentencing procedures when they commence their deliberations on guilt, then there is still a danger of nullification. For that is the only way a juror who strongly feels death is inappropriate can be sure that his view will prevail and he can avoid complicity in what he regards as an unjust execution. The fact that jurors should not vote on guilt for that reason, under the law, is not the point. Jurors do.[21]

Conclusion

For those who seek a carefully drawn death penalty statute which would avoid unjust results, and provide an effective deterrent, without distorting the criminal justice process or endangering innocent lives, S. 1401 raises many serious problems. I hope my colleagues will consider the advice of a witness at the subcommittee hearings *who is an advocate of capital punishment and was an advisor to the Florida Commission created to draft a post-Furman statute.* He concluded that S. 1401 would not accomplish its own professional aims and suggested that the Committee "go back to the drawing boards" to see if a better bill was not possible.[22]

FOOTNOTES

[1] There is both the mental anguish of anticiption and the physical pain of the execution, itself. We hope our colleagues do not assume that modern executions are momentary and painless. I urge them to read the responsible accounts of several recent executions in the appendix to these views.

[2] See appendix at 4.

[3] Letter from Attorney General Richardson to Senators Hart and Kennedy (October 8, 1973) P. 1. (The questions sent to the Attorney General and his response are reprinted in full in the appendix to these views.)

[4] These studies, and the Subcommittee Report's comment on them are examined more fully in the appendix at 2–3.

[5] Upon close examination, one learns this reference, by now misleading reproduced in several sources, refers to assertions made without documentation by a state district attorney at an ABA symposium on the death penalty. See testimony of Henry Peterson in Hearings on Capital Punishment before Committee on the Judiciary, U.S. House of Representatives, 92d Cong., 2d sess. (1972) at 33–34; and H. Bedau, "The Nixon Administration and the Deterrent Effect of the Death Penalty," 34 Pitt. L. Rev. 557 (1973) (tracing the emergence of this "study").

[6] Richardson letter, *supra* note 4 (emphasis added) at 2.

[7] The significance of these personal "testimonials" is discussed in the appendix at 3–4.

[8] "In providing its members protection, *society must do what is necessary* to deter those who would break its laws and punish those who do so in an appropriate manner." Subcommittee Report, p. 7 (emphasis added).

[9] E.g., Richardson letter, *supra*, note 4, at 2.

[10] It cannot be argued in response that such persons will be unaware of the sentencing scheme of S. 1401. Certainly after the first sentencing proceeding under S. 1401, and perhaps upon its enactment, widespread media comment on its operation would alert most of those who are likely to calculate their crimes in advance.

[11] It is doubtful that S. 1401 skirts the constitutional swamp posed by *Furman*. For example, Justice White objected not only to arbitrary imposition, but also to a death penalty "so infrequently imposed that the threat of execution is too attenuated to be of substantial service to criminal justice." 402 U.S. at 313. Moreover, it is by no means clear that Justices Stewart and White would uphold any death penalty which turned on findings by the jury, with the attendant possibility of arbitrary or discriminatory imposition.

[12] Richardson letter, *supra* note 4, at 4. (Answer to question 2.)

[13] National Commission on Reform of Federal Criminal Laws, Final Report, Provisional Section 3603 (p. 314) (1971).

[14] Richardson letter, *supra*, note 4, at 6–7.

[15] Subcommittee Report, p. 16 .

[16] *For these purposes*, we have accepted the assumption death is a greater deterrent, on which S. 1401 is premised.

[17] Richardson letter, *supra* note 4 at

[18] Richardson letter, *supra* note 4, at 9.

[19] Richardson letter, *supra* note 4, at 4.

[20] It is unclear what inquiries the trial jury might make of the court regarding the sentencing proceeding to follow, or what instructions would include on this point if S. 1401 were enacted. But in any event it is likely that some jurors would be familiar with the scheme of the statute from its discussion in the media.

[21] Only in a single stage proceeding at which both guilt and punishment are decided, can a juror vote his true feelings on the question of guilt and still be sure he can prevent a recommendation of the death penalty. After the jury agrees on guilt, he can still force a hung jury or an agreement not to recommend the death penalty. Where there is a split proceeding and the jury has broad discretion on the question of punishment, the danger is still present but substantially less

than where, as under S. 1401, the determination is automatic.

[2] Testimony of Prof. L. Harold Levinson, Reform of the Federal Criminal Laws, Hearings before the Subcommittee on Criminal Laws and Procedures, Committee on the Judiciary, U.S. Senate, 93d Cong., 1st sess. (1973) at p. —.

APPENDIX TO ADDITIONAL VIEWS OF MR. HART

I. FURTHER NOTES ON CAPITAL PUNISHMENT

Proponents of capital punishment are asked to show some substantial evidence it is necessary to protect society in view of the dangers of mistaken execution, of its discriminatory application, and of its effect on the public attitude toward the sanctity of human life. Therefore, they dispute these concerns.

Many cases of innocent men condemned to death in America have been documented. Most of the celebrated cases of wrongful conviction, and all of the best documented ones, have involved prisoners alive when the error was discovered, although there have been several very close calls. See H. Bedau, *The Death Penalty In America* (Rev. ed. 1967) 434–452 (hereinafter cited as *Bedau*). It is not surprising there are no fully documented incidents of innocent persons who were executed. Once a prisoner is killed, his own efforts at vindication cease. His family, friends and defense counsel are far less likely to pursue efforts to find the actual killer or to establish the actual circumstances where the prisoner did in fact commit a homicide. There are few official channels through which the case can be pursued posthumously.

At least one English case, which played a major role in the reform of English law, should give us pause. Timothy Evans' wife and baby daughter were killed and Evans, a man of subnormal intelligence gave the police a confession. He was convicted and hanged. Four years later, a boarder in the same house, who had been the chief witness against Evans, was found to be a multiple-murderer who had committed homicides strikingly similar to the ones of which Evans had been convicted. An official inquiry judged Evans had been erroneously convicted of his daughter's death, the only one for which he had been tried. He was granted a posthumous pardon, for what that was worth. Hearings on the Death Penalty, before the Subcommittee on Criminal Laws and Procedures, U.S. Senate, 90th Cong. 2d. sess. (1968) 60.

The Evans case is unusual in one sense. Far more often, the basis of the error is mistaken identity. And this points up the weakness in the Subcommittee's argument that present procedural safeguards regarding right to counsel, appeals and so forth "have all but reduced the danger of error in these cases to that of a mere theoretical possibility." Subcommittee Report at 13. This misconceives the nature of appeal and post-conviction remedies. These reviews concern almost exclusively errors of law, not of fact—jury charges, admission and exclusion of evidence, pre-trial proceedings. The one question rarely touched is the credibility of witnesses. Whether eye-witness testimony might be mistaken or a prosecution witness might be perjuring himself is left in our system to the jury. There are now too many documented cases of mistaken conviction to argue the death penalty poses no substantial risk of executing innocent persons. It is extremely unlikely that chance has saved or will save every innocent man who has or will come within inches of death. It is far more likely the records conceal many cases which differ from those we do know about only in that the evidence of their innocence was not revealed because they were killed before it could emerge.

The discriminary impact on poor and minorities of the death penalty in America has not been definitively adjudicated by the Supreme Court, although many justices have acknowledged the powerful evidence for its existence. See e.g. concurring opinions of Justice Douglas and Marshall in *Furman, supra*. The leading student of this problem, however, has recently concluded that the present evidence strongly indicates that the death penalty has been imposed with a patterned, systematic racial bias, unexplainable either by statistical chance or any statutory or other legally acceptable basis. Wolfgang and Riedel, *Race, Judicial Discretion and the Death Penalty*, 407 Annals of the Amer. Academy of Pol. and Soc. Science 119–133 (1973). Of course the possibility of discriminatory application increases with the amount of discretion given the court or jury to impose or withhold the death penalty. But under any save a completely automatic mandatory law the requirement of jury findings on specific factual issues gives substantial play to the possibility of discrimination.

As for the brutalizing effect of the death penalty, abolitionists are often accused of holding a double standard—concern for the sanctity of life when it comes to convicted murderers, but no equal reverence for the lives of the innocent victims. Such attacks are unfair. There is a valid distinction between killing when there is a clear and present danger that one would otherwise become an innocent victim and society's right to punish criminals after the fact of their offense. If execution could bring back to life the innocent victims of criminal murder, or if the prospective victim can save his own life at the cost of killing his attacker, all people except the absolute pacifist would value the innocent life over the life of the murderer. But those are not the kinds of choices we face in passing death penalty statutes unless it is shown that they will protect innocent lives effectively when other punishments will not. This brings us to the question of deterrence.

As noted in The Individual Views, the debate over the deterrent effect of the death penalty is shaped largely by the formulation of the question at issue and by the side which is thought to bear the burden of proof.

It seems to me that the pertinent question is clear: Is life imprisonment as good a deterrent as capital punishment for the crimes which a proposed statute would make capital.

Regarding the question of who should have the burden of the argument. I have explained my position in the Views, but a note can be added. In his dissenting opinion in *Furman*, Chief Justice Burger rejected the notion that proponents of capital punishment be asked to demonstrate its superiority as a deterrent to life imprisonment, unless we are prepared to make a similar inquiry regarding all gradations in punishment—that 20 years imprisonment is more effective than five, or that a $100 fine is more effective than a $10 fine. 408 U.S. at 396. Those additional questions may indeed make interesting inquiries as we revise the entire sentencing structure of our federal penal laws. But as Justice White recognized—and we think most people would agree—the death penalty is a "unique penalty" qualitatively different in its finality, its infliction of pain and terror, its distortion of the criminal justice process, and its impact on society. For that reason, I see no problem wth requiring a more substantial showing it is necessary, than in the case of lesser punishments.

What do the available studies and research tell about the deterrent effect of the death penalty as compared to life imprisonment?

1. Death penalty jurisdictions do not have a lower rate of criminal homicide than abolition jurisdictions, even when one compares continuous or otherwise comparable States;

2. In jurisdictions which abolish the death penalty, abolition has no influence on the rate of criminal homicide;

3. Jurisdictions which reintroduce the death penalty after its temporary abolition do not show a decreased rate of criminal homicide after its reinstatement. (See *Bedau*, supra, Ch. 6: Andenaes, "Does Punishment Deter Crime," 11 Criminal Law Quarterly, Quarterly 76, 83 (1968.); Sellin, *Capital Punishment* (1967).)

As for the impact on the safety of law enforcement officers and prison guards:

4. Police officers do not suffer a higher rate of criminal assault or homicide in abolition jurisdictions than in death penalty jurisdictions. Sellin, "Does the Death Penalty Protect Municipal Police" in *Bedau, supra*, at 284.

5. Nor do corrections guards suffer higher rates of assault or homicide in abolition states than in death penalty states. Sellin, *Capital Punishment* (1967) 154–160.

Death penalty proponents claim these figures are irrelevant because they never reflect persons who were in fact deterred from homicide by the threat of execution. But think about that argument. Assume State X and State Y have the same murder rate. State X has the death penalty. State Y does not. Proponents suggest the death penalty is a more effective deterrent but they cannot show it because persons deterred from killing in State X don't show up in the statistics. But what about the people in State Y who might have killed *but were deterred by life imprisonment?* The proponents argument requires the totally unwarranted assumption that, to begin with, there are a far greater number of potential murders in states with capital punishment than in states without it. *Only if that assumption is made, could the equal homicide rates reflect a greater deterrence by the death penalty.* There is no basis for such an assumption. If the assumption is not made, then essentially equal homicide rates suggest that the two penalties serve equally well to deter potential killers who do not show up in the statistics. This point can be seen even more clearly if we take a jurisdiction which had abolished the death penalty, but then reinstated it yet experienced no drop in the homicide rate. The Subcommittee's thesis requires the assumption that for some unexplained reason the number of would-be murderers in the state suddenly shot up when the death penalty was reintroduced, and that is the reason the homicide rate stayed the same even though the death penalty was deterring more people than had the previous threat of life imprisonment.

The Subcommittee further challenges these studies because they are based largely on aggregate homicide figures which do not distinguish capital from non-capital offenses. Report at 8–9. Great emphasis is placed on this point. But the Subcommittee's challenge suffers from the same defect just noted. Suppose State X has abolished capital punishment. The death penalty is reinstated with no drop in the overall homicide rate. The Subcommittee must assume that for some unexplained reason the number of homicides other than first degree murder have suddenly shot up when the death penalty was introduced. Otherwise, the steady homicide rate means that the rate of first-degree murders has stayed the same, i.e. that the proportion of capital and non-capital homicides has not substantially changed. Not only is this assumption offered without any basis; it contradicts another assertion in the Report, namely, that the death penalty has some deterrent effect even on the perpetration of non-capital homicides.

Nonetheless we agree with the Subcommittee that the evidence is not conclusive. The Subcommittee quotes one of the leading experts on capital punishment in America, Professor Hugo Bedau, for this proposition. Report at 14. But it omits Professor Bedau's overall conclusion based on his exhaustive study of the American experience with the death penalty:

"What do all these studies, taken together, seem to show? The results are negative; *there is no evidence to support the theory that the death penalty is a deterrent superior to imprisonment for the crime of murder.*" *Bedau, supra,* at 264. (italic added)

Similarly, in their opinions in the *Furman* case, both justices who joined the majority and some of those dissenting agreed there was no substantial evidence demonstrating that capital punishment is a more effective deterrent. See 408 U.S. at 307 n.7 (Mr. Justice Stewart, concurring); *Id.* at 395–6 (Chief Justice Burger dissenting); *Id.* at 416 (Mr. Justice Blackmun, dissenting); and *Id.* at 455–56 (Mr. Justice Powell, dissenting.)

Accordingly it is worth pursuing a little further the other "empirical arguments" of those supporting the death penalty. We have already discussed the so-called "American Bar Association study" in our Views. See p. 4, n. 6. The Subcommittee Report relies primarily on the stated opinions of several law enforcement officials. These views presumably are based either on institution or on conversations with captured criminals. But the significance of these conversations, and hence the opinions based upon them, is elusive. For example, the Justice Department in earlier Congressional testimony cited a Los Angeles Police Department analysis based on interrogation of 12 robbery suspects. Each reportedly indicated they had used unloaded or toy guns to avoid the risk of killing someone and being executed. Testimony of Henry Peterson, *supra* Individual Views, p. 4, n. 6.

Taking these statements at face value, they do not necessarily show anything more than that those defendants were deterred by the prospect of receiving the most severe penalty which they knew the state might impose for murder. We have no way of knowing whether, if California's toughest penalty at the time had been life imprisonment, they might have said "I didn't load my gun because I was afraid of getting life imprisonment." Without more information, use of such comments by offenders *assumes the very proposition for which they are offered,* namely, that the death penalty is a superior deterrent. Is it not likely, for example, that some robbers in Wisconsin or Michigan have used unloaded guns because they feared imprisonment with the possibility of parole being denied for much of the remainder of their life?

Moreover, it is not clear what may have been the motive of such statements. Warden Duffy of San Quentin, who personally interviewed thousands of prisoners on and off death row, reports that none indicated the death penalty was a factor they weighed. Other leading corrections officials confirm his experience. More importantly, many of those in prison for crimes other than murder told Warden Duffy that they had responded to police interrogation that the death penalty deterred them from using guns or killing because it seemed what the police wanted to hear. Many indicated to Warden Duffy that, in fact, they simply had not wanted to hurt anyone and merely wanted money. Hearings on the Death Penalty before the Subcommittee on Criminal Laws and Procedures, U.S. Senate, 90th Cong. 2d sess. 23 (1968).

The Subcommittee cites a dramatic threat to throw a grenade at hostages because the death penalty had been struck down. Yet the grenade *was never thrown,* according to the same news story cited. Report p. 11. What deterred the robber from throwing it, if he disregarded the death penalty?

As in the case of the studies, we cannot be sure about the significance of alleged "personal experience." It is possible that a few potential killers have been deterred by the prospect of the death penalty but would not have been deterred by life imprisonment. But they may well be offset—from any saving life perspective—by the instances of "suicide murders" committed by persons unable to take their own life who sought to produce their own execution. Several such cases have been documented. Ibid. at 126–27.

The superior "incapacitation" of the death penalty is usually advanced in terms of cost and the risk of recidivism. Recent experience has been that the total costs of trying, guarding and executing someone approximate—and may exceed—the costs of life imprisonment. McGhee, "Capital Punishment as Seen by a Correctional Administrator", 28 Fed. Probation 13 (1964); "The Death Penalty Cases" 56 California Law Rev. 1268 (1968); Washington Research Project, *The Case Against Capital Punishment* 61–62 (1971).

The studies done on recidivist rates for convicted murderers in both capital punishment and death penalty states show no greater risk that they will commit another murder than any other former offender. Indeed, some studies support the testimony of many corrections experts that convicted murderers rarely are involved in another homicide. *Bedau, supra,* at 395–400. This conclusion is applicable not only to those given life imprisonment (who might be deemed less likely to be hard core murderers) but also of those condemned and then pardoned. Of course a few convicted murderers will kill again, or attempt to do so, both within the prison and if they are subsequently released. Such cases understandably are well publicized and heighten calls for the death penalty. But other offenders, from armed robbers to petty grafters, also may commit murder, and in a few cases they will. The Subcommittee's appeal to "necessity" to protect society provides no greater case for executing murderers to incapacitate them, than it does for executing those convicted of other crimes.

Appeals to intuitive logic have been made by arguments that those already serving life imprisonment "have nothing to lose" and, without the deterrent of a death penalty, might easily contemplate killing a fellow prisoner or guard in an escape attempt. But this claim ignores the vast difference in conditions of incarceration—maximum security versus normal routine or even trustee status. Moreover, it ignores the possibilities of parole or clemency.

The Subcommittee Report, itself, suggests that a life sentence without the possibility of parole is too dangerous because wardens would then have no "hold" over such prisoners to control their behavior. Report at 11. Many states do deny or restrict parole opportunities for those under life sentence and the Subcommittee cites no study showing greater incidence of recidivism by imprisoned killers in those jurisdictions. See *Bedau, supra,* at 402. Second, denial of parole still leaves the possibility of executive clemency, which under the federal system probably could not be constitutionally denied.

In any event, the majority supporting the Subcommittee Report cannot have it both ways. Either the possible extinction of parole and elementary chances is a significant deterrent for those serving life imprisonment, as we suggest, or it does not, in which case the majority's objection to dealing with "incapacitation" for the most hardened murderers by a life sentence without parole cannot stand.

The brutalizing aspects of the death penalty involve both physical suffering and mental agony. In *Reflections on the Guillotine,* Camus wrote: "But what then is capital punishment but the most premeditated of murders, to which no criminal's deed, however calculated it may be, can be compared? For there to be equivalence, the death penalty would have to punish a criminal who had warned his victim of the date at 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 physical suffering inflicted by execution is recounted in the following eyewitness accounts collected in *The Case Against the Death Penalty,* by the Washington Research Project.

The classic form of execution, still used by several states, is hanging. Warden Duffy of San Quentin, a frequent witness, describes the process:

"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, et cetera. When the trap springs he dangles at the end of the rope. There are times when the neck has not been broken and the prisoners 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 hear 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, still the most widely used form of execution in this country. 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 odour 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."

As another frequent witness has reported: "The noise is loud. The dying man fights the straps with amazing strength. Usually, some smoke rises up from the chair . . . The body will burn if it requires a second or third jolt or if the condemned perspires excessively." In some cases, the eyeballs burst from their sockets.

The length of time it takes to die in the electric chair is open to serious question. Often several shocks are required, over a period of some minutes. The prison doctors who pronounced Julius Rosenberg dead, after two minutes and three shocks, found that his wife Ethel was still alive after three applications of current. They pronounced her dead after two more shocks and a total of over four minutes. No one knows whether electrocuted individuals retain consciousness until dead, but if they do it is certain that "such a form of torture would rival that of burning at the stake. A French scientist has concluded:

I do not believe that anyone killed by electrocution dies instantly, no matter how weak the subject may be. This method of execution is a form of torture.

Electrocutions, too, can go wrong, and one that did produced a celebrated Supreme Court decision. Louisiana attempted to exe-

cute Willie Francis, a teen-ager, but the current was apparently not strong enough. As one witness described the scene:

"Then the electrocutioner turned on the switch and when he did Willie Francis' lips puffed out and he groaned and jumped so that the chair came off the floor. Apparently the switch was turned on twice and then the condemned man yelled: 'Take it off. Let me breathe.'"

The current was turned off, and Francis was returned to his cell to await another attempt on his life. Later, by a five to four vote, the Supreme Court held that the Constitution did not forbid sending him to the chair a second time, and he died there.

* * * * *

The third major method of execution used in the United States is 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 the sulphuric 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." It is controversial how quickly the prisoner loses consciousness. Some medical experts believe cyanide poisoning amounts to slow, agonizing strangulation. It was reported that Caryl Chessman gave a prearranged signal six minutes after the gas reached him. 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 a 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.—*The Case Against Capital Punishment at 34–73.*

Mr. TUNNEY. Mr. President, I urge my colleagues to vote against S. 1401, the mandatory death penalty bill. This measure represents a step backward in human development, a return to a darker age of retribution and vindictiveness which I hoped had been put behind us forever when the Supreme Court outlawed the death penalty.

I firmly believe that it is wrong to take human life. Against this fundamental precept, I can find no countervailing arguments which would justify imposition of the death penalty by the State. Many studies have been done in recent years on the supposed deterrent effect of the death penalty, and they show that the correlation simply does not exist. Most persons who commit crimes are not thinking ahead of the danger of capture, let alone ultimate execution. Many crimes are committed in a fit of passion, or otherwise without premeditation. Surely persons committing such crimes are not deterred by the existence of the death penalty.

The conclusion that the death penalty has no effectiveness as a deterrent has been increasingly accepted by other nations and jurisdictions within the United States. Great Britain, Argentina, Germany, Iceland, Austria, Italy—all these nations have abolished the death penalty completely and they have not been deluged in a wave of crime because of it. There is nothing preordained about the existence of a death penalty; like slavery, it is dying out around the world because people are coming to the realization that it is an anachronism, without effectiveness or moral justification in a modern era.

Of course those of us who oppose the death penalty abhor murder, brutality, and the whole category of what were once called capital crimes just as much as those who support the death penalty.

And I believe the perpetrators of such crimes should be separated from society. I therefore favor life imprisonment without possibility of parole as a protection for society and as the penalty for those outrageous criminal acts for which some would impose death.

Within the United States, it is clear that, even before the Supreme Court decision, the death penalty was losing favor. The number of executions has been steadily declining for years, and more and more courts and State Governors were refusing to impose the death penalty. In the end, the penalty was being imposed so infrequently that its imposition had, truly, become an arbitrary matter. The mandatory death penalty as proposed under this bill would not, I think, add any greater certainty to the decisions being made by a criminal at the time of a crime. The whole scheme of aggravating and mitigating circumstances is so complicated that it is foolish to think any criminal will weigh these considerations in advance. I do not believe the bill as drafted will work, or will lessen the arbitrary nature of the death penalty.

Assuming, therefore, that the death penalty will continue to be infrequently imposed, we are faced with the hard fact that it will be invoked disproportionately against the poor, the mentally unstable, the minority individuals, the outcasts of society. This was the case before the death penalty was terminated by the Supreme Court, and this was, in my view, a disgrace. It should not be allowed to reoccur.

Human life is too precious to risk even one mistaken execution. Life is too precious to cheapen it by involving judges, juries, lawyers and the whole government apparatus in arguments about details of motivation and background, or the peculiar circumstances which occurred during a crime. The answer to crime is in better law enforcement techniques, and a better society which will combat the roots of crime. This anachronistic death penalty will neither lessen crime or increase the moral self-respect of our Nation. I severely doubt that this legislation will meet the Supreme Court's standard; I think this bill is unconstitutional. However, I also feel that it sets a very wrong tone for this Congress and this Nation to even adopt it. I hope the Senate will reject this mandatory death penalty bill.

Mr. EAGLETON. Mr. President, much of my public career has been in the field of law enforcement. As a prosecutor and as Attorney General of Missouri, I prosecuted capital cases, as was my sworn duty. My experience, and the experience of others in law enforcement, has been that the surest deterrent to crime is the effectiveness of police work in swift apprehension, effective and speedy trial, and the prompt imposition of sentence at the close of trial.

Criminal penalties unquestionably serve as a deterrent to crime. Thus, the solemn question we must resolve is whether the death penalty in aggravated cases is a sufficiently greater crime deterrent than, for example, life without parole, or life imprisonment, or a sentence of 99 years.

Available studies and scientific research tell us that:

First. Death penalty jurisdictions do not have a lower rate of homicides than nondeath penalty jurisdictions;

Second. In jurisdictions which abolish the death penalty, abolition has no influence on the rate of criminal homicide;

Third. Jurisdictions which reintroduce the dealth penalty after its temporary abolition do not show a decreased rate of crime after its reinstatement; and

Fourth. Police officers and prison guards do not suffer a higher rate of criminal assault or homicidc in abolition States than in death penalty States.

I submit that in our society the proponents of the death penalty must carry the burden of proving the necessity of execution and I submit, absent emotion, they cannot and do not carry that burden.

Indeed, the brutalizing horror of an execution is such that the sensibilities of our society insist that it be done in private, usually at the stroke of midnight, rather than publicly in the courthouse square or on national TV.

If by some miracle we could restore the life of the innocent victim by taking the life of the culprit, then the death penalty could be absolved as an act of restoration. Absent that miracle and thus standing alone, it is an act of retribution.

God's most precious gift is life itself. The quest of civilization has been to enhance and enrich the sanctity of life, to nourish it, to give it fuller meaning. My personal belief is that we are placed on earth not to play God but to do His work. His way is not served by useless acts of retribution.

Mr. BARTLETT. Mr. President, I want to thank the Committee on the Judiciary and the administration on the excellent job they have done on preparing legislation to reimplement the death penalty for certain prescribed crimes. I am proud to be a cosponsor of this legislation.

In striking down the death penalty the Supreme Court in Furman against Georgia weaved what appeared to be an insoluble maze around capital punishment. S. 1401 appears to have avoided the multiple hazards of the Furman case and will give the judiciary the means to impartially impose the death penalty for the commission of the most serious crimes.

The 1972 Furman case exposed the in-

consistencies, the unfairness and the discrimination which unfortunately was present in many capital punishment cases prior to that time.

It is impossible to completely eliminate human frailty and error from our criminal justice system. So long as man drafts and executes our laws they will not be perfect.

But S. 1401, by carefully setting guidelines for the imposition of death has greatly reduced the chance for unfairness.

I have long been convinced of the deterrent value of the ultimate penalty for extreme criminal conduct in reducing the number of heinous crimes. After many conversations with law and judicial enforcement officers during my term as Governor this view was reinforced.

Capital punishment is not only justified but necessary for several reasons.

Society must be in the position to protect itself from the Mansons, the Oswalds, the Rays, and other vicious persons who prey on innocent victims.

Society should be able to express its moral outrage at the most abominable crimes by providing that ultimate punishment.

Certainly the death penalty eliminates the possibility that a Charles Manson will again wreak terror on a prison guard or other innocent bystander.

Basically, S. 1401 does the following: it provides that capital punishment be imposed for certain prescribed crimes, including treason, espionage, murder, and aircraft hijacking, and kidnaping where death results. However, death cannot be imposed unless certain mitigating circumstances are absent and unless one or more aggravating factors is present. For instance, a mitigating factor would be the age of an offender. The sentence may not be imposed on anyone under 18. An aggravating factor could be the manner in which the crime was committed. For instance, a murder for hire.

I am convinced that this is one of the most important pieces of legislation which Congress will consider this year. Government has no higher responsibility than the protection of its citizens. S. 1401 will provide better protection. What we do will not go unnoticed by the criminal community. By passage of S. 1401 Congress will be saying that society will not tolerate certain types of conduct. And every potential murderer, hijacker, kidnaper will be on notice of the consequences of his conduct.

Mr. President, I fully support S. 1401 and urge its passage by this body.

Mr. KENNEDY. Mr. President, I make a motion to recommit, and I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to recommit. The clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Montana (Mr. MANSFIELD), the Senator from Minnesota (Mr. MONDALE), and the Senator from Wisconsin (Mr. NELSON) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT), the Senator from New Hampshire (Mr. COTTON), the Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), the Senator from Oregon (Mr. HATFIELD), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "yea."

The result was announced—yeas 35, nays 53, as follows:

[No. 74 Leg.]

YEAS—35

Abourezk	Haskell	Muskie
Aiken	Hathaway	Pastore
Biden	Hughes	Pearson
Brooke	Humphrey	Pell
Burdick	Inouye	Percy
Case	Javits	Proxmire
Clark	Kennedy	Ribicoff
Cranston	Mathias	Stevenson
Eagleton	McGovern	Tunney
Gravel	McIntyre	Weicker
Hart	Metcalf	Williams
Hartke	Metzenbaum	

NAYS—53

Allen	Domenici	Nunn
Baker	Ervin	Randolph
Bartlett	Fannin	Roth
Bayh	Goldwater	Schweiker
Beall	Griffin	Scott, Hugh
Bellmon	Gurney	Scott,
Bentsen	Hansen	William L.
Bible	Helms	Sparkman
Brock	Hruska	Stafford
Buckley	Huddleston	Stennis
Byrd,	Jackson	Stevens
Harry F., Jr.	Johnston	Symington
Byrd, Robert C.	Long	Taft
Cannon	Magnuson	Talmadge
Chiles	McClellan	Thurmond
Church	McClure	Tower
Cook	McGee	Young
Curtis	Montoya	
Dole	Moss	

NOT VOTING—12

Bennett	Fong	Mansfield
Cotton	Fulbright	Mondale
Dominick	Hatfield	Nelson
Eastland	Hollings	Packwood

So the motion to recommit was rejected.

Mr. McCLELLAN. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The yeas and nays are ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time on final passage of the bill be limitel to 10 minutes and that the warning bells be sounded after the first 2½ minutes.

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

Mr. ROBERT C. BYRD. Mr. President, I wish to remind Senators that there is an important matter to be taken up immediately following the passage of this bill. The Senator from Louisiana (Mr. LONG) already has addressed himself to that.

Mr. HUGHES. Mr. President, I am going to take 2 or 3 minutes now to express my opinion on this bill before final passage.

It is obvious the decision is already made and the outcome is known. I would rather that the Senate of the United States had taken this time to take a major step into light for the world rather than to continue the darkness that furthers the savagery and the brutality of mankind everywhere we look today. I say these things without any reflection upon colleagues who feel just as deeply in favor of the legislation as I feel in voting against it.

In all probability we feel that way for the same basic, fundamental reasons: The defense and safety of public society and care for those who have suffered the brutality of murder and murders.

But I would that I could have used my time debating this bill in explaining the personal agony I feel for those who have suffered as victims of crimes, as well as the agony I feel for those killed by the State.

In making my way through my life and making mistakes myself, I have arrived at a conclusion, rightly or wrongly, that man cannot make the world a better place to live in by returning brutality for brutality; neither can he increase the hope and the chance of civilization by inflicting pain and agony on others simply because they inflicted pain and agony.

I would that the evolution of man were such and the love of man were such that we no longer killed each other, nor robbed, nor took advantage of each other, but when those of us who have been victimized by these crimes force the same pain and agony to be inflicted in retribution, we have not, in my opinion, furthered the cause of hope or respect for human life.

It is regrettable that conditions in the world have not changed in so many centuries that we continue to build engines of death and tell ourselves that is the way to achieve peace; that we continue to kill each other, telling ourselves it is the way to maintain order, when we know deep within us that the only solution is not a solution of the physical but one of the spiritual.

I believe sincerely in redemption. It is obvious we are going to take what in my opinion is a step into the past after 7 and almost 8 years without an execution in this country, a beginning again of returning to a means that should be abandoned forever. It requires risk and it may well take further life to take the stand in the direction I urge, but the risk and the hope for mankind in the future by taking it would be an advantage, I believe, to all our children and our grandchildren.

In conclusion, Mr. President, and distinguished colleagues, I would say and hope that in the voting on this bill, although it is going to pass today, that we could all join together at least in the hope that in the workings and the conclusions that we make in the Senate and in the Congress we continue to lead by light those people who obviously live in darkness, as well as those who are not looking for light, and be willing to take the risk that men have taken throughout all history.

There is something beside savagery, pain, and fulfillment of that baseness in man, and this is not the way to do it. It may be the best way that we collectively know today, but ultimately mankind

must abandon these methodologies of settling the cruelties that arise in a few.

I thank you, Mr. President.

Mr. ROBERT C. BYRD. Mr. President, no issue can touch deeper in the hearts of all Americans than can the imposition of the death penalty for certain crimes. It is an issue for which strong arguments rest on both sides; but, in the final analysis, I believe that society as a whole can best be served by having the death penalty as a possible punishment for certain heinous crimes.

Therefore, I support S. 1401, a bill to establish rational criteria for the imposition of capital punishment. And my support for this legislation stems in large part from the tireless work done by the Committee on the Judiciary, which took every precaution to assure that the death penalty would only be meted out for the most serious of offenses and that, when such a sentence is clearly called for, it would be administered fairly.

As we are all well aware, the Supreme Court, in Furman against Georgia, found serious constitutional problems in the manner in which capital punishment was being meted out. Varying State laws, and juries with too much discretion, resulted in some criminals being sentenced to death for identical crimes for which other defendants received lesser sentences.

S. 1401 addresses itself to the confusion that caused that Supreme Court decision. For one thing, the imposition of capital punishment would follow a separate hearing on the issue before the trial jury, a different jury, or the judge alone; and it makes mandatory an appellate review of every death sentence. For another thing, the death penalty would be imposed for specific crimes; namely, treason, espionage, murder, and homicide committed during the crimes of sabotage, skyjacking, kidnaping, arson, and escape from custody.

The Judiciary Committee is to be commended for the effort that went into this legislation, and for the manner in which it dealt with the serious objections to the death penalty.

There are those who feel that the death penalty is not a deterrent to crime. But statistics on the value of capital punishment as a deterrent are inconclusive, and, in the absence of positive proof one way or the other, the committee rightly relied on the testimony of experienced law enforcement officers—men who deal on a day-to-day basis with the worst criminals in our society. The law enforcement officials were almost unanimous in the belief that the threat of capital punishment does indeed prevent criminals from committing the most serious crimes. My own feeling is that the death penalty can be an effective deterrent to certain crimes, especially the crime of premeditated murder. A mandatory death sentence for murder, for instance, could convince burglars not to kill their victims; and mandatory capital punishment for a death that occurs in a rape could result in not only fewer rape-murders, but also fewer rapes.

Another primary objection to capital punishment is the fear that a mistake could be made in administering the death penalty—that the life of an innocent defendant could be snuffed out by the State. There is no way that society can be 100-percent certain that such a mistake would not occur, and the possibility of such a fatal error is one of the reasons why so many safeguards—for example, the appellate review—are contained in S. 1401. It is also worth noting that Supreme Court decisions over the past several years have gone a long way toward assuring defendants and convicted criminals of their constitutional rights—if anything, those Supreme Court decisions have been weighted too heavily in favor of the criminal. Therefore, the possibility of the wrong man being sentenced to death is far more remote today than it has ever been before; and the argument that the possibility of a mistake should prevent our carrying the death penalty on the books is less valid today than ever before.

It is wrong, Mr. President—very wrong—for anyone to suggest that favoring the death penalty means lack of consideration or respect for human life. Quite the contrary, I favor the death penalty—a death penalty evenly administered for specific crimes—precisely because it offers protection to all of society from the heinous acts of a very few of its members. And the Judiciary Committee expressed this same feeling when, in its report, it said:

> The conclusion in favor of the retention of capital punishment has its basis in the belief that the primary responsibility of society is the protection of its members so that they might live out their lives in peace and safety.

This is a feeling that is also shared by the majority of American citizens, as well. In the Gallup oll of November 1972—the latest Gallup survey on the subject—57 percent of those persons interviewed said they favored capital punishment. And the Harris survey of 1973 showed that 59 percent of those persons interviewed favored capital punishment.

Those respondents were not expressing any lust for blood, or even a desire for vengeance. They were expressing a desire for the kind of justice that metes out punishment that fits the crime, and that keeps in mind that the vast majority of our citizens need—and are demanding—adequate protection from a vicious criminal element.

I believe that S. 1401 would be beneficial to society, and I am hopeful that it will be enacted into law.

The PRESIDING OFFICER. The question is, Shall the bill pass? The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Montana (Mr. MANSFIELD), the Senator from Minnesota (Mr. MONDALE), the Senator from Wisconsin (Mr. NELSON), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT), the Senator from New Hampshire (Mr. COTTON), the Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), the Senator from Oregon (Mr. HATFIELD), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

I further announce that, if present and voting, the Senator from Colorado (Mr. DOMINICK) and the Senator from Oregon (Mr. HATFIELD) would each vote "nay."

The result was announced—yeas 54, nays 33, as follows:

[No. 75 Leg.]

YEAS—54

Allen	Domenici	Moss
Baker	Ervin	Nunn
Bartlett	Fannin	Randolph
Bayh	Goldwater	Ribicoff
Beall	Griffin	Roth
Bellmon	Gurney	Schweiker
Bentsen	Hansen	Scott, Hugh
Bible	Haskell	Scott, William L.
Brock	Helms	Stafford
Buckley	Hruska	Stennis
Byrd, Harry F., Jr.	Huddleston	Stevens
Byrd, Robert C.	Jackson	Symington
Cannon	Johnston	Taft
Chiles	Long	Talmadge
Church	Magnuson	Thurmond
Cook	McClellan	Tower
Curtis	McClure	Young
Dole	McGee	
	Montoya	

NAYS—33

Abourezk	Hartke	Metzenbaum
Aiken	Hathaway	Muskie
Biden	Hughes	Pastore
Brooke	Humphrey	Pearson
Burdick	Inouye	Pell
Case	Javits	Percy
Clark	Kennedy	Proxmire
Cranston	Mathias	Stevenson
Eagleton	McGovern	Tunney
Gravel	McIntyre	Weicker
Hart	Metcalf	Williams

NOT VOTING—13

Bennett	Fulbright	Nelson
Cotton	Hatfield	Packwood
Dominick	Hollings	Sparkman
Eastland	Mansfield	
Fong	Mondale	

So the bill (S. 1401) was passed, as follows:

S. 1401

An act to establish rational criteria for the mandatory imposition of the sentence of death, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, 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 subsection (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, beyond a reasonable doubt, that one or more of the applicable aggravating factors set forth in subsection (g) or (h) exists, the court shall sentence the defendant to death, except that if such jury or court, as the case may be, finds by a preponderance of the information 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)(1) 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—

"(A) he was under the age of eighteen;

"(B) 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;

"(C) he was under unusual and substantial duress, although not such duress as to constitute a defense to prosecution;

"(D) 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

"(E) 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.

"(2) (A) 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 the action resulting in the offense for which the defendant was convicted involved the holding or detaining by the defendant of one or more individuals as hostage or otherwise and that, on the basis of an assurance given to him by the Attorney General or his delegate to the effect that the release of any and all such individual or individuals then held or otherwise detained would be considered a mitigating factor for purposes of this subsection, the defendant thereafter released any and all such individual or individuals on the basis of that assurance: *Provided*, That any such promise of assurance made by the Attorney General or his delegate, made prior to the release of such hostages, shall not be binding on the United States, the Attorney General, his delegate, or any court of the United States.

"(B) In any sentencing hearing involving a defendant who received an assurance in accordance with the provisions of subparagraph (A) of this paragraph and who, on the basis thereof, released any and all individual or individuals held or detained by him at the time such assurance was given, the Attorney General shall certify that information to the court conducting such hearing and such certification shall be deemed a mitigating factor for purposes of this subsection.".

"(3) For purposes of determining the existence of mitigating factors under this section, the provisions of this section relating thereto shall be liberally construed.

"(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.

"(i) In no event shall a sentence of death be carried out upon a pregnant woman.

"(j) In any case in which a jury finds the existence of any factor set forth in subsection (g) or (h) of this section and finds that none of the factors set forth in subsection (f) exists, the court shall, if it determines such findings with respect to subsection (f), (g), or (h) to be clearly erroneous, set aside the special verdict of the jury and impose a sentence other than death."

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".

SEC. 13. 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 3562A(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.".

SEC. 17. The provisions of sections 3562A and 3742 of title 18 of the United States Code, as added by this Act, shall not apply to prosecution under the Uniform Code of Military Justice (10 U.S.C. 801).

Mr. HRUSKA. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. McCLELLAN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORIZATION FOR SECRETARY OF SENATE TO MAKE TECHNICAL AND CLERICAL CORRECTIONS IN ENGROSSMENT OF S. 1401

Mr. McCLELLAN. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make such technical and clerical corrections as necessary in the engrossment of S. 1401.

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

ORDER FOR LIMITATION OF TIME ON H.R. 13025

Mr. ROBERT C. BYRD. Mr. President, the matter which the distinguished Senator from Louisiana (Mr. LONG) is going to call up at this time by unanimous consent is of such urgency that it is important that the matter be acted upon before we adojurn today to go over until next Tuesday.

I therefore ask unanimous consent that there be a time limitation on this matter of 20 minutes to be equally divided between the Senator from Louisiana (Mr. LONG) and the Senator from Nebraska (Mr. CURTIS) and that no amendments to the measure be in order other than the committee amendment.

Mr. JAVITS. Mr. President, if the Senator will yield, I will not object. I want to be sure that if any effort is made to affect the committee amendment, our other rights would not be foreclosed to affect that amendment. Is that correct?

Mr. ROBERT C. BYRD. The Senator is correct.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

The Chair hears none, and it is so ordered.

PAYMENT OF BENEFITS TO THE DISABLED UNDER THE SOCIAL SECURITY ACT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of H.R. 13025 which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 13025) to increase the period during which benefits may be paid under title XVI of the Social Security Act on the basis of presumptive disability to certain individuals who received aid, on the basis of disability, for December 1973, under a State plan approved under title XIV or XVI of that act.

Mr. LONG. Mr. President, I ask unanimous consent that Michael Stern, Joseph Humphreys, and Bill Galvin of the Finance Committee staff be granted the privilege of the floor during the consideration of the pending bill.

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

Mr. JAVITS. Mr. President, I ask unanimous consent that Gene Mittelman be granted the privilege of the floor during the consideration of the pending bill.

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

The clerk will report the committee amendment.

The legislative clerk read as follows:

SEC. 2. (a) The last sentence of section 203(e)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 (as added by section 20 of Public Law 93-233) is amended by striking out "April" and inserting in lieu thereof "July".

(b) In the case of an advance or advances to the unemployment account of a State under title XII of the Social Security Act made before the date of enactment of this subsection, section 3302(c)(3) of the Internal Revenue Code of 1954 shall be applied as if the "second consecutive January 1" referred to in subparagraph (A)(i) of such section were January 1, 1975, or, if later, such second consecutive January 1 as determined under such subparagraph without regard to the provisions of this subsection.

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays on the committee amendment.

The PRESIDING OFFICER. Is there a sufficient second (putting the question)? There is a sufficient second.

The yeas and nays were ordered.

Mr. LONG. Mr. President, H.R. 13025 would permit payments under the new supplemental security income (SSI) program to be made up for up to 12 months on the basis of presumptive disability to certain individuals who were formerly on the rolls of State programs of aid to the disabled. The bill is necessary because the Social Security Administration will not be able to complete its final determinations as to the disability of about 160,000 of these individuals within the 3-month period during which existing law permits SSI payments to be made on the basis of presumptive disability. Under the bill, payments can be continued until the necessary disability determinations are made, but not beyond December 1974.

The Committee bill would also continue for an additional 3 months a temporary provision in Public Law 93-233 with respect to the extended unemployment compensation program.

Under this provision, States can elect to come under the program which provides for 13 weeks of extended benefits beyond the expiration of regular unemployment benefits, if the insured unemployment rate in the State is at least 4 percent, without meeting the permanent

law requirement that the rate also has increased by 20 percent over the prior 2 years. The provision in Public Law 93–233 expires March 31, 1974 and the committee bill extends this through June 30, 1974.

Present law allows States up to 2 years in which to pay back advances which they may receive from the Federal Government if they need them in order to pay unemployment compensation benefits. The committee bill would allow an additional year for repayment to States whose advances would otherwise be due for repayment this year.

Mr. President, if the committee bill is not enacted, thousands of disabled persons will have their SSI benefits abruptly stopped at the end of this month. In addition, there will be a cutoff of the Federal funding which underwrites one-half the cost of extended unemployment benefits for thousands of unemployed persons who are either now eligible to receive these benefits or who will become eligible for benefits during the next 3 months.

The Senate voted last year to modify the extended benefit program as a matter of permanent law. The measure which the Senate passed as an amendment to H.R. 3153 is in conference with the House and though we are hopeful to resume action soon, that conference will not be resolved by the end of this month, when the present temporary program expires. So unless the committee amendment is enacted, as of the first of next month the program would come to an end and a great number of unemployed persons receiving benefits would lose those benefits.

Mr. President, I wish to compliment the Senator from Connecticut (Mr. RIBICOFF) for his interest and leadership in offering the unemployment compensation amendment which was, I believe, unanimously agreed to by the committee. He has shown again, as he has so many times in the past, what an effective legislator he is.

His amendment is important not only in Connecticut, but also in some 20 other States, and it would affect many thousands of unemployed workers.

I would also like to commend the Senator from New York (Mr. JAVITS), who has provided leadership in this area for some time. He has often directed our attention to the fact that unless the unemployment law is modified, a good many unemployed people in this country will be disadvantaged because of our failure to act.

Mr. President, I also commend the Senator from California (Mr. CRANSTON) for his key role in helping to bring about an understanding under which this bill could be taken up, the committee amendment could be agreed to, and the bill could be passed without involving various other matters of importance which Senators would like to offer as amendments but which could have endangered passage of the bill.

I know that the Senator from California is very much concerned over this measure both with regard to unemployed persons and those receiving disability benefits under the SSI program. It is no exaggeration to say that without his efforts, the bill could not have been brought up today and it might have been delayed to the point of causing serious problems for disabled and unemployed persons.

Mr. RIBICOFF. Mr. President, I take this opportunity to praise the chairman for his understanding of a very important matter at an uncertain time.

This matter has great meaning to the people of the State of Connecticut. Without the cooperation of the chairman of the committee, we would not have been able to be successful.

I want to call attention, too, to the distinguished Senator from Washington (Mr. MAGNUSON), whose problems are similar to those of Connecticut and who spoke to me about these problems.

Always in the Finance Committee I was equally concerned along with the Senator from Washington for his own people.

The Senator from New York (Mr. JAVITS) and the Senator from California (Mr. CRANSTON), who had similar problems, had spoken to me before the Finance Committee meeting. I was more than pleased to be able to introduce the amendment in the Finance Committee. This legislation contains three proposals—two of them broadening unemployment benefits in Connecticut and the other assuring continued aid to the disabled.

The first Ribicoff measure assures the continuation of the extended benefits unemployment program. Under present law, workers are entitled to 13 weeks of extended unemployment benefits in addition to their original 26 weeks of compensation. This special program is applicable only in States where the insured unemployment rate is increasing by 20 percent over the previous 2 years. This 20 percent provision was waived last December and as a result, Connecticut will become eligible for the extended program. The waiver, however was good only through March 31, 1974.

The Ribicoff proposal extends this waiver through June 30, 1974.

The second Ribicoff unemployment proposal is designed to alleviate a problem unique to the State of Connecticut. Because of increasing Connecticut unemployment, the State's unemployment fund in the last 2 years has had to borrow $53.5 million from the Federal Government to pay benefits to unemployed Connecticut workers. Connecticut will be unable to make full payment of that loan when it falls due in November of 1974 because of increased demands on its unemployment fund. As a result the law requires the Federal Government to impose steadily increasing unemployment taxes on Connecticut businesses.

An increased tax burden on these firms at this time is unfair. Many marginal employers may be forced to close if the Federal Government increases its tax load.

The Ribicoff proposal provides a 1-year delay for Connecticut in its loan repayment schedule. This will give Connecticut an opportunity to strengthen its unemployment reserves without suffering Federal tax penalties.

The third measure is identical to S. 3069 which I introduced on February 27, 1974.

It assures that disabled persons will not be arbitrarily cut off the rolls of aid to the disabled at the end of March. A provision in present law required the redetermination of eligibility for all disabled persons who began to receive aid in the last half of 1973. The Social Security Administration has until March 31 to redetermine the eligibility of these people. Those whose eligibility is not redetermined by that time would be cut off the rolls through no fault of their own. It would provide enough time—through December 1974—to redetermine the eligibility. And at the same time it assures that between 2,000 and 5,000 disabled people in Connecticut will continue to receive the aid to which they are entitled.

Mr. CRANSTON. Mr. President, I thank the distinguished chairman of the committee for his magnificent work in moving this measure so swiftly and effectively and in a way that will save a tremendous number of people very great hardship not only in my State, but also in every other State in the Union.

It is a very wonderful piece of work by the chairman of the committee. I am very grateful and appreciate his remarks made about me.

Mr. President, I urge the Senate to act immediately to preserve SSI benefits for tens of thousands of disabled SSI beneficiaries who are in danger of loosing their assistance at the end of this month unless the Senate moves today to pass H.R. 13025 as reported from the Finance Committee, the bill we now have before us.

H.R. 13025, which has already passed the House by an overwhelming majority, would authorize payment of supplemental security income—SSI—benefits, on the basis of presumptive disability, for up to 12 months, to otherwise eligible individuals who became recipients of State administered disability assistance during the second half of calendar year 1973. The additional time would allow the Social Security Administration, which administers SSI, to complete the eligibility review, required under a provision of Public Law 93–233, as well as insure that no disabled person loses his or her benefits without a clear determination of their ineligibility.

It hardly need be said that the loss of assistance would cause undue hardship to a group of persons who already face great personal trials. However, unless H.R. 13025 is enacted, some 27,463 disabled individuals in California alone—and some 234,769 disabled SSI recipients nationwide—will suddenly be cut off from assistance, due to no fault of their own.

Mr. President, I ask unanimous consent at this time that the following chart, prepared by the Social Security Administration and showing the estimated numbers of disabled SSI recipients affected in each of the 50 States be printed in the RECORD.

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

STATE WELFARE AGENCIES' ROLLBACK WORKLOAD AS AMENDED FEB. 27, 1974

State	Active workload [1]	Supplemental lists sent to States, Feb. 25–27 [2]
Alabama	2,671	588
Alaska	428	23
Arizona	1,857	68
Arkansas	1,934	180
California	27,463	2,595
Connecticut	5,004	3,683
Colorado	3,563	244
Delaware	355	62
British Columbia	733	49
Florida	4,192	448
Georgia	5,186	515
Hawaii	793	45
Idaho	733	51
Illinois	15,683	1,171
Indiana	1,636	113
Iowa	799	51
Kansas	1,365	52
Kentucky	1,818	1,554
Louisiana	5,512	356
Maine	1,619	113
Maryland	8,129	1,043
Massachusetts	2,093	1,501
Michigan	9,740	293
Mississippi	3,889	441
Minnesota	3,656	127
Missouri	3,555	275
Montana	867	81
Nebraska	1,172	30
Nevada	[3]	[3]
New Hampshire	235	18
New Jersey	4,204	462
New Mexico	1,932	300
New York	37,081	10,262
North Carolina	5,882	945
North Dakota	382	8
Ohio	7,571	416
Oklahoma	3,152	291
Oregon	5,195	941
Pennsylvania	15,736	2,326
Rhode Island	784	68
South Carolina	2,694	292
South Dakota	230	5
Tennessee	5,209	725
Texas	5,427	679
Utah	1,346	114
Vermont	568	39
Virginia	5,082	394
Washington	10,872	1,389
West Virginia	2,249	1,556
Wisconsin	2,069	273
Wyoming	384	2
Total	234,769	37,277

[1] Does not include accretions received February 1, 1974 or later.
[2] Included in [1].
[3] No APTD program.

Mr. CRANSTON. Mr. President, I want to express my very great appreciation to my many distinguished colleagues who worked with me so hard to resolve the impasse which was stopping this bill from prompt passage. I refer to the distinguished chairman of the Committee on Finance (Mr. LONG) and the acting ranking minority member (Mr. CURTIS); the principal sponsor of the Senate companion measure, S. 3069 (Mr. RIBICOFF); the distinguished assistant majority leader, (Mr. ROBERT C. BYRD) and his counterpart on the minority side (Mr. GRIFFIN); and the Senator from Massachusetts (Mr. KENNEDY) and the Senator from New York (Mr. JAVITS), both of whom had such a great interest in this bill.

Mr. President, I also want specially to thank the staff director of the Finance Committee, Michael Stern, who has been so very cooperative with me in working out the difficult parliamentary situation which almost prevented us from acting in time to save 234,000 disabled Americans from destitution. Finally, I thank Jon Steinberg, my counsel on the staff of the Committee on Labor and Public Welfare, and Traer Sunley, my legislative aide on the committee, for their most effective assistance in the whole matter.

Mr. President, I am told that the Social Security Administration is prepared to begin issuing termination notices to these disabled SSI recipients by the 15th. I urge the Senate to move with all dispatch to pass this important legislation so that needless suffering can be averted. I have talked with colleagues on the House side and believe the other body should be able to accept the Senate amendment to H.R. 13025 added in committee to extend the additional 13 weeks of unemployment compensation eligibility for 3 more months and send the bill to the President tomorrow.

Mr. JAVITS. Mr. President, I join in the universal praise and thanks for Senator LONG and in the prayer which we have uttered in this respect. I am particularly gratified by the Finance Committee's action on this amendment, as I was the one to have initiated this fight way back in 1972, and twice more in 1973.

The Senator from Connecticut (Mr. RIBICOFF), showed a marvelous initiative in moving this matter through the committee.

This is a critical matter for New York. We have 60,000 claimants right now. The number is going to go to 100,000, according to official estimates prepared by the New York Department of Labor.

The amount of help provided by this interim measure is thus really extraordinary.

I think that every Member should be pleased that we can do such a thing in the Senate, and I express those sentiments for myself and for my junior colleague, Senator BUCKLEY. Senator BUCKLEY allowed me to speak for him since it would save time.

The Secretary of Labor would like to submit a different formulation of language. However, they realize the emergency nature of this measure. For that, we should thank Secretary Brennan.

Mr. President, I ask unanimous consent that a letter to Mr. Eugene Mittelman, of my staff, from Mr. Gerald E. Dunn, concerning the number of claimants in New York, be included in the RECORD.

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

STATE OF NEW YORK,
DEPARTMENT OF LABOR,
Albany, N.Y., February 28, 1974.

Mr. EUGENE MITTELMAN,
Legislative Assistant, 326 Old Senate Office Building, Washington, D.C.

DEAR GENE: The insured unemployment rate in New York for the 13 week period ending February 3 reached 4.13%; thus, we have triggered in the extended benefit program. The first compensable week will begin February 18, 1974. Claimants will report during the week of February 25 to certify that they were unemployed during the week of February 18. We, of course, are hopeful that the federal-state sharing can continue beyond March 31, 1974.

We estimate that as many as 60,000 claimants, who have exhausted their benefits will be eligible for extended benefits initially and that the number may climb to over 100,000.

Kindest personal regards.

Sincerely yours,

GERALD E. DUNN.

Mr. MAGNUSON. Mr. President, the Senator from Louisiana knows that all of us and many other Senators have done this now three times, I think it is.

I think it points up what the Senator from Louisiana has said. I do hope that we get a permanent law through which unemployment compensation would be triggered automatically when it reaches a certain unemployment level.

We have gone over this over and over again. We do not know whether 3 months will work. This affects thousands of people in my State and in Connecticut and in many other States.

I have said many times that as chairman of the exchequer in this country, the chairman of the Finance Committee is doing a wise thing.

If we do not extend unemployment insurance, and they have exhausted that and there are no jobs, they go on welfare, and that costs us more money in the long run than what we are doing here tonight.

Mr. LONG. I thank the Senator.

The PRESIDING OFFICER. Who yields time?

Mr. CURTIS. Mr. President, I yield myself 3 minutes.

The passage of this bill—and I refer now to the part of it that came from the House of Representatives—is very important. Under the new SSI program, the Federal Government has assumed to a large extent the program for the aged blind and the disabled. It may have been that some of the States, about the time that the Federal Government did take over the burden for the disabled, increased their rolls. As a result, Congress passed an act that said there must be a redetermination as to each individual's disability, and gave the States 3 months to do it.

The program involves about 300,000 individuals and a great deal of administrative work. The disabled persons are not to blame. It has been an impossibility for the agencies involved to make the redetermination.

The House bill extends the time for this determination without these individuals having to go off the rolls. Without the passage of this legislation, quite a number of disabled individuals would be taken off the rolls and there would be no reason for doing so. It would not be the result of a reexamination. For that reason, it is important to the individuals involved and it is important to the States that we pass this legislation.

Now, as to the committee amendment, I shall not call for a yea and nay vote on it. I wish to state the position of the administration, having been in touch this afternoon, in the absence of the distinguished Senator from Utah (Mr. BENNETT), with both HEW and the Department of Labor.

They would prefer the advancement of the administration's program for job disability or job maintenance, which is a larger package than this, but they realize also the urgency of the passage of the House bill. The committee amendment is not favored by the administration, but under the circumstances, and realizing also that there is overwhelming sentiment in this body for the committee

amendment, no vote will be asked for with reference to the committee amendment.

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

The PRESIDING OFFICER. Is all remaining time yielded back?

Mr. LONG. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The amendment was agreed to.

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 of the amendment and the third reading of the bill.

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

The bill was read the third time.

The PRESIDING OFFICER (Mr. BIDEN). The bill having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Missouri (Mr. SYMINGTON), the Senator from Alabama (Mr. ALLEN), the Senator from Florida (Mr. CHILES), the Senator from Idaho (Mr. CHURCH), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Michigan (Mr. HART), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Montana (Mr. MANSFIELD), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Minnesota (Mr. MONDALE), the Senator from Wisconsin (Mr. NELSON), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT), the Senator from New Hampshire (Mr. COTTON), the Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), the Senator from Oregon (Mr. HATFIELD), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

The result was announced—yeas 80, nays 0, as follows:

[No. 76 Leg.]

YEAS—80

Abourezk	Goldwater	Muskie
Aiken	Gravel	Nunn
Baker	Griffin	Pastore
Bartlett	Gurney	Pearson
Bayh	Hansen	Pell
Beall	Hartke	Percy
Bellmon	Haskell	Proxmire
Bentsen	Hathaway	Randolph
Bible	Helms	Ribicoff
Biden	Hruska	Roth
Brock	Huddleston	Schweiker
Brooke	Hughes	Scott, Hugh
Buckley	Humphrey	Scott, William L.
Burdick	Inouye	Stafford
Byrd, Harry F., Jr.	Jackson	Stennis
Byrd, Robert C.	Javits	Stevens
Cannon	Johnston	Stevenson
Case	Long	Taft
Clark	Magnuson	Talmadge
Cook	Mathias	Thurmond
Cranston	McClure	Tower
Curtis	McGee	Tunney
Dole	McGovern	Weicker
Domenici	McIntyre	Williams
Eagleton	Metcalf	Young
Ervin	Metzenbaum	
Fannin	Montoya	
	Moss	

NAYS—0

NOT VOTING—20

Allen	Fong	McClellan
Bennett	Fulbright	Mondale
Chiles	Hart	Nelson
Church	Hatfield	Packwood
Cotton	Hollings	Sparkman
Dominick	Kennedy	Symington
Eastland	Mansfield	

So the bill (H.R. 13025) was passed.

Mr. LONG. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The title was amended so as to read:

"An Act to increase the period during which benefits may be paid under title XVI of the Social Security Act on the basis of presumptive disability to certain individuals who received aid, on the basis of disability, for December 1973, under a State plan approved under title XIV or XVI of that Act, and for other purposes.".

PRIVILEGE OF THE FLOOR ON BUDGET REFORM BILL

Mr. LONG. Mr. President, I ask unanimous consent that during Senate consideration of S. 1541, the budget reform bill, including votes, Michael Stern and Joe Humphreys of the Finance Committee be permitted on the floor; and that during Senate consideration of S. 3044, the Federal election campaign reform bill, including votes, Michael Stern, Bob Willan, and Bill Morris of the Finance Committee be permitted on the floor.

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

ADDITIONAL EXPENDITURES BY THE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

Mr. CANNON. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 682, Senate Resolution 240.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 240) authorizing additional expenditures by the Committee on Banking, Housing and Urban Affairs for inquiries and investigations.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution, which had been reported from the Committee on Rules and Administration with amendments on page 2, line 9, after the word "exceed", strike out "$700,000" and insert "$686,500"; in line 15, after the word "exceed", strike out "$340,000" and insert "$336,000"; and, on page 3, line 5, after the word "exceed", strike out "$230,000" and insert "$220,500".

Mr. CANNON. Mr. President, this resolution would authorize the Committee on Banking, Housing and Urban Affairs to expend not to exceed $700,000 during the next 12 months for inquiries and investigations.

During the last session of the Congress the committee was authorized to expend not to exceed $660,000 for that purpose. The committee estimates it will return approximately $60,000 of that amount to the Treasury.

The pending request includes an increase of $40,000 over last year's authorization.

The Committee on Rules and Administration has amended Senate Resolution 240 by reducing the requested amount from $700,000 to $686,500, a reduction of $13,500.

Senator SPARKMAN is chairman of the Committee on Banking, Housing and Urban Affairs and Senator TOWER is its ranking minority member.

Mr. President, I ask unanimous consent to have printed in the RECORD a tabulation containing pertinent information concerning the multiple inquiries contained within that resolution.

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

Section No. and purpose	Amount			Subcommittee	
	Requested	Amendment	Approved	Chairman	Ranking minority member
3—General	$340,000	—$4,000	$336,000	Mr. Sparkman	Mr. Tower.
4—Housing, urban affairs	230,000	—9,500	220,500	Mr. Sparkman	Mr. Tower.
5—Securities industry	130,000	0	130,000	Mr. Williams	Mr. Brooke.
Total	700,000	—13,500	686,500		

Mr. CANNON. Mr. President, I ask unanimous consent that the committee amendments be considered en bloc.

There being no objection, the amendments were agreed to en bloc.

The resolution, as amended, was agreed to, as follows:

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Banking, Housing and Urban Affairs, or any subcommittee thereof, is authorized from

March 1, 1974, through February 28, 1975, for the purpose stated and within the limitations imposed by the following sections, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The Committee on Banking, Housing and Urban Affairs, or any subcommittee thereof, is authorized from March 1, 1974, through February 28, 1975, to expend not to exceed $686,500 to examine, investigate, and make a complete study of any and all matters pertaining to each of the subjects set forth below in succeeding sections of this resolution, said funds to be allocated to the respective specific inquiries in accordance with such succeeding sections of this resolution.

SEC. 3. Not to exceed $336,000 shall be available for a study or investigation of—

(1) banking and currency generally;

(2) financial aid to commerce and industry;

(3) deposit insurance;

(4) the Federal Reserve System, including monetary and credit policies;

(5) economic stabilization, production, and mobilization;

(6) valuation and revaluation of the dollar;

(7) prices of commodities, rents, and services;

(8) securities and exchange regulations;

(9) credit problems of small business; and

(10) international finance through agencies within legislative jurisdiction of the committee.

SEC. 4. Not to exceed $220,500 shall be available for a study or investigation of public and private housing and urban affairs generally.

SEC. 5. Not to exceed $130,000 shall be available for an inquiry and investigation pertaining to the securities industry.

SEC. 6. The committee shall report its findings, together with such recommendations for legislation as it deems advisable with respect to each study or investigation for which expenditure is authorized by this resolution, to the Senate at the earliest practicable date, but not later than February 28, 1975.

SEC. 7. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

FEDERAL ACT TO CONTROL EXPENDITURES AND ESTABLISH NATIONAL PRIORITIES

Mr. ROBERT C. BYRD. Mr. President, for the purpose of laying it before the Senate and making it the pending business, so that it will be the unfinished business upon the Senate's return, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 664, S. 1541.

The PRESIDING OFFICER (Mr. HUDDLESTON). The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1541) 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; to create a budget committee in each House; to create a congressional Office of the Budget; and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Government Operations with an amendment and from the Committee on Rules and Administration with amendments, as follows:

The amendment of the Committee on Government Operations was to strike out all after the enacting clause and insert:

That (a) this Act may be cited as the "Federal Act To Control Expenditures and Establish National Priorities".

(b) The Congress declares that because it is imperative to establish national goals and priorities for maximum utilization of Federal expenditures, and because it is imperative for the Congress to regain effective control over the budgetary process so it may determine those priorities, therefore it is deemed necessary—

(1) to establish a congressional budgeting system which facilitates establishment of national goals and priorities to meet the needs of a modern society and economy,

(2) to create budget committees with responsibility to oversee and establish fiscal guidelines for the proper implementation of national goals and priorities, and

(3) to develop a means for a constant and systematic review of existing programs to be certain that they are achieving the national objectives for which they were created.

DEFINITIONS

SEC. 2. For purposes of this Act—

(1) The terms "budget outlays" and "outlays" mean, with respect to any fiscal year, expenditures of funds under budget authority during the fiscal year.

(2) The term "budget authority" means authority provided by law to enter into obligations which will result in immediate or future outlays.

(3) The term "tax expenditures" means those revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability representing a deviation from the normal tax structure for individuals and corporations. The term "tax expenditures budget" means the enumeration of such tax expenditures as published by the House Ways and Means Committee in "Estimates of Federal Tax Expenditures". Such enumeration shall correspond to the functional classifications shown in the most recent budget of the United States.

(4) The term "permanent budget authority" means budget authority which becomes available from time to time without further action by the Congress.

(5) The term "concurrent resolution on the budget" means a concurrent resolution referred to in section 301 or 302.

TITLE I—ESTABLISHMENT OF SENATE AND HOUSE BUDGET COMMITTEES

BUDGET COMMITTEE OF THE SENATE

SEC. 101. (a) Paragraph 1 of rule XXV of the Standing Rules of the Senate is amended by adding at the end thereof the following new subparagraph:

"(r)(1) Committee on the Budget, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"(A) The establishment of limitations on total budget outlays and on total new budget authority of the United States Government.

"(B) The establishment of appropriate levels of budget outlays and new budget authority for each committee of the Senate which has jurisdiction over legislation providing budget authority, based on allocations of the total budget outlays and total new budget authority referred to in clause (A), and the further subdivision of such allocations among the subcommittees of such committees or on the basis of major program groupings. In carrying out this function, the committee shall review and consider existing tax expenditures in each area of allocation and subdivision.

"(C) The determination of the amount, if any, by which budget outlays should exceed revenues, or revenues should exceed budget outlays, considering economic conditions and all other relevant factors.

"(D) The determination of the appropriate level of Federal revenues and the appropriate level of the public debt of the United States.

"(E) The determination of the amount, if any, by which the aggregate level of Federal revenues should be increased or decreased and the statutory limit on the public debt should be increased or decreased.

"(F) The determination of the existing levels of tax expenditures (the tax expenditures budget), and consideration of their effect on Federal revenues and their relationship to the matters set forth above.

"(G) The determination of the extent, if any, to which section 401 of the Federal Act To Control Expenditures and Establish National Priorities is to apply.

"(2) Such committee shall have the duty—

"(A) to report during each regular session of Congress at least one concurrent resolution dealing with the matters specified in clauses (A) through (G) of subparagraph (1), utilizing, in connection with the reporting of each such concurrent resolution, the reports of the Joint Economic Committee made under section 301(b) of the Federal Act To Control Expenditures and Establish National Priorities,

"(B) to make continuing studies of the effect on budget outlays of relevant existing and proposed legislation and to report the results of such studies to the Senate on a recurring basis,

"(C) to make continuing studies of tax expenditures and methods of coordinating the categories of tax expenditures policies and programs and direct budget outlays, and to report the results of such studies to the Senate on a recurring basis, and

"(D) to review, on a continuing basis, the conduct of its functions and duties by the Congressional Office of the Budget."

(b) The table contained in paragraph 2 of rule XXV of the Standing Rules of the Senate is amended by inserting after—

"Banking, Housing and Urban Affairs... 15"

the following:

"Budget ---------- 15".

(c) Each meeting of the Committee on the Budget of the Senate, or any subcommittee thereof, including meetings to conduct hearings shall be open to the public, except that a portion or portions of any such meeting may be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present that the matters to be discussed or the testimony to be taken at such portion or portions—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(2) will relate solely to matters of committee staff personnel or internal staff management or procedure;

(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

(4) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement; or

(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

(A) an Act of Congress requires the information to be kept confidential by Government officers and employees, or

(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person.

(d) Paragraph 7(b) of rule XXV of the Standing Rules of the Senate and section 133A(b) of the Legislative Reorganization Act of 1946 shall not apply to the Committee on the Budget of the Senate.

BUDGET COMMITTEE OF THE HOUSE OF REPRESENTATIVES

SEC. 102. (a) Clause 1 of rule X of the Rules of the House of Representatives is amended by redesignating paragraphs (e) through (u), inclusive, as paragraphs (f) through (v), respectively, and by inserting after paragraph (d) the following new paragraph:

"(e) Committee on the Budget, to consist of ——— members."

(b) Rule XI of the Rules of the House of Representatives is amended by redesignating clauses 5 through 33, inclusive, as clauses 6 through 34, respectively, and by inserting after clause 4 the following new clause:

"5. Committee on the Budget.

"(a) The establishment of limitations on total budget outlays and on total new budget authority of the United States Government.

"(b) The establishment of appropriate levels of budget outlays and new budget authority for each committee of the House which has jurisdiction over legislation providing budget authority, based on allocations of the total budget outlays and total new budget authority referred to in paragraph (a), and the further subdivision of such allocations among the subcommittees of such committees or on the basis of major program groupings. In carrying out this function, the committee shall review and consider existing tax expenditures in each area of allocation and subdivision.

"(c) The determination of the amount, if any, by which budget outlays should exceed revenues, or revenues should exceed budget outlays, considering economic conditions and all other relevant factors.

"(d) The determination of the appropriate level of Federal revenues and the appropriate level of the public debt of the United States.

"(e) The determination of the amount, if any, by which the aggregate level of Federal revenues should be increased or decreased and the statutory limit on the public debt should be increased or decreased.

"(f) The determination of the existing levels of tax expenditures (the tax expenditures budget), and consideration of their effect on Federal revenues and their relationship of the matters set forth above,

(g) The determination of the extent, if any, to which section 401 of the Federal Act To Control Expenditures and Establish National Priorities is to apply.

"(h) The committee shall have the duty—

"(1) to report during each regular session of Congress at least one concurrent resolution dealing with the matters specified in paragraphs (a), (b), (c), (d), (e), (f), and (g), utilizing, in connection with the reporting of each such concurrent resolution, the reports of the Joint Economic Committee made under section 301(b) of the Federal Act To Control Expenditures and Establish National Priorities,

"(2) to make continuing studies of the effect on budget outlays of relevant existing and proposed legislation and to report the results of such studies to the House on a recurring basis,

"(3) to make continuing studies of tax expenditures and methods of coordinating the categories of tax expenditures policies and programs and direct budget outlays, and to report the results of such studies to the House on a recurring basis, and

"(4) to review, on a continuing basis, the conduct of its functions and duties by the Congressional Office of the Budget."

TITLE II—CONGRESSIONAL OFFICE OF THE BUDGET

ESTABLISHMENT OF OFFICE

SEC. 201. (a) IN GENERAL.—There is hereby established an office of the Congress to be known as the Congressional Office of the Budget (hereafter in this title referred to as the "Office"). The Office shall be headed by a Director and there shall be in the Office a Deputy Director who shall perform such duties as may be assigned to him by the Director and, during the absence or incapacity of the Director or during a vacancy in that office, shall act as the Director. Both the Director and Deputy Director shall be appointed by the Speaker of the House of Representatives and the President pro tempore of the Senate with the approval of the Senate and the House of Representatives, given by resolution of each House. The Director and Deputy Director shall each serve at the pleasure of the Senate and the House of Representatives and may be removed by either House by resolution. The Director and Deputy Director shall each be appointed without regard to political affiliation and solely on the basis of his fitness to perform his duties. The Director shall receive the same compensation as the Comptroller General of the United States, and the Deputy Director shall receive compensation at the highest rate of basic pay payable under the General Schedule of section 5332 of title 5, United States Code.

(b) PERSONNEL.—The Director shall appoint and fix the compensation of such professional, technical, clerical, and other personnel as may be necessary to carry out the duties and functions of the Office. All personnel of the Office shall be appointed without regard to political affiliation and solely on the basis of their fitness to perform their duties. The Director may delegate to personnel of the Office authority to perform any of the duties and functions imposed by this Act on the Office or on the Director. For purposes of benefits, rights, and privileges other than pay, the Director and Deputy Director shall be treated as if they were employees of the Senate. All other personnel of the Office shall be treated as if they were employees of the House of Representatives.

(c) EXPERTS AND CONSULTANTS.—In carrying out the duties and functions of the Office, the Director may procure the temporary (not to exceed one year) or intermittent services of experts or consultants or organizations thereof by contract as independent contractors, or in the case of individual experts or consultants by employment at rates of pay not in excess of the daily equivalent of the highest rate of basic pay payable under the General Schedule of section 5332 of title 5, United States Code.

(d) RELATIONSHIP TO EXECUTIVE BRANCH.—

(1) SECURING OF INFORMATION, ETC.—The Director is authorized to secure all information, data, estimates, and statistics developed by the various departments, agencies, and establishments of the executive branch of the Government and regulatory agencies and commissions of the Government in the normal course of their operations and activities. All such departments, agencies, and establishments and regulatory agencies and commissions shall cooperate with the Director by furnishing to him that material which he determines to be necessary in the performance of his duties and functions.

(2) UTILIZATION OF SERVICES, ETC.—In carrying out the duties and functions of the Office, the Director may, as agreed upon with the head of any department, agency, or establishment of the executive branch of Government or regulatory agency or commission of the Government, utilize the services, facilities, and personnel of such department, agency, or establishment or such regulatory agency or commission. The utilization of such services, facilities, and personnel may be with or without reimbursement by the Office as may be agreed to.

(3) FURNISHING OF INFORMATION, SERVICES, ETC.—The head of each department, agency, and establishment in the executive branch, or regulatory agency or commission, is authorized to provide the Office such services, facilities, and personnel under this subsection.

(e) RELATIONSHIP TO OTHER AGENCIES OF CONGRESS.—

(1) COORDINATION OF OPERATIONS.—The Office, the General Accounting Office, the Library of Congress, and the Office of Technology Assessment shall fully coordinate and cooperate in planning and conducting their operations to utilize most effectively the information, services, and capabilities of all congressional agencies in carrying out the various responsibilities assigned to each agency.

(2) OBTAINING INFORMATION, ETC.—In carrying out duties and functions of the Office, the Director is authorized to obtain all information, data, estimates, and statistics developed by the General Accounting Office, the Library of Congress, and the Office of Technology Assessment in the normal course of their operations and activities. Requests for information, and the compliance with such requests, pursuant to this subsection shall be in accordance with procedures to be developed and agreed upon between the Director and the Comptroller General, the Librarian of Congress, and the Technology Assessment Board, respectively.

(3) UTILIZATION OF SERVICES, ETC.—In carrying out the duties and functions of the Office, the Director may, as agreed upon with the Comptroller General, the Librarian of Congress, and the Technology Assessment Board, utilize the services, facilities, and personnel of the General Accounting Office, the Library of Congress, and the Office of Technology Assessment, as the case may be. The utilization of such services, facilities, and personnel may be with or without reimbursement by the Office as may be agreed to.

(4) FURNISHING OF INFORMATION, SERVICES, ETC.—The Comptroller General, the Librarian of Congress, and the Technology Assessment Board are authorized to provide the Office such services, facilities, and personnel under this subsection.

(5) EXISTING AUTHORITIES NOT OTHERWISE AFFECTED.—Except as otherwise specifically provided, nothing in this title shall be construed as modifying any existing authorities or responsibilities of the General Account-

ing Office, the Library of Congress, and the Office of Technology Assessment.

(f) APPROPRIATIONS.—There are hereby authorized to be appropriated to the Office for each fiscal year such sums as may be necessary to enable it to carry out its duties and functions. Until sums are first appropriated to the Office pursuant to the preceding sentence, the expenses of the Office shall be paid, upon vouchers approved by the Director, from the contingent fund of the House of Representatives.

DUTIES AND FUNCTIONS

SEC. 202. (a) ASSISTANCE TO BUDGET COMMITTEES.—It shall be the duty and function of the Office to provide to the Committee on the Budget of both Houses information with respect to the budget, appropriation bills, other bills authorizing or providing budget authority or tax expenditures, and with respect to revenues, receipts, estimated future revenues and receipts, and changing revenue conditions. The Office shall also provide to the Committee on the Budget of either House such other related information as such committee may request. At the request of the Committee on the Budget of either House, personnel of the Office shall be assigned, on a temporary basis, to assist such committee.

(b) ASSISTANCE TO OTHER COMMITTEES AND MEMBERS.—At the request of any other committee of the Senate or the House of Representatives, any joint committee of the Congress, or any Member of the Senate or the House, the Office shall provide to such committee, joint committee, or Member any information compiled in carrying out the first sentence of subsection (a) and shall, to the extent practicable, provide other information requested with respect to the budget, appropriation bills, other bills authorizing or providing budget authority or tax expenditures, and with respect to revenues, receipts, estimated future revenue and recipts, changing revenue conditions, and related information. At the request of any such committee, joint committee, or Member, personnel of the Office may be assigned, on a temporary basis, to assist such committee, joint committee, or Member with respect to matters directly related to the items enumerated in the preceding sentence.

(c) TRANSFER OF FUNCTIONS OF JOINT COMMITTEE ON REDUCTION OF FEDERAL EXPENDITURES.—The duties and functions of the Joint Committee on Reduction of Federal Expenditures are transferred to the Office, and the Joint Committee is hereby abolished.

(d) REPORT ON REVENUES AND BUDGET OUTLAYS.—On or before May 1 of each year, and based on his estimates of revenues expected to be received by the United States Government during the fiscal year beginning on October 1 of such year, the Director shall report to the Congress with respect to alternative levels of revenues and outlays for such fiscal year. Such report shall also set forth the existing levels of tax expenditures (the tax expenditure budget) and an estimate, based on projected economic factors, of any anticipated change in the level of tax expenditures for such fiscal year. The Director may at any time thereafter submit subsequent reports to the Congress revising the report required by this subsection.

(e) PROJECTION OF REVENUES AND BUDGET OUTLAYS.—The Director shall develop information with respect to the effect of existing laws on revenues and existing authorizations and budget authority on outlays during the current fiscal year and the ensuing four fiscal years. Such information shall include the effect of tax expenditures on revenues and outlays, and the effect of existing laws and existing authorizations and budget authority on tax expenditures.

(f) USE OF COMPUTERS AND OTHER TECHNIQUES.—The Director may equip the Office with up-to-date computer capability, obtain the services of experts and consultants in computer technology, and develop techniques for the evaluation of budgetary requirements, including the establishment of data files as required by section 902 of this Act.

PUBLIC ACCESS TO BUDGET DATA

SEC. 203. (a) RIGHT TO INSPECT AND COPY.—Except as provided in subsections (c) and (d), the Director shall make all information, data, estimates, and statistics obtained under sections 201(d)(1) and 201(e)(2) available for public inspection and copying during normal business hours. To the extent possible, he shall at the request of any person, furnish a copy of any such information, data, estimates, or statistics requested, upon payment by such person of the cost of making and furnishing such copy.

(b) INDEX.—The Director shall develop and maintain filing, coding, and indexing systems that identify the information, data, estimates, and statistics to which subsection (a) applies and shall make such systems available for public use during normal business hours.

(c) EXCEPTIONS.—Subsection (a) shall not apply to information, data, estimates, and statistics—

(1) which are specifically exempted from disclosure by Act of Congress; or

(2) which the Director determines will disclose—

(A) matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(B) information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(C) personnel or medical data or similar data the disclosure of which would constitute a clearly unwarranted invasion of personal privacy,

unless the portions containing such information have been excised.

(d) INFORMATION OBTAINED FOR COMMITTEES AND MEMBERS.—Subsection (a) shall apply to any information, data, estimates, and statistics obtained at the request of any committee or Member of the Senate or the House of Representatives, or any joint committee of the Congress, unless the committee, Member, or joint committee making the request has instructed the Director not to make such information, data, estimates, or statistics available for public inspection and copying.

TITLE III—CONGRESSIONAL BUDGET PROCESS

The timetable with respect to the congressional budget process for any fiscal year shall be as follows:

On or before:	Action to be completed:
December 1	Current services budget to be sumbitted.
February 1	President's budget to be submitted.
April 15	Joint Economic Committee reports, and Joint Committee on Internal Revenue Taxation, appropriations, taxing, and other committees submit estimates, to Budget Committees.
May 1	Congressional Office of the Budget submits report to Congress.
May 31	Congress completes action on legislation authorizing enactment of new budget authority.
June 1	Budget Committees report first concurrent resolution on the budget.
June 20	Each House completes action on first concurrent resolution on the budget.
July 1	Congress completes action on first concurrent resolution on the budget.
September 20	Congress completes action on legislation providing new budget authority.
September 30	Congress completes action on ceiling enforcement bill.
October 1	Fiscal year begins.

ADOPTION OF CONCURRENT RESOLUTION

SEC. 301. (a) ACTION TO BE COMPLETED BY JULY 1.—On or before July 1 of each year, the Congress shall complete action on a concurrent resolution setting forth for the fiscal year beginning on October 1 of such year—

(1) TOTAL BUDGET OUTLAYS AND TOTAL NEW BUDGET AUTHORITY.—Limitations on total budget outlays and total new budget authority:

(2) ALLOCATIONS OF TOTALS.—Appropriate levels of budget outlays and new budget authority for each committee of the Senate and House which has jurisdiction over legislation providing budget authority, based on allocations of the total budget outlays and total new budget authority, which allocations may be further subdivided among the subcommittees of such committees or on the basis of major program groupings;

(3) ESTIMATED REVENUES.—Estimated revenue receipts and their major sources;

(4) RECOMMENDED SURPLUS OR DEFICIT.—The amount, if any, by which revenues should exceeed budget outlays, or by which budget outlays should exceed revenues, considering economic conditions and all other relevant factors;

(5) TAX EXPENDITURES BUDGET.—The existing levels of tax expenditures (the tax expenditures budget) by major budget categories;

(6) LEVEL OF TOTAL REVENUES AND TOTAL DEBT.—The appropriate level of Federal revenues and the public debt;

(7) RECOMMENDED CHANGE IN REVENUES.—The amount, if any, by which the aggregate level of Federal revenues should be increased or decreased by legislation to be reported by the appropriate committees;

(8) RECOMMENDED CHANGE IN PUBLIC DEBT LIMIT.—The amount, if any, by which the statutory limit on the public debt should be increased or decreased by legislation reported by the appropriate committees; and

(9) SPENDING BILLS TO SPECIFY OUTLAYS.—The extent (if any) to which section 401 'relating to requirement that budget authority legislation contain limitation on outlays) shall apply for the fiscal year.

(b) REPORTS BY JOINT ECONOMIC COMMITTEE.—On or before April 15 of each year, the Joint Economic Committee shall report to the Committee on the Budget of both Houses its recommendations as to the fiscal policy appropriate to the goals of the Employment Act of 1946, including where appropriate recommendations with regard to major categories of new budget authority and budget outlays. The joint committee shall also, from time to time, report to the Committees on the Budget of both Houses such other recommendations as it deems advisable.

(c) VIEWS AND ESTIMATES OF OTHER COMMITTEES.—On or before April 15 of each year, the Committees on Appropriations and Finance of the Senate shall submit their views and estimates to the Committee on the Budget of the Senate, the Committees on Appropriations and Ways and Means of

the House of Representatives shall submit their views and estimates to the Committee on the Budget of the House, and the Joint Committee on Internal Revenue Taxation shall submit their views and estimates to the Committees on the Budget of both Houses, with respect to all matters set forth in subsection (a) which relate to matters within the respective jurisdictions or functions of such committees and joint committees. Any other committee of the Senate or House may submit to the Committee on the Budget of its House, and any other joint committee of the Congress may submit to the Committees on the Budget of both Houses, its views and estimates with respect to all matters set forth in subsection (a) which relate to matters within its jurisdiction or function.

(d) REPORTING.—On or before June 1 of each year, the Committee on the Budget of each House shall report to its House a concurrent resolution on the budget referred to in subsection (a) for the fiscal year beginning on October 1 of such year. The report accompanying such concurrent resolution shall include, but not be limited to—

(1) a comparison of revenues and major sources thereof as estimated for the purposes of such concurrent resolution with those estimated in the budget submitted by the President;

(2) a comparison of the limitations on total budget outlays and total new budget authority set forth in such concurrent resolution with total budget outlays estimated and total new budget authority requested in the budget submitted by the President;

(3) the economic assumptions and program objectives which underlie the limitations, appropriate levels, estimates, deficits, or surpluses, and levels of revenue and public debt set forth in such concurrent resolution, and the alternative economic assumptions and program objectives which the committee considered in formulating such concurrent resolution;

(4) specific projections, not limited to the following, for the next five fiscal years, of—

(A) the estimated levels of total budget outlays and new budget authority for each fiscal year in such period,

(B) the estimated revenues to be received and the major sources thereof, and the estimated surplus or deficit, if any, for each fiscal year in such period, based upon such estimated revenues and the estimated levels of total budget outlays and new budget authority set forth pursuant to subparagraph (A), and

(C) the estimated levels of tax expenditures by major budget categories; and

(5) an explanation of any significant changes in the proposed levels of Federal assistance to State and local governments. Such report shall also contain the recommendations of the Joint Economic Committee as reported pursuant to subsection (b) and the separate views of other committees and joint committees as submitted pursuant to section (c).

(e) FLOOR ACTION.—On or before June 20 of each year, each House shall complete action on a concurrent resolution on the budget referred to in subsection (a) for the fiscal year beginning on October 1 of such year (except for action on any conference report on such concurrent resolution).

(f) EFFECT OF CERTAIN ADJOURNMENTS.—Whenever after June 1 of any year, either House is not in session because of an adjournment or recess more than three days to a day certain, then in applying subsection (e) to such House, there shall be substituted for June 20 that date which follows June 20 by the same number of days (not exceeding seven in the aggregate) as the number of days after June 1 and before June 20, on which such House was not in session because of any such adjournment or recess.

(g) EXTENSION WHERE SPECIFIED DATE FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—When any date specified in subsection (d) or (e) (as modified by subsection (f)) falls on a Saturday, Sunday, or legal holiday in the District of Columbia in any year, there shall be substituted for that date the next succeeding date which is not a Saturday, Sunday, or legal holiday in the District of Columbia.

(h) EFFECT OF FAILURE TO ADOPT CONCURRENT RESOLUTION BY JULY 1.—If the Congress fails to complete action on the concurrent resolution on the budget referred to in subsection (a) on or before July 1 of any year, then, until such action is completed—

(1) if each House has agreed to such a concurrent resolution, the figure for each matter set forth pursuant to paragaraph (2) of subsection (a) for the fiscal year shall be deemed to be the lower figure contained in the concurrent resolution agreed to by either House, and the limitations on total outlays and total new budget authority set forth pursuant to paragraph (1) of such subsection shall be the sums of such lower figures;

(2) if one House has agreed to such a concurrent resolution, the figures for the matters set forth pursuant to subsection (a) for the fiscal year shall be deemed to be the figures contained in that concurrent resolution; and

(3) if neither House has agreed to such a concurrent resolution, the figures for the matters set forth pursuant to subsection (a) for the fiscal year shall be deemed to be the respective figures therefor set forth in the budget submitted for the fiscal year pursuant to section 201(d) of the Budget and Accounting Act, 1921 (31 U.S.C. 11), as added by section 601 of this Act.

For any period for which paragraph (1), (2), or (3) applies, there shall be deemed to have been adopted a concurrent resolution on the budget referred to in this section which contains the figures referred to in the applicable paragraph.

ADDITIONAL CONCURRENT RESOLUTIONS ON THE BUDGET

SEC. 302. (a) REQUIRED REAFFIRMATION OR REVISION.—When required under section 309(d), the Committee on the Budget of each House shall report a concurrent resolution which reaffirms or revises the concurrent resolution adopted pursuant to section 301 for a fiscal year, or, if a concurrent resolution for such fiscal year has been adopted pursuant to subsection (b), which reaffirms or revises the most recently adopted concurrent resolution on the budget for such fiscal year.

(b) PERMISSIBLE REVISIONS.—At any time after the concurrent resolution for a fiscal year has been adopted pursuant to section 301, and before the close of such fiscal year, the two Houses may adopt a concurrent resolution on the budget which revises the most recently adopted concurrent resolution on the budget for such fiscal year.

RULES FOR CONSIDERATION OF CONCURRENT RESOLUTIONS OF THE BUDGET

SEC. 303. (a) PROCEDURE AFTER REPORT OF COMMITTEE.—

(1) A concurrent resolution on the budget reported in either House shall be highly privileged. It shall be in order at any time after the third day following the day on which the report accompnaying such a concurrent resolution is available to move to proceed to its consideration (even though a previous motion to the same effect has been disagreed to). Such a motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate on any concurrent resolution on the budget, and all amendments thereto, shall be limited to not more than one hundred hours (twenty hours, in the case of a concurrent resolution reported after recommittal pursuant to section 304(c)). General debate shall be divided equally between the majority and minority parties. Debate on any amendment shall be limited to not more than four hours, which shall be equally divided between those favoring and those opposing the amendment. A motion further to limit debate is not debatable. A motion to recommit the concurrent resolution is not in order, and it is not in order to move to reconsider the vote by which the concurrent resolution is agreed to or disagreed to. An amendment to a concurrent resolution reported after recommittal pursuant to section 304(c) shall be in order only if it is in order under section 304(f).

(b) DECISIONS WITHOUT DEBATE ON MOTION TO POSTPONE OR PROCEED.—

(1) Motions to postpone, made with respect to the consideration of any concurrent resolution on the budget, and motions to proceed to the consideration of other business, shall be decided without debate.

(2) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to any concurrent resolution on the budget shall be decided without debate.

(c) PROCEDURE AFTER PASSAGE BY ONE HOUSE.—If, prior to the passage by one House of a concurrent resolution of that House, that House receives from the other House a concurrent resolution of such other House, then—

(1) the procedure with respect to the concurrent resolution of the first House shall be the same as if no concurrent resolution from the other House had been received; but

(2) on any vote on final passage of the concurrent resolution from the other House shall be automatically substituted.

(d) ACTION ON CONFERENCE REPORTS.—

(1) The conference report on any concurrent resolution on the budget shall be highly privileged in each House. It shall be in order at any time after the third day following the day on which such a conference report is reported and is available to move to proceed to its consideration (even though a previous motion to the same effect has been disagreed to). Such a motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate on the conference report shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing the conference report. A motion to recommit the conference report shall not be in order and it shall not be in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

(3) Motions to postpone, made with respect to the consideration of such conference report and motions to proceed to the consideration of other business, shall be decided without debate.

(4) Appeals from decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to such conference report shall be decided without debate.

FLOOR AMENDMENTS TO CONCURRENT RESOLUTIONS ON THE BUDGET

SEC. 304. (a) INITIAL FLOOR CONSIDERATION.—During the consideration in either House of any concurrent resolution on the

budget, an amendment shall not be in order unless—

(1) it is germane,

(2) there has been made available an analysis prepared by the Director of the Congressional Office of the Budget which sets forth the effect (if any) which such amendment would have on both budget outlays and new budget authority, on revenues if appropriate, and

(3) in the case of an amendment to a concurrent resolution on the budget which has been reported after recommittal pursuant to subsection (c), it is in order under subsection (f).

Paragraph (2) shall not apply to any amendment if, at the time such amendment is proposed, the Member proposing such amendment states that an analysis was requested (giving the date of such request), but has not been received, from the Director of the Congressional Office of the Budget.

(b) FLOOR AMENDMENTS ALWAYS IN ORDER TO MAKE CONCURRENT RESOLUTION CONSISTENT.—Notwithstanding any other rule (other than those provided in this section), an amendment, or series of amendments, to a concurrent resolution on the budget proposed in either the Senate or the House of Representatives shall always be in order if such amendment or series of amendments proposes to change any figure or figures then contained in such concurrent resolution so that such concurrent resolution would (if such amendment or series of amendments were adopted) not be consistent within the meaning of subsection (d).

(c) PROCEDURE IF FLOOR AMENDMENTS MAKE CONCURRENT RESOLUTION INCONSISTENT.—If after all amendments proposed to a concurrent resolution on the budget have been considered, such concurrent resolution is inconsistent within the meaning of subsection (d), it shall be recommitted by the presiding officer, without further motion, to the Committee on the Budget with instructions to report such concurrent resolution back to the Senate or the House of Representatives, as the case may be, within three days (not counting any day on which that House is not in session) in a form which meets the requirements of subsection (e).

(d) MEANING OF INCONSISTENCY.—For purposes of this section, a concurrent resolution on the budget is inconsistent if, with respect to the figures described in and set forth pursuant to section 301(a)—

(1) with respect to budget outlays or new budget authority, the sum of the allocation of totals does not equal total budget outlays or total new budget authority, as the case may be, or

(2) the appropriate level of total revenues less the recommended surplus or plus the recommended deficit does not equal the total budget outlays, or

(3) the estimated revenues combined with the change in revenues does not equal the appropriate level of total revenues, or

(4) the change in public debt limit is not sufficient to allow implementation of the appropriate level of total debt, or

(5) any combination of (1), (2), (3), and (4) above.

(e) ACTION BY BUDGET COMMITTEE AFTER RECOMMITTAL.—When a concurrent resolution on the budget is recommitted to the Committee on the Budget of the Senate or the House of Representatives pursuant to subsection (c), such committee shall report such concurrent resolution back to its House in a form which is not inconsistent and which preserves, to the greatest extent practicable, the spirit and letter of the floor amendments previously adopted.

(f) FLOOR AMENDMENTS AFTER RECOMMITTAL.—During the consideration in either the Senate or the House of Representatives of a concurrent resolution on the budget reported back after recommittal pursuant to subsection (c), an amendment, or series of amendments, shall not be in order unless it preserves the concurrent resolution in a form which is not inconsistent.

(g) RECORD AND ANALYSIS OF EFFECT OF FLOOR ACTION.—During the consideration in either the Senate or the House of Representatives of a concurrent resolution on the budget, the Director of the Congressional Office of the Budget shall maintain a record of the effect (if any) which floor amendments adopted would have on budget outlays and new budget authority and the figures set forth pursuant to section 301(a). On each day on which a concurrent resolution on the budget is under consideration in either the Senate or the House of Representatives, the Director shall make available to Members of that House, before the House meets on such day, the record so maintained by him as of the close of the preceding day.

CONCURRENT RESOLUTION ON THE BUDGET MUST BE ADOPTED BEFORE APPROPRIATIONS AND CHANGES IN REVENUES AND PUBLIC DEBT LIMIT ARE MADE

SEC. 305. (a) IN GENERAL.—It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution (or amendment thereto) which provides—

(1) new budget authority for a fiscal year,

(2) an increase or decrease in revenues to become effective during a fiscal year, or

(3) an increase or decrease in the public debt limit to become effective during a fiscal year,

until the concurrent resolution for such year referred to in section 301(a) has been adopted by the Congress.

(b) EXCEPTION FOR MULTI-YEAR FUNDING.—In order to provide for multiyear advance funding for programs where for planning purposes there is a need to know in advance the amount of funds which will be available, particularly programs of Federal assistance to State and local governments, subsection (a) shall not apply to new budget authority which first becomes available in a fiscal year following the fiscal year to which the concurrent resolution applies.

LEGISLATION DEALING WITH CONGRESSIONAL BUDGET MUST BE HANDLED BY BUDGET COMMITTEES

SEC. 306. No bill or resolution, and no amendment to any bill or resolution, dealing with any matter which is within the jurisdiction of the Committee on the Budget of either House shall be considered in that House unless it is a concurrent resolution on the budget which has been reported by the Committee on the Budget of that House (or from the consideration of which such committee has been discharged) or unless it is an amendment to such a concurrent resolution.

SUMMARIES OF CONGRESSIONAL BUDGET ACTIONS

SEC. 307. (a) REPORTS ON LEGISLATION PROVIDING NEW BUDGET AUTHORITY OR LIMITING OUTLAYS.—Whenever a committee of either House reports a bill or resolution to its House providing new budget authority or limiting budget outlays, or both, for a fiscal year, the report accompanying that bill or resolution shall contain a statement prepared in consultation with the Director of the Congressional Office of the Budget detailing—

(1) how the new budget authority in that bill or resolution compares with the limitations on, and the applicable appropriate levels of, new budget authority and budget outlays set forth in the most recently adopted concurrent resolution on the budget for such fiscal year;

(2) a projection for the period of five fiscal years beginning with such fiscal year of the budget outlays which will result from that bill or resolution in each fiscal year in such period; and

(3) the impact on State and local governments of the new budget authority and budget outlays authorized by that bill or resolution.

(b) UP-TO-DATE TABULATION OF CONGRESSIONAL BUDGET ACTIONS.—The Director of the Congressional Office of the Budget shall issue a daily report detailing and tabulating the progress of congressional action on legislation providing new budget authority or limiting budget outlays for a fiscal year. Specificially, such report shall include—

(1) an up-to-date tabulation comparing the new budget authority and budget outlays in legislation on which Congress has completed action to the limitations on, and the appropriate levels of, new budget authority and budget outlays set forth in the most recently adopted concurrent resolution on the budget for such fiscal year; and

(2) an up-to-date status report on all new budget authority legislation for such fiscal year in both Houses.

(c) FIVE-YEAR PROJECTION OF CONGRESSIONAL BUDGET ACTION.—After a bill required to be reported for a fiscal year under section 309(b) has been enacted into law, the Director of the Congressional Office of the Budget shall issue a report projecting for the period of five fiscal years beginning with such fiscal year—

(1) total budget outlays and new budget authority for each fiscal year in such period; and

(2) revenues to be received and the major sources thereof, and the surplus or deficit, if any, for each fiscal year in such period.

(d) REPORTS ON LEGISLATION PROVIDING NEW TAX EXPENDITURES.—Whenever a committee of either House reports a bill or resolution to its House providing new or increased tax expenditures during a fiscal year, the report accompanying that bill or resolution shall contain a statement prepared in consultation with the Director of the Congressional Office of the Budget detailing—

(1) how the new tax expenditures provided in that bill or resolution will affect the existing levels of tax expenditures as set forth in the most recently adopted concurrent resolution on the budget for such fiscal year, and a justification for any deviation from those levels;

(2) a projection for the period of five fiscal years beginning with such fiscal year of the tax expenditures which will result from that bill or resolution in each fiscal year in such period; and

(3) the impact, if any, on State and local governments of the tax expenditures provided by that bill or resolution.

ACTION ON BILLS PROVIDING NEW BUDGET AUTHORITY

SEC. 308. (a) BILLS TO BE ENACTED BEFORE BEGINNING OF FISCAL YEAR.—In order to promote sound fiscal policies and procedures, the Congress declares that—

(1) on or before September 20 preceding the beginning of a fiscal year all bills and resolutions providing new budget authority for such fiscal year (other than supplemental, deficiency, and continuing appropriations bills and resolutions) and all bills and resolutions providing new tax expenditures during such fiscal year shall be enacted into law; and

(2) before the beginning of a fiscal year, a bill required to be reported under section 309(b) shall be enacted into law.

(b) REQUIRED PROVISION IN NEW BUDGET AUTHORITY LEGISLATION.—Every bill or resolution providing new budget authority for a fiscal year (other than supplemental, deficiency, and continuing appropriations bills and resolutions) shall contain a provision that the new budget authority provided in such bill or resolution shall not become effective until a bill required to be reported under section 309(b) has been enacted into law.

(c) LEGISLATION FAILING TO COMPLY SUBJECT TO POINT OF ORDER.—It shall not be in order in either House to consider any bill or resolution providing new budget authority (or any conference report on any such bill or resolution) which fails to comply with the provisions of subsection (b).

ENFORCEMENT OF CEILINGS ON NEW BUDGET AUTHORITY AND BUDGET OUTLAYS

SEC. 309. (a) REPORT BY CONGRESSIONAL OFFICE OF THE BUDGET.—As soon as possible after all bills and resolutions providing new budget authority for a fiscal year (other than supplemental, deficiency, and continuing appropriations bills and resolutions) have been enacted into law, the Director of the Congressional Office of the Budget shall prepare and submit to the Committees on the Budget and the Committees on Appropriations of both Houses a report setting forth for such fiscal year the total amounts of new budget authority and outlays for such fiscal year and a breakdown of such total amounts in such detail as such committees may direct.

(b) ACTION TO EFFECTUATE BILLS AND RESOLUTIONS PROVIDING NEW BUDGET AUTHORITY.—After all laws described in subsection (a) for a fiscal year have been enacted and when the total amounts of new budget authority and outlays provided in such laws for such fiscal year do not exceed the limitations set forth in the most recently adopted concurrent resolution on the budget for such fiscal year, the Committee on Appropriations of each House shall, as soon as possible, report to its House a bill providing that the new budget authority provided in such laws shall become effective.

(c) ACTION IF CONCURRENT RESOLUTION CEILINGS ARE EXCEEDED.—

(1) If, with respect to any fiscal year, the total amount of new budget authority or outlays provided in laws described in subsection (a) exceeds the limitation on total new budget authority or outlays set forth in the most recently adopted concurrent resolution on the budget for such fiscal year, then the Committee on Appropriations of each House shall, as soon as possible after all laws described in subsection (a) have been enacted, report to its House a bill, to be known as the ceiling enforcement bill, which meets the requirements of paragraph (2).

(2) A ceiling enforcement bill meets the requirements of this paragraph only if it rescinds amounts of new budget authority or other budget authority so that the total new budget authority and outlays for such fiscal year provided by laws described in subsection (a) do not exceed the limitations on total new budget authority and outlays, respectively, for such fiscal year set forth in the most recently adopted concurrent resolution on the budget.

(d) REQUIRED REPORTING OF CONCURRENT RESOLUTION ON THE BUDGET.—If—

(1) the ceiling enforcement bill reported under subsection (c) is recommitted, pursuant to section 310(c), by either House to the Committee on Appropriations of that House, or

(2) such bill is not so recommitted by either House, but is not enacted into law, the Committee on the Budget of each House shall report to its House a concurrent resolution on the budget which revises or reaffirms the most recently adopted concurrent resolution on the budget for the fiscal year.

(e) FINAL CONSIDERATION OF CEILING ENFORCEMENT BILL.—After a concurrent resolution on the budget reported under subsection (d) has been adopted by Congress, the Committee on Appropriations of each House shall report to its House a ceiling enforcement bill or shall report the ceiling enforcement bill reported under subsection (c) and recommitted to it pursuant to section 310(c). Such ceiling enforcement bill shall rescind amounts of new budget authority or other budget authority so that the total new budget authority and outlays for the fiscal year do not exceed the limitations set forth in such concurrent resolution.

(f) PRO RATA RESCISSION BILL.—If for any fiscal year—

(1) the Congress fails to adopt a concurrent resolution on the budget reported under subsection (d), or

(2) a ceiling enforcement bill reported under subsection (e) is not enacted into law,

the Committee on Appropriations of each House shall report to its House a bill which meets the requirements of subsection (c)(2) and in which all rescissions of budget authority are on a pro rata basis applied to all available budget authority (other than budget authority for outlays which are not controllable).

(g) CONGRESS MAY NOT ADJOURN OR RECESS UNTIL LAW IS ENACTED.—After September 30 of any year, it shall not be in order in either the Senate or the House of Representatives to consider any resolution providing for the adjournment or recess of either House for a period of more than three days, unless a bill required to be reported under subsection (b) has been enacted into law for the fiscal year beginning on October 1 of each year.

RULES FOR CONSIDERATION OF BILLS REPORTED UNDER SECTION 309

SEC. 310. (a) SECTION 303 RULES TO APPLY.—Except as provided in subsection (b), the rules provided in section 303 for the consideration of concurrent resolutions on the budget shall also apply to bills reported under section 309.

(b) DEBATE LIMITATIONS.—Debate on any bill reported under section 309, and all amendments thereto, shall be limited to not more than thirty hours, which shall be equally divided between the majority and minority parties. Debate on any amendment shall be limited to not more than two hours, which shall be equally divided between those favoring and those opposing the amendment. Debate on a conference report on any such bill shall be limited to not more than ten hours, which shall be equally divided between those favoring and those opposing the conference report.

(c) RECOMMITTAL OF CEILING ENFORCEMENT BILLS REPORTED UNDER SECTION 309(c).—If, after amendments proposed in either House to a ceiling enforcement bill reported under section 309(c) have been considered, such bill does not meet the requirements of section 309(c)(2), it shall be recommitted by the Presiding Officer, without further motion, to the Committee on Appropriations of that House.

(d) RECOMMITTAL OF CEILING ENFORCEMENT BILLS REPORTED UNDER SECTION 309(e) AND PRO RATA RESCISSION BILLS REPORTED UNDER SECTION 309(f).—If, after all amendments proposed in either House to a bill reported under section 309(e) or 309(f) have been considered, such bill does not meet the requirements of those sections, it shall be recommitted by the Presiding Officer, without further motion, in the form as then amended to the Committee on Appropriations of that House with instructions to report the bill back to that House within three days (not counting any day on which that House is not in session) in a form which meets the requirements of section 309(e) or 309(f), as the case may be, and which preserves, to the greatest practicable extent, the spirit and the letter of floor amendments previously adopted.

(e) FLOOR AMENDMENTS AFTER RECOMMITTAL.—During the consideration in either House of a bill reported back after recommittal pursuant to subsection (d), an amendment or series of amendments shall not be in order unless it preserves the bill in a form which meets the requirements of section 309(e) or 309(f), as the case may be.

(f) AMENDMENTS TO MEET REQUIREMENTS ALWAYS IN ORDER.—Notwithstanding any other rule, if during the consideration in either House of a bill reported under section 309 (c), (e), or (f) such bill does not, at any time, meet the requirements of those sections, an amendment or series of amendments which would, if adopted, make such bill meet such requirements shall always be in order.

(g) CONFERENCE REPORTS.—It shall not be in order in either House to consider a conference report on a bill reported under section 309 (c), (e), or (f) if the bill as recommended in the conference report does not meet the requirements of those sections.

SUPPLEMENTAL AND DEFICIENCY APPROPRIATIONS MUST BE WITHIN CEILINGS

SEC. 311. After the bill required to be reported for a fiscal year under section 309 (b) has been enacted into law, it shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution providing additional new budget authority for such fiscal year, any amendment to any such bill or resolution, or any conference report on any such bill or resolution, if—

(1) the enactment of such bill or resolution as reported,

(2) the adoption of such amendment and the enactment of such bill or resolution as so amended, or

(3) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the limitation on total new budget authority or the limitation on total budget outlays set forth in the most recently adopted concurrent resolution on the budget for such fiscal year to be exceeded.

TITLE IV—ADDITIONAL RULES TO IMPROVE FISCAL PROCEDURES

BUDGET AUTHORITY LEGISLATION MAY BE REQUIRED TO CONTAIN OUTLAY LIMITATIONS

SEC. 401. (a) ACTION BY BUDGET COMMITTEES.—Whenever a concurrent resolution on the budget for a fiscal year so requires (and to the extent provided in such concurrent resolution)—

(1) bills and resolutions providing new budget authority for that fiscal year reported in each House shall also specify the amount of outlays which may be made during that fiscal year both pursuant to the new budget authority provided by the bill or resolution and to any other available budget authority.

(2) legislation shall be reported by the Committee on Appropriations in each House for that fiscal year specifying the amount of outlays which may be made during the fiscal year under permanent budget authority, and

(3) amendments proposed in each House to bills or resolutions providing new budget authority for that fiscal year which increase or decrease the amount of any budget authority shall also specify the amount of outlays which may be made during that fiscal year pursuant to the budget authority so increased or decreased.

(b) LEGISLATION FAILING TO COMPLY SUBJECT TO POINT OF ORDER.—If any requirement referred to in subsection (a) applies for a fiscal year, it shall not be in order to consider in either House any bill, resolution, or amendment which does not comply with such requirement.

(c) STUDIES AND ASSISTANCE BY CONGRESSIONAL OFFICE OF THE BUDGET.—The Director of the Congressional Office of the Budget shall undertake studies and provide assistance to the committees of both Houses which have jurisdiction over legislation pro-

viding budget authority to enable such committees to comply with the provisions of subsection (a).

LIMITATION ON NEW ADVANCE BUDGET AUTHORITY

SEC. 402. (a) LEGISLATION SUBJECT TO POINT OF ORDER.—It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution which provides new advance budget authority (or any amendment which provides new advance budget authority) unless such bill or resolution, or such amendment, also provides that the new advance budget authority is to be exercised for any fiscal year only to such extent or in such amounts as are provided for such fiscal year in appropriation Acts or other laws enacted after the enactment of such bill or resolution.

(b) NEW ADVANCE BUDGET AUTHORITY DEFINED.—For purposes of subsection (a)—

(1) NEW ADVANCE BUDGET AUTHORITY.—The term "new advance budget authority" means advance budget authority provided by law enacted after the date of enactment of this Act, including any increase in, or addition to, any advance budget authority provided by law in effect on the date of enactment of this Act.

(2) ADVANCE BUDGET AUTHORITY.—The term "advance budget authority" means authority provided by law, whether on a temporary or permanent basis—

(A) to enter into contracts, under which the United States is obligated to make outlays, which have not been provided for in advance by appropriation Acts,

(B) to incur indebtedness, for the repayment of which the United States is liable (other than indebtedness incurred under the Second Liberty Bond Act), which has not been provided for in advance by appropriation Acts,

(C) to guarantee on behalf of the United States the repayment of indebtedness (other than indebtedness described in subparagraph (B)), which has not been provided for in advance by appropriation Acts,

(D) to make payments (including loans and grants), which have not been provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law, and

(E) to obligate the United States to make outlays by any other means which has not been provided for in advance by appropriation Acts.

(c) REFERENCE OF BILLS AND RESOLUTIONS.—All bills and resolutions introduced in the Senate which authorize the exercise of new advance budget authority shall be referred to the Committee on Appropriations of the Senate. No committee of the Senate other than the Committee on Appropriations shall have jurisdiction to report any bill or other measure which authorizes the exercise of new advance budget authority. All bills and resolutions introduced in the House of Representatives which authorize the exercise of new advance budget authority shall be referred to the Committee on Appropriations of the House. No committee of the House other than the Committee on Appropriations shall have jurisdiction to report any bill or resolution which authorizes the exercise of new advance budget authority.

REQUIREMENT OF ADVANCE AUTHORIZATIONS BY LEGISLATIVE COMMITTEES

SEC. 403. It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution (or conference report thereon) authorizing the enactment of new budget authority for any fiscal year after May 31 preceding the beginning of such fiscal year.

JURISDICTION OF APPROPRIATION COMMITTEES

SEC. 404. (a) AMENDMENT OF SENATE RULES.—Subparagraph (c) of paragraph 1 of rule XXV of the Standing Rules of the Senate is amended to read as follows:

"(c) Committee on Appropriations, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"1. Except as provided in subparagraph (r)1, appropriation of the revenue for the support of the Government.

"2. Rescission of appropriations.

"3. The amount of outlays for a fiscal year under permanent budget authority, to the extent section 401(a)(2) of the Federal Act To Control Expenditures and Establish National Priorities applies for such fiscal year.

"4. The exercise of new advance budget authority within the meaning of section 402 of the Federal Act To Control Expenditures and Establish National Priorities.".

(b) AMENDMENT OF HOUSE RULES.—Clause 2 of rule XI of the Rules of the House of Representatives is amended be redesignating paragraph (b) as (e) and by inserting after paragraph (a) the following new paragraphs:

"(b) Rescission of appropriations.

"(c) The amount of outlays for a fiscal year under permanent budget authority, to the extent section 401(a)(2) of the Federal Act To Control Expenditures and Establish National Priorities applies for such fiscal year.

"(d) The exercise of new advance budget authority within the meaning of section 402 of the Federal Act To Control Expenditures and Establish National Priorities.".

TITLE V—CHANGE OF FISCAL YEAR

FISCAL YEAR TO BEGIN OCTOBER 1

SEC. 501. Section 237 of the Revised Statutes (31 U.S.C. 1020) is amended to read as follows:

"SEC. 237. (a) The fiscal year of the Treasury of the United States, in all matters of accounts, receipts, expenditures, estimates, and appropriations—

"(1) shall, through June 30, 1974, commence on July 1 of each year and end on June 30 of the following year;

"(2) shall for the period commencing July 1, 1974, and ending on September 30, 1975, be for such period; and

"(3) shall, beginning on October 1, 1975, commence on October 1 of each year and end on September 30 of the following year.

"(b) All accounts of receipts and expenditures required by law to be published annually shall be prepared and published for each fiscal year as established by subsection (a)."

SPECIAL AUTHORIZATION OF APPROPRIATIONS

SEC. 502. In the case of any law enacted before the date of the enactment of this Act which authorizes the appropriation of a specified amount (or which authorizes the appropriation of sums not to exceed a specified amount) for the fiscal year commencing July 1, 1974, the amount so specified is hereby increased by 25 percent.

TRANSMITTAL OF BUDGET

SEC. 503. Section 201(a) of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is amended by striking out the first sentence and inserting in lieu thereof the following: "The President shall transmit to the Congress the budget which shall set forth his budget message, summary data and text, and supporting detail. The budget for any fiscal year beginning before October 1, 1975, shall be transmitted during the first fifteen days of that regular session of the Congress which commences prior to the beginning of the fiscal year, and the budget for any fiscal year beginning on or after October 1, 1975, shall be transmitted on or before February 1 preceding the beginning of the fiscal year."

ACCOUNTING PROCEDURES

SEC. 504. (a) Subsection (a)(1) of the first section of the Act entitled "An Act to simplify accounting, facilitate the payment of obligations, and for other purposes", approved July 25, 1956, as amended (31 U.S.C. 701), is amended to read as follows:

"(1) The obligated balance shall be transferred, at the time specified in subsection (b)(1) of this section, to an appropriation account of the agency or subdivision thereof responsible for the liquidation of the obligations, in which account shall be merged the amounts so transferred from all appropriation accounts for the same general purposes; and".

(b) Subsection (b) of such section is amended to read as follows:

"(b)(1) Any obligated balance referred to in subsection (a)(1) of this section shall be transferred as follows:

"(A) for any fiscal year or years ending on or before June 30, 1974, on that June 30 which falls in the first month of June which occurs twenty-four months after the end of such fiscal year or years; and

"(B) for any fiscal year commencing on or after July 1, 1974, on September 30 of the second fiscal year following the fiscal year or years for which the appropriation is available for obligation.

"(2) The withdrawals required by subsection (a)(2) of this section shall be made—

"(A) for any fiscal year ending on or before June 30, 1974, not later than September 30 of the fiscal year immediately following the fiscal year in which the period of availability for obligation expires; and

"(B) for any fiscal year commencing on or after July 1, 1974, not later than January 1 following the fiscal year in which the period of availability for obligation expires."

CONVERSION OF AUTHORIZATIONS OF APPROPRIATIONS

SEC. 505. Any law providing for an authorization of appropriations commencing on July 1 of a year shall, if that year is any year after 1974, be considered as meaning October 1 of that year. Any law providing for an authorization of appropriations ending on June 30 of a year shall, if that year is any year after 1974, be considered as meaning September 30 of that year. Any law providing for an authorization of appropriation for the fiscal year 1975 or any fiscal year thereafter shall be construed as referring to that fiscal year ending on September 30 of the calendar year having the same calendar year number as the fiscal year number.

ECONOMIC REPORTS

SEC. 506. (a) Section 3 of the Employment Act of 1946 (15 U.S.C 1022), is amended by striking out "The President shall transmit to the Congress not later than January 20 of each year" and inserting in lieu thereof the following: "Not later than January 20 of each year before 1975, and not later than February 5 of each year after 1974, the President shall transmit to the Congress".

(b) Section 5(b)(3) of such Act (15 U.S.C. 1024) is amended by striking out "(beginning with the year 1947)" and inserting in lieu thereof "before 1975 and not later than March 20 of each year after 1974,".

REPEALS

SEC. 507. The following provisions of law are repealed:

(1) The ninth paragraph under the headings "Legislative Establishment", "Senate", of the Deficiency Appropriation Act, fiscal year 1934 (48 Stat. 1022; 2 U.S.C. 66); and

(2) The proviso to the second paragraph under the headings "House of Representatives", "Salaries, Mileage, and Expenses of Members", of the Legislative-Judiciary Appropriation Act, 1955 (68 Stat. 400; 2 U.S.C. 81).

TECHNICAL AMENDMENT

SEC. 508. (a) Section 105 of title 1, United States Code, is amended by striking out "June 30" and inserting in lieu thereof "September 30".

(b) The provisions of this section shall be effective with respect to Acts making appropriations for the support of the Government for any fiscal year commencing on or after July 1, 1974.

TITLE VI—AMENDMENTS TO BUDGET AND ACCOUNTING ACT, 1921, AND ANALYSES

PRESIDENTIAL BUDGET TO INCLUDE SAME ELEMENTS AS CONGRESSIONAL BUDGET AND TAX EXPENDITURES

SEC. 601. Section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is amended by adding at the end thereof the following new subsections:

"(d) The budget transmitted pursuant to subsection (a) for each fiscal year shall set forth separately the items enumerated in subsection (a) (other than paragraph (9)) of section 301 of the Federal Act To Control Expenditures and Establish National Priorities.

"(e) The budget transmitted pursuant to subsection (a) for each fiscal year shall set forth the existing levels of tax expenditures (the tax expenditures budget) by major budget categories, and an estimate, based on projected economic factors, of any anticipated change in the levels of tax expenditures for that fiscal year. For purposes of this subsection, the terms 'tax expenditures' and 'tax expenditures budget' have the meanings given to them by section 2(3) of the Federal Act To Control Expenditures and Establish National Priorities.".

FIVE-YEAR BUDGET PROJECTIONS

SEC. 602. (a) Section 201(a) of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is amended—

(1) by inserting after "ensuing fiscal year" in paragraph (5) "and the four fiscal years immediately following the ensuing fiscal year";

(2) by striking out "such year" in paragraph (5) and inserting in lieu thereof "such years"; and

(3) by inserting after "ensuing fiscal year" in paragraph (6) "and the four fiscal years immediately following the ensuing fiscal year".

(b) Section 201 of such Act is amended by adding after subsection (e) (as added by section 601 of this Act) the following new subsection:

"(f) The budget transmitted pursuant to subsection (a) for each fiscal year shall include (1) an examination of proposed expenditures (including tax expenditures) and appropriations and estimated receipts within a comprehensive framework of existing and proposed programs and (2) the bases used for the proposed expenditures (including tax expenditures) and appropriations and estimated receipts."

BUDGET DATA BASED ON CONTINUATION OF EXISTING LEVEL OF SERVICES

SEC. 603. On or before December 1 of each year (beginning with 1974), the President shall submit to the Committees on the Budget of the Senate and the House of Representatives the estimated expenditures and proposed appropriations, by functional and subfunctional category, which would be included in the budget to be submitted pursuant to section 201 of the Budget and Accounting Act, 1921, for the ensuing fiscal year if all programs and activities were carried on during such ensuing fiscal year at the same level as the fiscal year in progress and without policy changes in such programs and activities.

ANALYSIS BY CONGRESSIONAL OFFICE OF THE BUDGET

SEC. 604. (a) With respect to each bill or resolution of a public character reported by any committee of the Senate or the House of Representatives (except the Committee on Appropriations and the Committee on the Budget of each House), the Director of the Congressional Office of the Budget shall prepare and make available for inclusion in the report accompanying such bill or resolution—

(1) an estimate of the costs which would be incurred in carrying out such bill or joint resolution in the fiscal year in which it is to become effective and in each of the four fiscal years following such fiscal year, together with the basis for each such estimate;

(2) a comparison of the estimate of costs described in paragraph (1) with any estimate of costs made by such committee and any Federal agency; and

(3) a list of existing and proposed Federal programs, including assistance from tax expenditures, which provide or would provide financial assistance for the objectives of the program or programs authorized by the bill or resolution.

(b) It shall not be in order in either the Senate or the House of Representatives to consider any bill or joint resolution unless the report accompanying such bill or resolution contains the material described in subsection (a) prepared by the Director of the Congressional Office of the Budget.

(c) Section 252 of the Legislative Reorganization Act of 1970 is repealed.

TITLE VII—PILOT TESTING AND EVALUATION OF PROGRAMS

PILOT TESTING OR EVALUATION OF MAJOR OUTLAY PROGRAMS

SEC. 701. (a) Except as provided in subsection (c), it shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution which establishes or extends a major outlay program unless such bill or resolution provides (or a prior law has provided) for a pilot test or an evaluation of such program, to be completed not later than three years after the enactment of such bill or resolution.

(b) For the purpose of this title, a major outlay program is any program (including a program involving tax expenditures) estimated to cost more than $100,000,000 for the first three fiscal years of the program or extension thereof, as indicated in the material prepared by the Director of the Congressional Office of the Budget and included in the report accompanying the bill or resolution under section 604 of this Act.

(c) Subsection (a) shall not apply to a bill or resolution if the committee report accompanying it contains a statement, together with full reasons therefor, that the committee has given full consideration to pilot testing and program evaluation and, in its judgment, neither would be feasible or desirable for the program established or extended.

(d) A pilot test of a major outlay program shall—

(1) specify the clear objective of the program, a well as the criteria which will be used in the measurements,

(2) include a replica as nearly as possible of the program if it were implemented on a permanent basis,

(3) be conducted for a defined period of time,

(4) be conducted by a department or agency of the Government or a public or private organization specified in the law providing for the pilot test,

(5) provide a valid comparison criterion for evaluation, including one or more of the following: control groups; base rates derived from prior time frames; or other valid measurement, and

(6) test alternative options toward achievement of the objectives specified in paragraph (1).

(e) The department, agency, or organization which conducts the pilot test or program evaluation shall report the results of the test or evaluation, and the data or other information upon which the results are based, to the committees of the Senate and the House of Representatives which have jurisdiction to report legislation implementing the program on a broad scale or authorizing its further extension. Such report shall be submitted in sufficient time to permit adequate consideration by the Congress of legislation to implement the program on a broader scale or to authorize its further extension.

(f) Nothing contained in this title shall preclude simultaneous multiple pilot tests of a major outlay program to determine the most feasible alternative before broader implementation.

(g) Each committee to which a report of a pilot test or program evaluation with respect to a major outlay program is submitted under subsection (e) shall submit to its House a report on the test or evaluation. It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution which authorizes the enactment of budget authority for the major outlay program, for any period after the date for completion of the pilot test or program evaluation of the major outlay program, until the committee or committees of that House have submitted the report required by the preceding sentence.

COMMITTEE ANALYSIS

SEC. 702. (a) Each committee to which a report of a pilot test or program evaluation, with respect to a major outlay program, is submitted under section 701 shall analyze and consider the results of the test or evaluation in its consideration of legislation to implement the major outlay program on a broader scale or to extend authorization of the program, as the case may be. Such analysis shall include a review of the data and other information upon which the department, agency, or organization which conducted the test or evaluation based its findings, results, and recommendations. In conducting such analysis, the committees of the two Houses may conduct hearings jointly.

(b) The report of a committee on legislation to implement on a broader scale or extend authorization for a major outlay program shall include (but not be limited to) the following matters:

(1) Suitability of the Federal Government to implement such program on a broader scale or to continue the conduct of such program.

(2) A summary of any available evaluations or analyses of such program, including cost-benefit studies, in relation to other alternative approaches.

(3) In the event the legislation would change a current method of dealing with a specific problem, a comparison of the current method used and the method used in the test and an analysis in terms of relative effectiveness.

REVIEW AND EVALUATION BY THE COMPTROLLER GENERAL

SEC. 703. Part I of title II of the Legislative Reorganization Act of 1970 (84 Stat. 1167; Public Law 91-510; 31 U.S.C. 1151 and following) is amended by striking out section 204 and inserting in lieu thereof the following:

"ASSISTANCE TO CONGRESS BY GENERAL ACCOUNTING OFFICE

"SEC. 204. (a) The Comptroller General shall review and evaluate the results of Government programs and activities carried on under existing law when ordered by either House of Congress, or upon his own initiative, or when requested by any committee of the House of Representatives or the Senate, or any joint committee of the two Houses having jurisdiction over such programs and activities.

"(b) The Comptroller General upon request of any committee of the House of Representatives or the Senate, any joint committee of the two Houses, or any Member of either House—

"(1) in developing specifications for legislative requirements for executive branch evaluations of Federal programs and activities, including reporting the results of such evaluations to the Congress, and

"(2) in analyzing and assessing program reviews, evaluation studies, or cost-benefit studies prepared by or for any Federal agency or organization to assist such committee in meeting the requirements of section 702 and section 802 of the Federal Act To Control Expenditures and Establish National Priorities.

"(c) The Comptroller General shall develop and prescribe principles and standards for the evaluation of Federal programs and activities, and submit an annual report.

"(d) The Comptroller General shall monitor the various recurring reporting requirements of the Congress and committees and make recommendations to the Congress and committees for changes and improvements in these reporting requirements to meet the congressional information needs ascertained by the Comptroller General, to enhance their usefulness to the congressional users, and to eliminate duplicative or unneeded reporting.

"(e) In carrying out his responsibilities under this section, the Comptroller General is authorized to establish an Office of Program Review and Evaluation within the General Accounting Office. The Comptroller General is authorized to employ not to exceed ten experts on a permanent, temporary, or intermittent basis and to obtain services as authorized by section 3109 of title 5, United States Code, but in either case at a rate (or the daily equivalent) for individuals not to exceed that prescribed, from time to time, for level V of the Executive Schedule under section 5316 of title 5, United States Code."

TITLE VIII—LIMITATION ON PERIOD OF AUTHORIZATION OF NEW BUDGET AUTHORITY FOR MAJOR OUTLAY PROGRAMS; REQUIRED REVIEWS

AUTHORIZATION OF NEW BUDGET AUTHORITY LIMITED TO THREE FISCAL YEARS

SEC. 801. (a) No law enacted after the effective date of this title which authorizes new budget authority for any major outlay program may authorize such new budget authority for a period of more than three fiscal years.

(b) All provisions of law in effect on the effective date of this title which authorize new budget authority for any major outlay program for a period of more than three fiscal years, beginning with the first fiscal year which commences after such date, shall cease to be effective at the end of the fourth fiscal year beginning after such date.

(c) All provisions of law in effect on the effective date of this title which authorize new budget authority for any major outlay program for an unspecified number of fiscal years shall cease to be effective at the end of the fifth year beginning after such date.

(d) Subsections (a), (b), and (c) shall not apply to any major outlay program funded in whole or major part of user taxes.

(e)(1) For purposes of this title, the term "major outlay program" means a program for which the sum of—

(A) the amount of new budget authority authorized to be provided for the fiscal year in progress (or, if no new budget authority has been authorized, the amount of new budget authority requested for such fiscal year in the budget submitted by the President), and

(B) the aggregate of the new budget authority provided for the two preceding fiscal years,

is more than $100,000,000. Such term includes, for purposes of subsection (a), a program enacted after the effective date of this title which is a major outlay program as defined in section 701(b).

(2) For purposes of this title, a program for which new budget authority has not been provided or authorized (or requested) for a period of three fiscal years, shall be treated as a major outlay program (until new budget authority has been provided or authorized (or requested) for three fiscal years), if the sum of—

(A) the amount, if any, of new budget authority authorized to be provided for the fiscal year in progress (or, if no budget authority has been authorized, the amount, if any, of new budget authority requested for such fiscal year in the budget submitted by the President),

(B) the new budget authority, if any, provided for such program for any preceding fiscal year in such period, and

(C) the estimated cost of such program (as determined by the Director of the Congressional Office of the Budget) for any fiscal year in such period for which no amount is applicable under paragraph (1) or (2), is more than $100,000,000.

COMPREHENSIVE REVIEW AND STUDY

SEC. 802. (a)(1) During the period prescribed in subsection (b), each committee of the Senate and the House of Representatives which has jurisdiction to report legislation authorizing new budget authority for a major outlay program shall conduct a comprehensive review and study of such program and shall submit a report thereon to the Senate or the House, as the case may be. In conducting any such review and study, the committee shall receive testimony and evidence in hearings open to the public, except that such hearings may be closed to the public upon the same terms and conditions as hearings of the Committee on the Budget of that House may be closed to the public.

(2) Prior to the beginning of the period (or as soon thereafter as possible), during which any committee of the Senate or the House of Representatives is to conduct a comprehensive review and study of a major outlay program, the head of the department or agency of the Government which administers the program (or any part thereof) shall submit to the committee an evaluation and analysis of the program.

(b)(1) The period referred to in subsection (a) for the first comprehensive review and study of a major outlay program is—

(A) with respect to any major outlay program in effect on the effective date of this title, the last fiscal year commencing after such effective date for which new budget authority is authorized for such program (after the application of section 801), except that (i) such review and study may be conducted in a fiscal year preceding such last fiscal year if the committees of both Houses required to conduct such review and study agree to conduct it during such preceding fiscal year, and (ii) if such last fiscal year precedes the third fiscal year commencing after such date, such review and study may be conducted during such third fiscal year if the committees of both Houses required to conduct such review and study agree to conduct it during that fiscal year, and

(B) with respect to any major outlay program enacted after such effective date, the third fiscal year during which the program is in effect.

For purposes of applying this paragraph, the provisions of section 801 shall be applied without regard to subsection (d) thereof.

(2) The period referred to in subsection (a) for the comprehensive review and study of a major outlay program (after the first such review and study) is the third fiscal year following the period during which the preceding review and study was conducted.

(c) Insofar as possible, the committees of the Senate and House of Representatives which have jurisdiction over a major outlay program shall conduct the review and study required by subsection (a) at the same time. Such committees may conduct the hearings required by such subsection jointly.

(d) The report of a committee on a review and study of a major outlay program shall contain an analysis of the program and the committee's evaluation of the overall success or failure of the program, and shall include (but not be limited to) the following matters:

(1) Whether the program objectives are still relevant.

(2) Whether the program has adhered to the original and intended purpose.

(3) Whether the program has had any substantial impact on solving the problems and objectives dealt with in the program.

(4) The impact of the program on the functions and freedom of the private sector of the economy.

(5) The feasibility of alternative programs and methods for dealing with the problems dealt with in the program and their cost effectiveness.

(6) The relation of all Government and private programs dealing with the problems dealt with in the program.

(7) An examination of proposed legislation pending in either House dealing with the problems being dealt with in the program, including an examination of each proposed legislation in the context of—

(A) existing laws,

(B) other proposed legislation,

(C) private efforts, and

(D) whether public efforts will hinder or help private efforts.

COORDINATION WITH TITLE VII

SEC. 803. (a) If a committee of the Senate or the House of Representatives which is required under section 802 to conduct a comprehensive review and study of a major outlay program is also (but for the provisions of this section) required under section 702, during the same period, to analyze and consider the results of an evaluation of such program under section 701, such committee shall conduct the comprehensive review and study of such program under section 802, and the provisions of section 702 shall not apply with respect to such evaluation.

(b) If a committee of the Senate or the House of Representatives which (but for this subsection) is required under section 702 to analyze and consider the results of an evaluation of a major outlay program has conducted a comprehensive review and study of such program during either of the two fiscal years preceding the period when such analysis is otherwise required, the provisions of section 702 shall not apply with respect to such evaluation.

LEGISLATION SUBJECT TO POINT OF ORDER

SEC. 804. It shall not be in order in either the Senate or the House of Representatives to consider—

(1) any bill or resolution which authorizes the enactment of new budget authority for any major outlay program for any fiscal year beginning after the period during which the committee of that House which has jurisdiction over the program is required to conduct a comprehensive review and study under section 802, until that committee has submitted the report thereon required by such section, or

(2) any bill or resolution which authorizes the enactment of new budget authority for any major outlay program for a period of more than three fiscal years.

TITLE IX—FISCAL AND BUDGETARY INFORMATION AND CONTROLS

SEC. 901. That part of title II of the Legislative Reorganization Act of 1970 which precedes section 201 thereof (84 Stat. 1167;

Public Law 91-510; 31 U.S.C. chapter 22) is amended by striking out—

"TITLE II—FISCAL CONTROLS

"PART 1—BUDGETARY AND FISCAL INFORMATION AND DATA"

and inserting in lieu thereof—

"TITLE II—FISCAL AND BUDGETARY INFORMATION AND CONTROLS

"PART 1—FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION"

SEC. 902. Part 1 of title II of the Legislative Reorganization Act of 1970 (84 Stat. 1167; Public Law 91-510; 31 U.S.C. 1151 and following) is amended by striking out sections 201, 202, and 203 and inserting in lieu thereof the following:

"FEDERAL FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION SYSTEMS

"SEC. 201. The Secretary of the Treasury and the Director of the Office of Management and Budget, in cooperation with the Comptroller General of the United States, shall develop, establish, and maintain, for use by all Federal agencies, standardized data and information systems for fiscal, budgetary, and program-related data and information. The development, establishment, and maintenance of such systems shall be carried out so as to meet the needs of the various branches of the Federal Government and, insofar as practicable, of governments at the State and local level.

"STANDARDIZATION OF TERMINOLOGY, DEFINITIONS, CLASSIFICATIONS, AND CODES FOR FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION

"SEC. 202. (a) The Comptroller General of the United States, in cooperation with the Secretary of the Treasury and the Director of the Office of Management and Budget, shall develop, establish, maintain, and publish standard terminology, definitions, classifications, and codes, for Federal fiscal, budgetary, and program-related data and information. The authority contained in this part shall include, but not be limited to, data and information pertaining to Federal fiscal policy, revenues, receipts, expenditures, functions, programs, projects, and activities and shall be carried out so as to meet the needs of the various branches of the Federal Government and, insofar as practicable, of governments at the State and local level. Such standard terms, definitions, classifications, and codes shall be used by all executive departments and agencies in supplying to the Congress fiscal, budgetary, and program-related data and information.

"(b) In carrying out this responsibility, the Comptroller General of the United States shall cooperate with and give particular consideration to the needs of the Committees on the Budget of the House of Representatives and the Senate and the Congressional Office of the Budget.

"(c) The Comptroller General of the United States shall submit to both Houses of the Congress, on or before June 30, 1975, a report containing his recommendations for the initial standard terms, definitions, and classifications, as described in this part, and shall recommend legislation to implement them as may be necessary.

"(d) The Comptroller General shall monitor the various recurring reporting requirements of the Congress and committees and make recommendations to the Congress and committees for changes and improvements in these reporting requirements to meet the congressional information needs ascertained by the Comptroller General, to enhance their usefulness to the congressional users, and to eliminate duplicative or unneeded reporting.

"AVAILABILITY TO AND USE BY THE CONGRESS AND STATE AND LOCAL GOVERNMENTS OF FEDERAL FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION

"SEC. 203. (a) Upon request of any committee of either House, of any joint committee of the two Houses, of the Comptroller General, or of the Director of the Congressional Office of the Budget, the Secretary of the Treasury, the Director of the Office of Management and Budget, or the heads of the various executive agencies shall—

"(1) furnish to the congressional committee, the joint committee, the Comptroller General, or the Director of the Congressional Office of the Budget, information as to the location and nature of available fiscal, budgetary, and program-related data and information;

"(2) prepare summary tables of such data and information and any related information deemed necessary by the requesting committee, joint committee, the Comptroller General, or the Director of the Congressional Office of the Budget; and

"(3) furnish any program evaluations conducted or commissioned by any executive agency as deemed necessary by the requesting committee, joint committee, the Comptroller General, or the Director of the Congressional Office of the Budget.

"(b) The Comptroller General, in cooperation with the Director of the Congressional Office of the Budget, the Secretary of the Treasury, and the Director of the Office of Management and Budget, shall—

"(1) develop, establish, and maintain an up-to-date inventory and directory of sources and information systems containing fiscal, budgetary, and program-related data and information and a brief description of their content;

"(2) provide, upon request, assistance to committees, joint committees, and Members of Congress in securing Federal fiscal, budgetary, and program-related data and information from the sources identified in the inventory and directory described in this part; and

"(3) furnish, upon request, assistance to committees, joint committees, and Members of Congress in appraising and analyzing fiscal, budgetary, and program-related data and information secured from the sources identified in the inventory and directory described in this part.

"(c) The Comptroller General and the Director of the Congressional Office of the Budget shall, to the extent they deem necessary, develop, establish, and maintain a central file or files of the data and information required to carry out the purposes of this title. Such a file or files shall be established to meet recurring requirements of the Congress for fiscal, budgetary, and program-related data and information and shall include, but not be limited to, data and information pertaining to budget requests, congressional authority to obligate and spend, apportionment and reserve actions, and obligations and expenditures. Such file or files and their indexes shall be maintained in such a manner as to facilitate their use by the committees of both Houses, joint committees, and other congressional agencies through modern data processing and communications techniques.

"(d) The Comptroller General, in cooperation with the Director of the Congressional Office of the Budget, the Director of the Office of Management and Budget, the Administrator of the General Services Administration, and appropriate representatives of State and local governments, shall develop procedures to assure access by State and local governments to such fiscal, budgetary, and program information as may be necessary for the accurate and timely determination by these governments of the impact of Federal assistance upon their budgets.".

SEC. 903. The table of contents of title II of the Legislative Reorganization Act of 1970 (84 Stat. 1140; Public Law 91-510; 31 U.S.C. chapter 22) is amended by striking out—

"TITLE II—FISCAL CONTROLS

"PART 1—BUDGETARY AND FISCAL INFORMATION AND DATA

"Sec. 201. Budgetary and fiscal data processing system.
"Sec. 202. Budget standard classifications.
"Sec. 203. Availability to Congress of budgetary, fiscal, and related data."

and inserting in lieu thereof—

"TITLE II—FISCAL AND BUDGETARY INFORMATION AND CONTROLS

"PART 1—FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION

"Sec. 201. Federal fiscal, budgetary, and program-related data and information systems.
"Sec. 202. Standardization of terminology, definitions, classifications, and codes for fiscal, budgetary, and program-related data and information.
"Sec. 203. Availability to and use by the Congress and State and local governments of Federal fiscal, budgetary, and program-related data and information.".

TITLE X—MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

CONFORMING AMENDMENTS TO STANDING RULES OF THE SENATE

SEC. 1001. Paragraph 1 of rule XXV of the Standing Rules of the Senate is amended—

(1) by striking out "Revenue" in subparagraph (h)1 and inserting in lieu thereof "Except as provided in subparagraph (r)(1), revenue";

(2) by striking out "The" in subparagraph (h)2 and inserting in lieu thereof "Except as provided in subparagraph (r)(1), the"; and

(3) by striking out "Budget" in subparagraph (j)(1)(A) and inserting in lieu thereof "Except as provided in subparagraph (r)(1), budget".

CONFORMING AMENDMENT TO HOUSE RULES

SEC. 1002. Rule XI of the Rules of the House of Representatives is amended by inserting immediately below clause 22 (as renumbered by section 102(b) of this Act) thereof the following new clause:

"22A. The respective areas of legislative jurisdiction under this rule are modified by title I of the Federal Act To Control Expenditures and Establish National Priorities."

AMENDMENTS TO LEGISLATIVE REORGANIZATION ACT OF 1946

SEC. 1003. (a) Section 133 of the Legislative Reorganization Act of 1946 (2 U.S.C. 190a) is amended—

(1) by inserting "and the Committee on the Budget" after "Appropriations" in subsections (d) and (f), and

(2) by inserting "or the Committee on the Budget" after "Appropriations" in subsection (h).

(b) Section 133A of such Act (2 U.S.C. 190a-1) is amended by inserting "and the Committee on the Budget" after "Appropriations" each place it appears in such section.

(c) Section 134(c) of such Act (2 U.S.C. 190b) is amended by inserting "or the Committee on the Budget" after "Appropriations".

(d) Section 136(c) of such Act (2 U.S.C. 190d) is amended by striking out "Com-

mittee on Appropriations of the Senate and the Committees on Appropriations," and inserting in lieu thereof "Committees on Appropriations and the Budget of the Senate and the Committees on Appropriations, the Budget,".

AMENDMENTS TO LEGISLATIVE REORGANIZATION ACT OF 1970

SEC. 1004. (a) Section 232 of the Legislative Reorganization Act of 1970 (31 U.S.C. 1172) is amended by renumbering paragraphs (2) and (3) as (3) and (4), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) the Committees on the Budget of the Senate and House,".

(b) Section 236 of such Act (31 U.S.C. 1176) is amended by inserting "and the Budget" after "Appropriations" in paragraph (2).

(c) Section 242(a) of such Act (2 U.S.C. 190h) is amended by inserting "or the Committee on the Budget" after "Appropriations".

(d) Section 243 of such Act (2 U.S.C. 1901) is amended by inserting "(a)" immediately after "243" and by adding at the end thereof the following new subsection:

"(b) The provisions of subsection (a) shall also apply to the Committee on the Budget of the Senate."

EXERCISE OF RULEMAKING POWERS

SEC. 1005. (a) The provisions of this title (except section 1006) and titles I, III, IV, VII (except section 703), and VIII are enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply; and such rules shall supercede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(b) Any rule provided in this Act may be waived or suspended by the Senate or the House of Representatives only by a vote of two-thirds of the Members voting, a quorum being present.

(c) If a point of order is made in either the Senate or the House of Representatives, and sustained by the Presiding Officer of that House, that any bill, resolution, amendment, motion, or other matter is not in order by reason of any rule provided in this Act, the decision of the Presiding Officer may be overruled only by a vote of two-thirds of the Members voting, a quorum being present.

EFFECTIVE DATES

SEC. 1006. (a) Except as provided in subsections (a) and (b), the provisions of this Act shall take effect on the date of its enactment.

(b) Titles III and VI (except section 604) shall apply with respect to the fiscal year beginning on October 1, 1975, and succeeding fiscal years.

(c) Section 401, section 403, section 604, title VII (except section 703), and title VIII shall take effect on the first day of the first session of the Congress following the date of the enactment of this Act.

The amendments of the Committee on Rules and Administration were to strike out the language of the Committee on Government Operations and insert:

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. (a) SHORT TITLE.—This Act may be cited as the "Congressional Budget Act of 1974".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Declaration of purposes.
Sec. 3. Definitions.

TITLE I—ESTABLISHMENT OF SENATE AND HOUSE BUDGET COMMITTEES

Sec. 101. Budget Committee of the Senate.

TITLE II—CONGRESSIONAL OFFICE OF THE BUDGET

Sec. 201. Establishment of Office.
Sec. 202. Duties and functions.
Sec. 203. Public access to budget data.

TITLE III—CONGRESSIONAL BUDGET PROCESS

Sec. 301. Adoption of first concurrent resolution.
Sec. 302. Reports after adoption of concurrent resolutions.
Sec. 303. First concurrent resolution on the budget must be adopted before budget authority and changes in revenues and public debt limit are made.
Sec. 304. Permissible revisions of concurrent resolutions on the budget.
Sec. 305. Provisions relating to the consideration of concurrent resolutions on the budget.
Sec. 306. Required action by conference committee.
Sec. 307. Legislation dealing with congressional budget must be handled by budget committees.
Sec. 308. Summaries of congressional budget actions.
Sec. 309. Action on bills providing new budget authority.
Sec. 310. Second required concurrent resolution and reconciliation bill.
Sec. 311. New budget authority must be within appropriate levels.

TITLE IV—ADDITIONAL PROVISIONS TO IMPROVE FISCAL PROCEDURES

Sec. 401. Bills providing new advance spending authority.
Sec. 402. Reporting of authorizing legislation.
Sec. 403. Analyses by Congressional Office of the Budget.
Sec. 404. Jurisdiction of Appropriations Committees.

TITLE V—CHANGE OF FISCAL YEAR

Sec. 501. Fiscal year to begin October 1.
Sec. 502. Transmittal of budget.
Sec. 503. Transition to new fiscal year.
Sec. 504. Accounting procedures.
Sec. 505. Conversion of authorizations of appropriations.
Sec. 506. Economic reports.
Sec. 507. Repeals.
Sec. 508. Technical amendment.

TITLE VI—AMENDMENTS TO BUDGET AND ACCOUNTING ACT, 1921

Sec. 601. Matters to be included in President's budget.
Sec. 602. Midyear review.
Sec. 603. Five-year budget projections.
Sec. 604. Allowances for supplemental budget authority and uncontrollable outlays.
Sec. 605. Budget data based on continuation of existing level of services.
Sec. 606. Removal of exemptions from budget process.

TITLE VII—PROGRAM REVIEW AND EVALUATION

Sec. 701. Review and evaluation by standing committees.
Sec. 702. Review and evaluation by the Comptroller General.

TITLE VIII—FISCAL AND BUDGETARY INFORMATION AND CONTROLS

Sec. 801. Amendment to Legislative Reorganization Act of 1970.

TITLE IX—MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Sec. 901. Conforming amendments to standing rules of the Senate.
Sec. 902. Amendments to Legislative Reorganization Act of 1946.
Sec. 903. Exercise of rulemaking powers.
Sec. 904. Effective dates.
Sec. 905. Application of congressional budget process to fiscal year 1976.

TITLE X—APPROPRIATION RESERVES

Sec. 1001. Amendment to Antideficiency Act.
Sec. 1002. Disclaimer.

DECLARATION OF PURPOSES

SEC. 2. (a) PURPOSES.—The Congress declares that it is essential—

(1) to establish national goals and priorities to meet the needs of a strong national economy;

(2) to provide for the congressional determination each year of the appropriate level of Federal revenues and expenditures;

(3) to assure the most effective use of Federal revenues; and

(4) to assure effective control over the budgetary process.

(b) MEANS OF ACCOMPLISHMENT.—In order to achieve these purposes, it is necessary—

(1) to establish a congressional budgeting system;

(2) to create budget committees with responsibility to oversee and establish fiscal guidelines for the implementation of national goals and priorities; and

(3) to require the executive branch to furnish information in a manner that will assist the Congress in discharging its duties.

DEFINITIONS

SEC. 3. (a) IN GENERAL.—For purposes of this Act—

(1) The terms "budget outlays" and "outlays" mean, with respect to any fiscal year, expenditures and net lending of funds under budget authority during the fiscal year.

(2) The term "budget authority" means authority provided by law to enter into obligations which will result in immediate or future outlays involving Government funds, except that such term does not include authority to insure or guarantee the repayment of indebtedness incurred by another person or government.

(3) The term "tax expenditures" means those revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability representing a deviation from the normal tax structure for individuals and corporations. The term "tax expenditures budget" means an enumeration of such tax expenditures.

(4) The term "concurrent resolution on the budget" means a concurrent resolution referred to in section 301, 304, or 310.

(5) The term "appropriation Act" means an Act referred to in section 105 of title 1, United States Code.

(b) JOINT COMMITTEE ON ATOMIC ENERGY.—For purposes of titles II, III, and IV of this Act, the Members of the Senate who are members of the Joint Committee on Atomic Energy shall be treated as a standing committee of the Senate, and the Members of the House of Representatives who are members of such Joint Committee shall be treated as a standing committee of the House.

TITLE I—ESTABLISHMENT OF SENATE AND HOUSE BUDGET COMMITTEES

BUDGET COMMITTEE OF THE SENATE

SEC. 101. (a) Paragraph 1 of rule XXV of the Standing Rules of the Senate is amended by adding at the end thereof the following new subparagraph:

"(r)(1) The Committee on the Budget, to which committee shall be referred all concurrent resolutions on the budget (as defined in section 3(4) of the Congressional Budget Act of 1974) and all other matters required to be referred to that committee under titles III and IV of that Act, and messages, petitions, memorials, and other matters relating thereto.

"(2) Such committee shall have the duty—

"(A) to report the matters required to be reported by it under title III and IV of the Congressional Budget Act of 1974;

"(B) to make continuing studies of the effect on budget outlays of relevant existing and proposed legislation and to report the results of such studies to the Senate on a recurring basis;

"(C) to request and evaluate continuing studies of tax expenditures, and to devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays, and to report the results of such studies to the Senate on a recurring basis; and

"(D) to review, on a continuing basis, the conduct by the Congressional Office of the Budget of its functions and duties."

(b) The table contained in paragraph 2 of rule XXV of the Standing Rules of the Senate is amended by inserting after—

"Banking, Housing, and Urban Affairs.. 15"

the following:

"Budget ..... 15".

(c) Paragraph 6 of rule XXV of the Standing Rules of the Senate is amended by adding at the end thereof the following new subparagraph:

"(h) For purposes of the first sentence of subparagraph (a), membership on the Committee on the Budget shall not be taken into account until that date occurring during the first regular session of the Ninety-sixth Congress, upon which the appointment of the majority and minority party members of the standing committees of the Senate is initially completed."

TITLE II—CONGRESSIONAL OFFICE OF THE BUDGET

ESTABLISHMENT OF OFFICE

SEC. 201. (a) IN GENERAL.—

(1) ESTABLISHMENT.—There is established an office of the Congress to be known as the Congressional Office of the Budget (hereinafter in this title referred to as the "Office"). The Office shall be headed by a Director, and there shall be a Deputy Director who shall perform such duties as may be assigned to him by the Director and, during the absence or incapacity of the Director or during a vacancy in that office, shall act as Director.

(2) APPOINTMENT OF DIRECTOR AND DEPUTY DIRECTOR.—The Director and Deputy Director shall be appointed by the Speaker of the House of Representatives and the President pro tempore of the Senate after consultation with the Committees on the Budget of the House and the Senate, respectively, subject to confirmation given by order of each House. The Director and Deputy Director shall each be appointed without regard to political affiliation and solely on the basis of his fitness to perform his duties.

(3) TERMS OF OFFICE.—The terms of office of the Director and Deputy Director first appointed shall expire at noon on January 3, 1979, and the terms of Directors and Deputy Directors appointed thereafter shall expire at noon on January 3 of each sixth year thereafter. Any individual appointed to fill a vacancy prior to the expiration of a term shall serve only for the unexpired portion of that term. An individual serving as Director or Deputy Director at the expiration of a term may continue to serve until his successor is appointed.

(4) REMOVAL.—The Director and Deputy Director, or either of them, may be removed by either House by resolution.

(5) COMPENSATION.—The Director shall receive the same compensation as the Comptroller General of the United States. The Deputy Director shall receive the same compensation as the Deputy Comptroller General of the United States.

(b) PERSONNEL.—The Director shall appoint and fix the compensation of such personnel as may be necessary to carry out the duties and functions of the Office. All personnel of the Office shall be appointed without regard to political affiliation and solely on the basis of their fitness to perform their duties. The Director may delegate to personnel of the Office authority to perform any of the duties, powers, and functions imposed on the Office or on the Director. For purposes of pay (other than pay of the Director and Deputy Director) and employment benefits, rights, and privileges, all personnel of the Office shall be treated as if they were employees of the Senate.

(c) EXPERTS AND CONSULTANTS.—In carrying out the duties and functions of the Office, the Director may procure the temporary (not to exceed one year) or intermittent services of experts or consultants or organizations thereof by contract as independent contractors, or, in the case of individual experts or consultants by employment, at rates of pay not in excess of the daily equivalent of the highest rate of basic pay payable under the General Schedule of section 5332 of title 5, United States Code.

(d) RELATIONSHIP TO EXECUTIVE BRANCH.—

(1) SECURING OF INFORMATION, ETC.—The Director is authorized to secure information, data, estimates, and statistics developed by various departments, agencies, and establishments of the executive branch of Government and regulatory agencies and commissions of the Government in the course of their operations and activities. All such departments, agencies, and establishments and regulatory agencies and commissions shall cooperate with the Director by furnishing to him that material which he determines to be necessary in the performance of his duties and functions. This paragraph shall not apply to any information, data, estimates, or statistics, the disclosure of which is specifically prohibited by law.

(2) UTILIZATION OF SERVICES, ETC.—In carrying out the duties and functions of the Office, the Director may, as agreed upon with the head of any department, agency, or establishment of the executive branch of Government or regulatory agency or commission of the Government, utilize the services, facilities, and personnel of such department, agency, or establishment or such regulatory agency or commission. The utilization of such services, facilities, and personnel may be with or without reimbursement by the Office as may be agreed to.

(3) FURNISHING OF SERVICES, ETC.—The head of each department, agency, and establishment in the executive branch, agency, and establishment in the executive branch, or regulatory agency or commission, is authorized to provide the Office the services, facilities, and personnel referred to in paragraph (2).

(e) RELATIONSHIP TO OTHER AGENCIES OF CONGRESS.—

(1) COORDINATION OF OPERATIONS.—The Office, the General Accounting Office, the Library of Congress, and the Office of Technology Assessment shall fully coordinate and cooperate in planning and conducting their operations to utilize most effectively the information, services, and capabilities of all congressional agencies in carrying out the various responsibilities assigned to each agency.

(2) OBTAINING INFORMATION, ETC.—In carrying out the duties and functions of the Office, the Director is authorized to obtain information, data, estimates, and statistics developed by the General Accounting Office, the Library of Congress, and the Office of Technology Assessment in the course of their operations and activities. Requests for information, and the compliance with such requests, pursuant to this subsection shall be in accordance with procedures to be developed and agreed upon between the Director and the Comptroller General, the Librarian of Congress, or the Technology Assessment Board, as the case may be.

(3) UTILIZATION OF SERVICES, ETC.—In carrying out the duties and functions of the Office, the Director may, as agreed upon with the Comptroller General, the Librarian of Congress, or the Technology Assessment Board, as the case may be, utilize the services, facilities, and personnel of the General Accounting Office, the Library of Congress, and the Office of Technology Assessment. The utilization of such services, facilities, and personnel may be with or without reimbursement by the Office as may be agreed to.

(4) FURNISHING OF SERVICES, ETC.—The Comptroller General, the Librarian of Congress, and the Technology Assessment Board are authorized to provide the Office the services, facilities, and personnel referred to in paragraph (3).

(5) EXISTING AUTHORITIES NOT OTHERWISE AFFECTED.—Except as otherwise specifically provided, nothing in this title shall be construed as modifying any existing authorities or responsibilities of the General Accounting Office, the Library of Congress, and the Office of Technology Assessment.

(f) APPROPRIATIONS.—There are authorized to be appropriated to the Office for each fiscal year such sums as may be necessary to enable it to carry out its duties and functions. Until sums are first appropriated to the Office pursuant to the preceding sentence, the expenses of the Office shall be paid, in accordance with the paragraph relating to the contingent fund of the Senate under the heading "UNDER LEGISLATIVE" in the Act of October 1, 1888, (28 Stat. 546; 2 U.S.C. 68), and upon vouchers approved by the Director, from the contingent fund of the Senate.

DUTIES AND FUNCTIONS

SEC. 202. (a) ASSISTANCE TO BUDGET COMMITTEES.—It shall be the duty and function of the Office to provide to the Committees on the Budget of both Houses information which will assist such committees in the discharge of all matters within their jurisdiction, including information with respect to the budget, appropriation bills, other bills authorizing or providing budget authority or tax expenditures, and with respect to revenues, receipts, estimated future revenues and receipts, and changing revenue conditions. The Office shall also provide to the Committee on the Budget of either House such other related information as such committee may request. At the request of the Committee on the Budget of either House, personnel of the Office shall be assigned, on a temporary basis, to assist such committee.

(b) ASSISTANCE TO OTHER COMMITTEES AND MEMBERS.—At the request of any other committee of the Senate or the House of Representatives or any joint committee of the Congress, the Office shall provide to such committee or joint committee any information compiled in carrying out the first sentence of subsection (a) and any additional detailed information related to the foregoing, as requested. At the request of any such committee or joint committee, personnel of the Office may be assigned, on a temporary basis, to assist such committee or joint committee with respect to matters directly related to the information referred to in the preceding sentence. At the request of any Member of the Senate or the House, the Office shall provide to such Member any information compiled in carrying out the first sentence of subsection (a) and any additional detailed information related to the foregoing, to the extent practicable, as requested.

(c) TRANSFER OF FUNCTIONS OF JOINT COMMITTEE ON REDUCTION OF FEDERAL EXPENDITURES.—

(1) The duties, functions, and personnel of the Joint Committee on Reduction of Federal Expenditures are transferred to the Office, and the Joint Committee is abolished.

(2) Section 601 of the Revenue Act of 1941 (55 Stat. 726) is repealed.

(d) REPORT ON REVENUES AND BUDGET OUTLAYS.—On or before April 15 of each year, and based on his estimates of revenues expected to be received during the fiscal year beginning on October 1 of such year, the Director shall report to the Congress with respect to alternative levels of total revenues and total outlays for such fiscal year and the surpluses or deficits related to such alternative levels. Such report shall also set forth the levels of tax expenditures under existing law for such fiscal year (the tax expenditure budget), taking into account projected economic factors, and any changes in such levels based on proposals in the budget submitted by the President for such fiscal year. The Director may at any time thereafter submit subsequent reports to the Congress revising the report required by this subsection.

(e) PROJECTION OF REVENUES AND BUDGET OUTLAYS.—The Director shall develop information with respect to the effect of existing laws on revenues and tax expenditures, and of existing authorizations and budget authority on outlays, during the current fiscal year and the ensuing four fiscal years. Such information shall include a compilation of tax expenditures and outlays, by major functional categories, and, to the extent practicable, an analysis of the interrelationship of existing authorizations, budget authority, and tax expenditures.

(f) USE OF COMPUTERS AND OTHER TECHNIQUES.—The Director may equip the Office with up-to-date computer capability (upon approval of the Committee on Rules and Administration of the Senate and the Committee on House Administration of the House of Representatives), obtain the services of experts and consultants in computer technology, and develop techniques for the evaluation of budgetary requirements.

PUBLIC ACCESS TO BUDGET DATA

SEC. 203. (a) RIGHT TO COPY.—Except as provided in subsections (c) and (d), the Director shall make all information, data, estimates, and statistics obtained under sections 201(d)(1) and 201(e)(2), available for public copying during normal business hours, subject to reasonable rules and regulations prescribed by the Director. To the extent practicable, he shall, at the request of any person, furnish a copy of any such information, data, estimates, or statistics requested, upon payment by such person of the cost of making and furnishing such copy.

(b) INDEX.—The Director shall develop and maintain filing, coding, and indexing systems that identify the information, data, estimates, and statistics to which subsection (a) applies and shall make such systems available for public use during normal business hours.

(c) EXCEPTIONS.—Subsection (a) shall not apply to information, data, estimates, and statistics—

(1) which are specifically exempted from disclosure by Act of Congress; or

(2) which the Director determines will disclose—

(A) matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United Sates;

(B) information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(C) personnel or medical data or similar data the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

unless the portions containing such information have been excised.

(d) INFORMATION OBTAINED FOR COMMITTEES AND MEMBERS.—Subsection (a) shall apply to any information, data, estimates, and statistics obtained at the request of any committee or Member of the Senate or the House of Representatives, or any joint committee of the Congress, unless the committee, Member, or joint committee making the request has instructed the Director not to make such information, data, estimates, or statistics available for public copying.

TITLE III—CONGRESSIONAL BUDGET PROCESS

The timetable with respect to the congressional budget process for any fiscal year is as follows:

On or before:	Action to be completed:
November 10	President submits current services budget.
February 15	President submits his budget.
April 1	Committees and joint committees submit reports to Budget Committees.
April 15	Congressional Office of the Budget submits report to Congress.
May 1	Budget Committees report first concurrent resolution to their Houses.
May 15	Committees report bills and resolutions authorizing new budget authority.
June 1	Completion of all action on first concurrent resolution.
(1) Five days before beginning of August adjournment or (2) August 7 when no August adjournment.	Completion of enactment into law of all bills and resolutions providing new budget authority.
(1) Three days before beginning of August adjournment, or (2) August 15 when no August adjournment.	Budget Committees report second required concurrent resolution.
(1) Three days after end of August adjournment or (2) Four days after Labor Day when no August adjournment.	Completion of all action on second required concurrent resolution.
September 25	Congress completes action on reconciliation bill implementing second required concurrent resolution.
October 1	Fiscal year begins.

ADOPTION OF FIRST CONCURRENT RESOLUTION

SEC. 301. (a) ACTION TO BE COMPLETED BY JUNE 1.—On or before June 1 of each year, the Congress shall complete action on the first concurrent resolution on the budget for the fiscal year beginning on October 1 of such year. The concurrent resolution shall set forth—

(1) TOTAL BUDGET OUTLAYS AND TOTAL NEW BUDGET AUTHORITY.—Appropriate levels of total budget outlays and total new budget authority;

(2) ALLOCATIONS OF TOTALS.—An estimate of budget outlays and an appropriate level of new budget authority—

(A) for each major functional category, for contingencies, and for undistributed intragovernmental transactions, based on allocations of the appropriate levels of total budget outlays and total new budget authority;

(B) within each major functional category, for all existing programs (including renewals thereof) in the aggregate and for all proposed programs in the aggregate, based on the estimate and appropriate level allocated to that category; and

(C) based on the total estimate and appropriate level allocated for all existing programs (including renewals thereof) within each major functional category, in the aggregate for all permanent authority for such programs and in the aggregate for such programs whose funds are generally provided in appropriation Acts, with the estimate and appropriate level for funds so provided being further subdivided between controllable amounts and all other amounts;

(3) ESTIMATED REVENUES.—Estimated revenue receipts;

(4) RECOMMENDED SURPLUS OR DEFICIT.—The amount, if any, by which revenues should exceed budget outlays, or by which budget outlays should exceed revenues, considering economic conditions and all other relevant factors;

(5) LEVEL OF, AND RECOMMENDED CHANGE IN, TOTAL REVENUES.—The appropriate level of Federal revenues, and the amount, if any, by which the aggregate level of Federal revenues should be increased or decreased by bills and resolutions to be reported by the appropriate committees;

(6) LEVEL OF, AND RECOMMENDED CHANGE IN, PUBLIC DEBT.—The appropriate level of the public debt, and the amount, if any, by which the statutory limit on the public debt should be increased or decreased by bills and resolutions reported by the appropriate committees; and

(7) OTHER MATTERS.—Such other matters relating to the budget as may be appropriate to carry out the purposes of this Act.

(b) ADDITIONAL MATTER IN CONCURRENT RESOLUTION.—The first concurrent resolution on the budget may also include provisions to one of the following procedures:

(1) that each bill or resolution providing new budget authority for that fiscal year (other than supplemental, deficiency, and continuing appropriation bills and resolutions) shall contain a provision that the new budget authority provided in such bill or resolution shall not become effective until a provision has been enacted into law, after all such bills and resolutions providing new budget authority have been enacted into law, that the new budget authority contained in such bill or resolution shall become effective;

(2) that all bills and resolutions providing new budget authority for such fiscal year shall not be enrolled until the concurrent resolution required to be reported under

section 301(a) has been agreed to, and, if a reconciliation bill is required to be reported under section 310(c), until after that bill has been enrolled;

(3) that all provisions for new budget authority which would be included in appropriation Acts (other than supplemental and deficiency appropriation Acts) for such fiscal year be included instead in one bill; or

(4) any other procedure which is considered appropriate to carry out the purposes of this Act.

(c) REPORTS BY JOINT ECONOMIC COMMITTEE.—On or before April 1 of each year, the Joint Economic Committee shall report to the Committees on the Budget of both Houses its recommendations as to the fiscal policy appropriate to the goals of the Employment Act of 1946, including, where appropriate, recommendations with regard to major functional categories of new budget authority and budget outlays. The joint committee shall also, from time to time, report to the Committees on the Budget of both Houses such other recommendations as it deems advisable.

(d) VIEWS AND ESTIMATES OF OTHER COMMITTEES.—On or before April 1 of each year, each standing committee of the Senate shall submit to the Committee on the Budget of the Senate, each standing committee of the House of Representatives shall submit to the Committee on the Budget of the House, and the Joint Committee on Internal Revenue Taxation shall submit to the Committees on the Budget of both Houses—

(1) its views and estimates with respect to all matters set forth in subsection (a) which relate to matters within the respective jurisdiction or functions of such committee or joint committee; and

(2) except in the case of the Joint Committee on Internal Revenue Texation, the estimate of the total amounts of new budget authority, and budget outlays resulting therefrom, to be provided or authorized in all bills and resolutions within the jurisdiction of such committee which such committee intends to be effective during the fiscal year beginning on October 1 of such year.

Any other committee of the Senate or House may submit to the Committee on the Budget of its House, and any other joint committee of the Congress may submit to the Committees on the Budget of both Houses, its views and estimates with respect to all matters set forth in subsection (a) which relate to matters within its jurisdiction or functions.

(e) REPORTING.—On or before May 1 of each year, the Committee on the Budget of each House shall report to its House the first concurrent resolution on the budget referred to in subsection (a) for the fiscal year beginning on October 1 of such year. The report accompanying such concurrent resolution shall include, but not be limited to—

(1) a comparison of revenues, as estimated for the purposes of such concurrent resolution, with those estimated in the budget submitted by the President;

(2) a comparison of the appropriate levels of total budget outlays and total new budget authority, as set forth in such concurrent resolution, with total budget outlays estimated and total new budget authority requested in the budget submitted by the President;

(3) the economic assumptions and programs objectives which underlie the appropriate levels, estimates, deficits or surpluses, and levels of revenue and public debt set forth in such concurrent resolution, and the alternative economic assumptions and program objectives which the committee considered in formulating such concurrent resolution;

(4) specific projections, not limited to the following, for the period of five fiscal years beginning with such fiscal year of—

(A) the estimated levels of total budget outlays and total new budget authority for each fiscal year in such period;

(B) the estimated revenues to be received, and the estimated surplus or deficit, if any, for each fiscal year in such period, based upon such estimated revenues and the estimated levels of total budget outlays and total new budget authority set forth pursuant to subparagraph (A); and

(C) the estimated levels of tax expenditures by major functional categories;

(5) an explanation of any significant changes in the proposed levels of Federal assistance to State and local governments; and

(6) allocations of the appropriate levels of the total budget outlays and total new budget authority among each committee of the Senate and House which has jurisdiction over bills and resolutions providing budget authority, with such allocations made with respect to the Committees on Appropriations of the two Houses being further subdivided among the subcommittees of such committees.

Such report shall also contain the recommendations of the Joint Economic Committee as reported pursuant to subsection (c), the separate views and estimates of other committees and joint committees as submitted pursuant to subsection (d), and an explanation of the Committee on the Budget of actions taken with respect to such recommendations, views, and estimates.

(f) FLOOR ACTION.—On or before May 20 of each year, each House shall complete action on the first concurrent resolution on the budget referred to in subsection (a) for the fiscal year beginning on October 1 of such year (except for action on any conference report on such concurrent resolution).

(g) EXTENSION WHERE SPECIFIED DATE FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—When any date (other than October 1) specified in subsection (e) or (f) falls on a Saturday, Sunday, or legal holiday in the District of Columbia in any year, there shall be substituted for that date during that year the next succeeding date which is not a Saturday, Sunday, or legal holiday in the District of Columbia.

REPORTS AFTER ADOPTION OF CONCURRENT RESOLUTIONS

SEC. 302. (a) MAKING ALLOCATIONS.—As soon as practicable after the first concurrent resolution on the budget for a fiscal year has been agreed to pursuant to section 301, and as soon as practicable after any concurrent resolution on the budget under section 304 or 310 has been agreed to—

(1) the Committee on the Budget of each House shall make an estimated allocation, based upon such concurrent resolution, of the appropriate levels of total budget outlays and total new budget authority among each committee of its House which has jurisdiction over bills and resolution providing such new budget authority; and

(2) based upon the allocation to it under paragraph (1), the Committee on Appropriations of each House shall—

(A) subdivide such allocation among its subcommittees; and

(B) further subdivide the amount with respect to each such subcommittee between controllable amounts and all other amounts. In the case of a concurrent resolution on the budget referred to in section 304 or 310, the allocation under paragraph (1) and subdivisions under paragraph (2) shall be required only to the extent necessary to take into account revisions made in the most recently agreed to concurrent resolution on the budget.

(b) SUBMISSION OF REPORT.—The Committee on Appropriations of each House shall promptly transmit the information determined in accordance with subsection (a)(2) to the Committee on the Budget of its House. Such information shall be included in a report, without change, by that Committee on the Budget with the allocations made by it under subsection (a)(1).

FIRST CONCURRENT RESOLUTION ON THE BUDGET MUST BE ADOPTED BEFORE BUDGET AUTHORITY AND CHANGES IN REVENUES AND PUBLIC DEBT LIMIT ARE MADE

SEC. 303. (a) IN GENERAL.—It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution (or amendment thereto) which provides—

(1) new budget authority for a fiscal year;

(2) an increase or decrease in revenues to become effective during a fiscal year; or

(3) an increase or decrease in the public debt limit to become effective during a fiscal year;

until the first concurrent resolution on the budget for such year has been agreed to pursuant to section 301 or until June 1 preceding the beginning of such fiscal year, whichever first occurs.

(b) EXCEPTIONS.—Subsection (a) does not apply to any bill or resolution—

(1) providing new advance spending authority (as defined in section 401(c));

(2) increasing or decreasing revenues, equivalent amounts of which are paid into trust funds described in section 401(d)(1);

(3) providing new budget authority which first becomes available in a fiscal year following the fiscal year to which the concurrent resolution applies; or

(4) increasing or decreasing revenues which first becomes effective in a fiscal year following the fiscal year to which the concurrent resolution applies.

(c) WAIVER IN THE SENATE.—

(1) The committee of the Senate which reports any bill or resolution to which subsection (a) applies may, at or after the time it reports such bill or resolution, report a resolution to the Senate (A) providing for the waiver of subsection (a) with respect to such bill or resolution, and (B) stating the reasons why the waiver is necessary. The resolution shall then be referred to the Committee on the Budget of the Senate. That commitee shall report the resolution to the Senate within ten days after the resolution is referred to it (not counting any day on which the Senate is not in session) beginning with the day following the day on which it is so referred, accompanied by that committee's recommendations and reasons for such recommendations with respect to the resolution. If the committee does not report the resolution within such ten-day period, it shall automatically be discharged from further consideration of the resolution and the resolution shall be placed on the calendar.

(2) During the consideration of any such resolution, debate shall be limited to one hour, to be equally divided between, and controlled by, the majority and minority leaders or their designees, and the time on any debatable motion or appeal shall be limited to twenty minutes, to be equally divided between, and controlled by, the mover and the manager of the resolution. In the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from the time under their control on the passage of such resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal. No amendment to the resolution is in order.

(3) If, after the Committee on the Budget has reported (or been discharged from further consideration of) the resolution, the Senate agrees to the resolution, then subsection (a) of this section shall not apply

with respect to the bill or resolution to which the resolution so agreed to applies.

PERMISSIBLE REVISIONS OF CONCURRENT RESOLUTIONS ON THE BUDGET

SEC. 304. At any time after the first concurrent resolution on the budget for a fiscal year has been agreed to pursuant to section 301, and before the close of such fiscal year, the two Houses may adopt a concurrent resolution on the budget which revises the concurrent resolution on the budget for such fiscal year most recently agreed to.

PROVISIONS RELATING TO THE CONSIDERATION OF CONCURRENT RESOLUTIONS ON THE BUDGET

SEC. 305. (a) PROCEDURE IN SENATE AFTER REPORT OF COMMITTEE; DEBATE; AMENDMENTS.—

(1) Debate in the Senate on any concurrent resolution on the budget, and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than fifty hours, except that, with respect to the second required concurrent resolution referred to in section 310(a), all such debate shall be limited to not more than fifteen hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(2) Debate in the Senate on any amendment to a concurrent resolution on the budget shall be limited to two hours, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution, and debate on any amendment to an amendment, debatable motion, or appeal shall be limited to one hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution, except that in the event the manager of the concurrent resolution is in favor of any such amendment, motion, or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. No amendment that is not germane to the provisions of such concurrent resolution shall be received. Such leaders, or either of them, may, from the time under their control on the passage of the concurrent resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

(3) A motion to further limit debate is not debatable. A motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed three, not counting any day on which the Senate is not in session) is not in order. Debate on any such motion to recommit shall be limited to one hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution.

(4) Notwithstanding any other rule, an amendment, or series of amendments, to a concurrent resolution on the budget proposed in the Senate shall always be in order if such amendment or series of amendments proposes to change any figure or figures then contained in such concurrent resolution so as to make such concurrent resolution mathematically consistent or so as to maintain such consistency.

(b) PROCEDURE IF HOUSE PASSES CONCURRENT RESOLUTION FIRST.—If, prior to the passage of a concurrent resolution on the budget by the Senate, the Senate receives from the House of Representatives a concurrent resolution on the budget of the House, then—

(1) the procedure with respect to the concurrent resolution of the Senate shall be the same as if no concurrent resolution from the House had been received; but

(2) on any vote on final passage of the concurrent resolution of the Senate the concurrent resolution of the House shall be automatically substituted with all after the resolving clause struck and the language of the concurrent resolution of the Senate substituted therefor.

(c) ACTION ON CONFERENCE REPORTS IN THE SENATE.—

(1) The conference report on any concurrent resolution on the budget shall be in order in the Senate at any time after the third day (excluding Saturdays, Sundays, and legal holidays) following the day on which such a conference report is reported and is available to Members of the Senate. A motion to proceed to the consideration of the conference report may be made even though a previous motion to the same effect has been disagreed to.

(2) During the consideration in the Senate of the conference report on any concurrent resolution on the budget, debate shall be limited to ten hours, to be equally divided between, and controlled by, the majority leader and minority leader or their designees. Debate on any debatable motion or appeal related to the conference report shall be limited to one hour, to be equally divided between, and controlled by, the mover and the manager of the conference report.

(3) Should the conference report be defeated, debate on any request for a new conference and the appointment of conferees shall be limited to one hour, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee, and should any motion be made to instruct the conferees before the conferees are named, debate on such motion shall be limited to one-half hour, to be equally divided between, and controlled by, the mover and the manager of the conference report. Debate on any amendment to any such instructions shall be limited to twenty minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report. In all cases when the manager of the conference report is in favor of any motion, appeal, or amendment, the time in opposition shall be under the control of the minority leader or his designee.

(4) In any case in which there are amendments in disagreement, time on each amendment shall be limited to thirty minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader of his designee. No amendment that is not germane to the provisions of such amendments shall be received.

(d) CONCURRENT RESOLUTION MUST BE CONSISTENT.—It shall not be in order in the Senate to vote on the question of agreeing to—

(1) a concurrent resolution on the budget unless the figures then contained in such resolution are mathematically consistent; or

(2) a conference report on a concurrent resolution on the budget unless the figures contained in such resolution, as recommended in such conference report, are mathematically consistent.

REQUIRED ACTION BY CONFERENCE COMMITTEE

SEC. 306. If a committee of conference on a concurrent resolution on the budget is unable, within seven days (excluding Saturdays, Sundays, and legal holidays) after the conferees of each House have been appointed to such committee, to agree, and submit a conference report, with respect to all amounts in the concurrent resolution which are in disagreement between the two Houses, then the conferees of each House shall submit to their House a conference report recommending—

(1) the amounts upon which the committee of conference is in agreement; and

(2) in the case of amounts upon which the committee of conference is not in agreement, an amount which is the midpoint between the amount contained in the concurrent resolution as agreed to by the Senate and the amount contained in the concurrent resolution as agreed to by the House. In the case of the first concurrent resolution on the budget referred to in section 301, the preceding sentence shall not require the submission of a conference report before May 25 of any year, and, in the case of the second required concurrent resolution on the budget referred to in section 310(a), the preceding sentence shall not require the submission of a conference report earlier than five days preceding the date on which action on such concurrent resolution is required to be completed.

LEGISLATION DEALING WITH CONGRESSIONAL BUDGET MUST BE HANDLED BY BUDGET COMMITTEES

SEC. 307. No bill or resolution, and no amendment to any bill or resolution, dealing with any matter which is within the jurisdiction of the Committee on the Budget of either House shall be considered in that House unless it is a bill or resolution which has been reported by the Committee on the Budget of that House (or from the consideration of which such committee has been discharged) or unless it is an amendment to such a bill or resolution.

SUMMARIES OF CONGRESSIONAL BUDGET ACTIONS

SEC. 308. (a) REPORTS ON LEGISLATION PROVIDING NEW BUDGET AUTHORITY.—Whenever a committee of either House reports a bill or resoluton to its House providing new budget authority for a fiscal year, the report accompanying that bill or resolution shall contain a statement prepared after consultation with the Director of the Congressional Office of the Budget detailing—

(1) how the new budget authority in that bill or resolution compares with the new budget authority set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year and the reports submitted under section 302;

(2) a projection for the period of five fiscal years beginning with such fiscal year of the budget outlays which will result from that bill or resolution in each fiscal year in such period; and

(3) the impact on State and local governments of the new budget authority, and budget outlays resulting therefrom, provided by that bill or resolution.

The committee is not required to include in the report a projection in accordance with paragraph (2) for any fiscal year in such five-year period, or to detail such impact in accordance with paragraph (3), if the committee determines that the projection for such year or detailing that impact, as the case may be, is impracticable and states in the report the reasons for such impracticability.

(b) UP-TO-DATE TABULATION OF CONGRESSIONAL BUDGET ACTIONS.—The Director of the Congressional Office of the Budget shall issue periodic reports detailing and tabulating the progress of congressional action on bills and resolutions providing new budget authority and changes in revenues and the public debt limit for a fiscal year. Specifically, such report shall include—

(1) an up-to-date tabulation comparing the new budget authority, and estimated outlays resulting therefrom, in bills and resolutions on which Congress has completed action to the new budget authority and estimated outlays set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year and the reports submitted under section 302;

(2) an up-to-date status report on all bills and resolutions providing new budget authority and changes in revenues and the public debt limit for such fiscal year in both Houses;

(3) an up-to-date comparison of the appropriate level of revenues contained in the

most recently agreed to concurrent resolution on the budget for such fiscal year with the latest estimate of revenue receipts for such year (including new revenues anticipated during such year under bills and resolutions on which the Congress has completed action); and

(4) an up-to-date comparison of the appropriate level of the public debt contained in the most recently agreed to concurrent resolution on the budget for such fiscal year with the latest estimate of the public debt during such fiscal year.

(c) FIVE-YEAR PROJECTION OF CONGRESSIONAL BUDGET ACTION.—As soon as practicable after the beginning of each fiscal year, the Director of the Congressional Office of the Budget shall issue a report projecting for the period of five fiscal years beginning with such fiscal year—

(1) total new budget authority and total budget outlays for each fiscal year in such period, except that for any fiscal year in such period that the Director determines a projection to be impracticable, no such projection shall be required if the Director states the reasons for such impracticability with respect to that year; and

(2) revenues to be received and the major sources thereof, and the surplus or deficit, if any, for each fiscal year in such period.

(d) UNCONTROLLABLE OUTLAYS AND OUTLAYS NOT WITHIN JURISDICTION OF APPROPRIATIONS COMMITTEES.—

(1) APPROPRIATIONS COMMITTEES.—The Committee on Appropriations of each House shall, with respect to bills and resolutions which provide new budget authority for a fiscal year for uncontrollable outlays, include in the report accompanying such bill or resolution its estimate of the total outlays which will be made during that fiscal year under such new budget authority and budget authority provided for prior fiscal years.

(2) OUTLAYS NOT WITHIN JURISDICTION OF APPROPRIATIONS COMMITTEES.—The Committee on the Budget of each House shall, on or before August 1 of each year, report to its House its estimate of the total outlays which will be made during the fiscal year beginning on October 1 of that year under budget authority which is not provided in appropriation Acts.

(e) REPORTS ON LEGISLATION PROVIDING NEW TAX EXPENDITURES.—Whenever a committee of either House reports a bill for resolution to its House providing new or increased tax expenditures during a fiscal year, the report accompanying that bill or resolution shall contain a statement prepared after consultation with the Director of the Congressional Office of the Budget detailing—

(1) how the new tax expenditures provided in that bill or resolution will affect the levels of tax expenditures under existing law as set forth in the report accompanying the first concurrent resolution on the budget for such fiscal year, or, if a report accompanying a subsequently agreed to concurrent resolution for such year sets forth such levels, then as set forth in that report, and a justification for any deviation from those levels; and

(2) a projection for a period of five fiscal years beginning with such fiscal year of the tax expenditures which will result from that bill or resolution in each fiscal year in such period, except that for any fiscal year in such period that the committee determines such projection to be impracticable, no such projection shall be required if the committee states the reasons for such impracticability with respect to that year.

ACTION ON BILLS PROVIDING NEW BUDGET AUTHORITY

SEC. 309. In order to promote sound fiscal policies and procedures, the Congress declares that—

(1) not later than five days before the beginning of an adjournment taken in an odd-numbered year under section 132(a)(2) of the Legislative Reorganization Act of 1946, or, in any year in which there is no such adjournment, not later than August 7 preceding the beginning of a fiscal year, all bills and resolutions providing new budget authority for such fiscal year (other than supplemental, deficiency, and continuing appropriation bills and resolutions) and all bills and resolutions providing new tax expenditures during such fiscal year shall be enacted into law; and

(2) if a reconcilation bill is required to be reported under section 310(c) for a fiscal year, the Congress shall complete action on that bill by September 25 preceding such fiscal year.

SECOND REQUIRED CONCURRENT RESOLUTION AND RECONCILIATION BILL

SEC. 310. (a) REPORTING OF CONCURRENT RESOLUTION.—Not later than three days before the beginning of an adjournment taken in an odd-numbered year under section 132(a)(2) of the Legislative Reorganization Act of 1946, or, in any year in which there is no such adjournment, not later than August 15, the Committee on the Budget of each House shall report to its House a concurrent resolution on the budget which reaffirms or revises the concurrent resolution on the budget most recently agreed to with respect to the fiscal year beginning on October 1 of such year. Any such concurrent resolution on the budget to reaffirm or revise shall also, to the extent necessary—

(1)(A) specify the total amount by which new budget authority for such fiscal year and budget authority for any prior fiscal year contained in laws within the jurisdiction of a committee is to be changed and direct that committee to determine and recommend changes in such laws to accomplish a change of such total amount; or

(B) whenever subparagraph (A) is infeasible, direct that all budget authority available for any such fiscal year be changed on a pro rata basis (other than budget authority for uncontrollable outlays with respect to provisions of laws already in effect);

(2) specify the total amount by which revenues are to be changed and direct the committees having jurisdiction to determine and recommend changes in the revenue laws to accomplish a change of such total amount;

(3) specify the amount by which the statutory limit on the public debt is to be changed and direct the committees having jurisdiction to recommend such change; or

(4) any combination of paragraphs (1), (2), and (3).

(b) COMPLETION OF ACTION ON CONCURRENT RESOLUTION.—Not later than three days after the end of an adjournment taken in an odd-numbered year under section 132(a)(2) of the Legislative Reorganization Act of 1946, or, in any year in which there is no such adjournment, not later than four days after Labor Day of that year, the Congress shall complete action on the concurrent resolution on the budget referred to in subsection (a) which reaffirms or revises the concurrent resolution on the budget most recently agreed to.

(c) RECONCILIATION BILL.—If a concurrent resolution on the budget is agreed to in accordance with subsection (a) containing a direction that changes in laws be made, and—

(1) only one committee is directed to determine and recommend changes, that committee shall promptly make such determination and recommendations and report a reconciliation bill to its House containing such recommendations; or

(2) more than one committee is directed to determine and recommend changes, each such committee so directed shall promptly make such determination and recommend changes and submit such recommendations to the Committee on the Budget of its House. The Committee on the Budget, upon receiving all such recommendations, shall report to its House a reconciliation bill containing, without substantive revision, all such recommendations.

(d) COMPLETION OF ACTION ON RECONCILIATION BILL.—Congress shall complete action on any reconciliation bill reported under subsection (c) not later than September 25 immediately preceding the beginning of the fiscal year commencing October 1.

(e) PROCEDURE IN THE SENATE.—

(1) Except as provided in paragraph (2), the provisions of section 305 for the consideration in the Senate of concurrent resolutions on the budget and conference reports thereon shall also apply to the consideration in the Senate of reconciliation bills reported under subsection (c) and conference reports thereon.

(2) Debate in the Senate on any reconciliation bill reported under subsection (c), and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than twenty hours. Any reconciliation bill originating in the Senate which passes the Senate containing any matter relating to revenues shall not be engrossed or transmitted to the House of Representatives.

(f) CONGRESS MAY NOT ADJOURN OR RECESS UNTIL ACTION IS COMPLETED.—It shall not be in order in either the Senate or the House of Representatives to consider any resolution providing—

(1) for the adjuornment sine die of either House; or

(2) for the adjournment or recess, after September 30 of any year, of either House for a period of more than three days;

unless action has been completed on the concurrent resolution on the budget required to be reported under subsection (a) for the fiscal year beginning on October 1 of such year, and, if a reconciliation bill is required to be reported under subsection (c) for such fiscal year, unless the Congress has completed action on that bill.

(g) SHORTENING OF AUGUST RECESS.—Section 132(a)(2) of the Legislative Reorganization Act of 1946 (2 U.S.C. 198(a)(2)) is amended by striking out "thirty days" and inserting in lieu thereof "twenty-three days".

NEW BUDGET AUTHORITY MUST BE WITHIN APPROPRIATE LEVELS

SEC. 311. After all regular annual bills and resolutions providing new budget authority for a fiscal year have been enacted into law, and, if a reconciliation bill for such fiscal year is required to be reported under section 310(c), after that bill has been enacted into law, it shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution providing additional new budget authority for such fiscal year, any amendment to any such bill or resolution, or any conference report on any such bill or resolution, if—

(1) the enactment of such bill or resolution as reported;

(2) the adoption of such amendment and the enactment of such bill or resolution as so amended; or

(3) the enactment of such bill or resolution in the form recommended in such conference report; would cause the appropriate level of total new budget authority or total budget outlays set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year to be exceeded.

TITLE IV—ADDITIONAL PROVISIONS TO IMPROVE FISCAL PROCEDURES

BILLS PROVIDING NEW ADVANCE SPENDING AUTHORITY

SEC. 401. (a) PROPOSED LEGISLATION PROVIDING CONTRACT OR BORROWING AUTHORITY.—It shall not be in order in either the Senate or the House of Representatives to consider any

bill or resolution which provides new advance spending authority described in subsection (c)(2)(A) or (B) (or any amendment which provides such new advance spending authority), unless that bill, resolution, or amendment also provides that such new advance spending authority is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(b) PROPOSED LEGISLATION PROVIDING ENTITLEMENT AUTHORITY.—

(1) EFFECTIVE DATE.—It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution which provides new advance spending authority described in subsection (c)(2)(C) (or any amendment which provides such new advance spending authority) which is to become effective before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported.

(2) REFERRAL TO APPROPRIATIONS COMMITTEES.—Whenever any bill or resolution which provides new advance spending authority described in subsection (c)(2)(C) is reported by any committee of the Senate or the House of Representatives, such bill or resolution shall then be referred to the Committee on Appropriations of that House with instructions to report it, with the committee's recommendations, within ten calendar days (not counting any day on which that House is not in session) beginning with the day following the day on which it is so referred. Whenever any amendment which provides such new advance spending authority (other than an amendment contained in a bill or resolution as reported and other than an amendment which increases or decreases the new advance spending authority provided by a bill or resolution as reported) is agreed to in the Senate or the House of Representatives, the bill or resolution containing such amendment shall (after all amendments have been considered) then be referred to the Committee on Appropriations of that House with instructions to report it, with the committee's recommendations, within ten calendar days (not counting any day on which that House is not in session) beginning with the day on which it is so referred. If the Committee on Appropriations of either House fails to report a bill or resolution referred to it under this paragraph within such ten-day period, the committee shall automatically be discharged from further consideration of such bill or resolution and such bill or resolution shall be placed on the calendar.

(3) COMMITTEE AMENDMENT.—The Committee on Appropriations of each House shall have jurisdiction to report any bill or resolution referred to it under paragraph (2) with an amendment which limits the total amount of new advance spending authority provided in such bill or resolution.

(c) DEFINITIONS.—

(1) NEW ADVANCE SPENDING AUTHORITY.—For purposes of this section, the term "new advance spending authority" means advance spending authority not provided by law on the date of the enactment of this Act, including any increase in or addition to advance spending authority provided by law on such date.

(2) ADVANCE SPENDING AUTHORITY.—For purposes of paragraph (1), the term "advance spending authority" means authority (whether temporary or permanent)—

(A) to enter into contracts under which the United States is obligated to make outlays, the budget authority for which is not provided in advance by appropriation Acts;

(B) to incur indebtedness (other than indebtedness incurred under the Second Liberty Bond Act) for the repayment of which the United States is liable, the budget authority for which is not provided in advance by appropriation Acts; and

(C) to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law.

Such term does not include authority to insure or guarantee the repayment of indebtedness incurred by another person or government.

(d) EXCEPTIONS.—

(1) TRUST FUNDS.—Subsections (a) and (b) shall not apply to new advance spending authority if the budget authority for outlays which will result from such new advance spending authority is derived—

(A) from a trust fund established by the Social Security Act (as in effect on the date of the enactment of this Act);

(B) from any other trust fund established by law before the date of the enactment of this Act, a substantial portion of the receipts of which consist of amounts (transferred from the general fund of the Treasury) equivalent to amounts of taxes (related to the purposes for which such outlays are made) received in the Treasury under specified provisions of the Internal Revenue Code of 1954; or

(C) from a trust fund established by law after the date of the enactment of this Act, 90 percent or more or the receipts of which consist or will consist of amounts (transferred from the general fund of the Treasury) equivalent to amounts of taxes (related to the purposes for which such outlays are or will be made) received in the Treasury under specified provisions of the Internal Revenue Code of 1954.

(2) GENERAL REVENUE SHARING.—Subsections (a) and (b) shall not apply to new advance spending authority which is an amendment to or extension of the State and Local Fiscal Assistance Act of 1972, or a continuation of the program of fiscal assistance to State and local governments provided by that Act, to the extent so provided in the bill or resolution providing such authority.

(3) OTHER SPENDING AUTHORITY.—Subsections (a) and (b) shall not apply to new advance spending authority to the extent that—

(A) the outlays resulting therefrom are made by an organization which is (i) a mixed-ownership Government Corporation (as defined in section 201 of the Government Corporation Control Act), or (ii) a wholly owned Government corporation (as defined in section 101 of such Act) which is specifically exempted by law from compliance with any or all of the provisions of that Act; or

(B) the outlays resulting therefrom consist exclusively of the proceeds of gifts or bequests made to the United States for a specific purpose.

REPORTING OF AUTHORIZING LEGISLATION

SEC. 402. (a) REQUIRED REPORTING DATE.—Except as otherwise provided in this section, it shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution authorizing the enactment of new budget authority for a fiscal year, unless that bill or resolution is reported in the Senate or the House, as the case may be, on or before May 15 preceding the beginning of such fiscal year.

(b) WAIVER IN THE SENATE.—

(1) The committee of the Senate which reports any such bill or resolution may, at or after the time it reports such bill or resolution, report a resolution to the Senate (A) providing for the waiver of subsection (a) with respect to such bill or resolution, and (B) stating the reasons why the waiver is necessary. The resolution shall then be referred to the Committee on the Budget of the Senate. That committee shall report the resolution to the Senate, within ten days after the resolution is referred to it (not counting any day on which the Senate is not in session) beginning with the day following the day on which it is so referred, accompanied by that committee's recommendations and reasons for such recommendations with respect to the resolution. If the committee does not report the resolution within such ten-day period, it shall automatically be discharged from further consideration of the resolution and the resolution shall be placed on the calendar.

(2) During the consideration of any such resolution, debate shall be limited to one hour, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees, and the time on any debatable motion or appeal shall be limited to twenty minutes, to be equally divided between, and controlled by, the mover and the manager of the resolution. In the event the manager of the resolution is in favor of any such motion or appeal, the time in oppositon thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from the time under their control on the passage of such resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal. No amendment to the resolution is in order.

(3) If, after the Committee on the Budget has reported (or been discharged from further consideration of) the resolution, the Senate agrees to the resolution, then subsection (a) of this section shall not apply with respect to that bill or resolution referred to in the resolution.

(c) CERTAIN BILLS FROM OTHER HOUSE.—For purposes of subsection (a), a bill or resolution of the House of Representatives which is placed on the calendar and not referred to a committee of the Senate shall be treated as having been reported on the same day on which a companion or similar bill or resolution was reported in the Senate; and a bill or resolution of the Senate which is placed on a calendar of the House of Representatives and not referred to a committee of the House shall be treated as having been reported on the same day on which a companion or similar bill or resolution was reported in the House.

ANALYSES BY CONGRESSIONAL OFFICE OF THE BUDGET

SEC. 403. The Director of the Congressional Office of the Budget shall, to the extent practicable, prepare for each bill or resolution of a public character reported by any committee of the Senate or the House of Representatives (except the Committee on Appropriations of each House), and submit to such committee—

(1) an estimate of the costs which would be incurred in carrying out such bill or resolution in the fiscal year in which it is to become effective and in each of the four fiscal years following such fiscal year, together with the basis for each such estimate; and

(2) a comparison of the estimate of costs described in paragraph (1) with any available estimate of costs made by such committee or by any Federal agency.

The estimate and comparison so submitted shall be included in the report accompanying such bill or joint resolution if submitted to such committee before such report is filed.

JURISDICTION OF APPROPRIATIONS COMMITTEES

SEC. 404. (a) AMENDMENT OF SENATE RULES.—Subparagraph (c) of paragraph 1 of

rule XXV of the Standing Rules of the Senate is amended to read as follows:

"(c) Committee on Appropriations, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"1. Except as provided in subparagraph (r), appropriation of the revenue for the support of the Government.

"2. Rescission of appropriations contained in Appropriations Act (referred to in section 105 of title 1, United States Code).

"3. The amount of new advance spending authority described in section 401(c)(2)(A) and (B) of the Congressional Budget Act of 1974 which is to be effective for a fiscal year.

"4. New advance spending authority described in section 401(c)(2)(C) of the Congressional Budget Act of 1974 provided in bills and resolutions referred to the committee under section 401(b)(2) of that Act (but subject to the provisions of section 401(b)(3) of that Act)."

(b) AMENDMENT OF HOUSE RULES.—Clause 2 of rule XI of the Rules of the House of Representatives is amended by redesignating paragraph (b) as (e) and by inserting after paragraph (a) the following new paragraphs:

"(b) Rescission of appropriations contained in appropriation Acts (referred to in section 105 of title 1, United States Code).

"(c) The amount of new advance spending authority described in section 401(c)(2)(A) and (B) of the Congressional Budget Act of 1974 which is to be effective for a fiscal year.

"(d) New advance spending authority described in section 401(c)(2)(C) of the Congressional Budget Act of 1974 provided in bills and resolutions referred to the committee under section 401(b)(2) of that Act (but subject to the provisions of section 401(b)(3) of that Act)."

TITLE V—CHANGE OF FISCAL YEAR

FISCAL YEAR TO BEGIN OCTOBER 1

SEC. 501. Section 237 of the Revised Statutes (31 U.S.C. 1020) is amended to read as follows:

"SEC. 237. (a) The fiscal year of the Treasury of the United States, in all matters of accounts, receipts, expenditures, estimates, and appropriations—

"(1) shall, through June 30, 1975, commence on July 1 of each year and end on June 30 of the following year;

"(2) shall for the period commencing July 1, 1975, and ending on September 30, 1976, be for such period; and

"(3) shall, beginning on October 1, 1976, commence on October 1 of each year and end on September 30 of the following year.

"(b) All accounts of receipts and expenditures required by law to be published annually shall be prepared and published for each fiscal year as established by subsection (a)."

TRANSMITTAL OF BUDGET

SEC. 502. Section 201(a) of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is amended by striking out the first sentence and inserting in lieu thereof the following: "The President shall transmit to the Congress the Budget which shall set forth his budget message, summary data and text, and supporting detail. The Budget for any fiscal year beginning on or before July 1, 1975, shall be transmitted during the first fifteen days of that regular session of the Congress which commences prior to the beginning of the fiscal year, and the Budget for any fiscal year beginning on or after October 1, 1976 shall be transmitted on or before February 15 preceding the beginning of the fiscal year."

TRANSITION TO NEW FISCAL YEAR

SEC. 503. (a) The Director of the Office of Management and Budget shall prepare and submit to the Congress such proposed legislation as he considers appropriate with respect to changes in law necessary to provide adequate authorizations of appropriations for the fiscal year provided under section 237(a)(2) of the Revised Statutes (as amended by section 501 of this Act), commencing July 1, 1975, and ending on September 30, 1976.

(b) The Director shall provide by regulation, order, or otherwise for the orderly transition by all departments, agencies, and instrumentalities of the United States Government and the government of the District of Columbia from the use of the fiscal year in effect on the date of enactment of this Act to the use of the new fiscal year prescribed by section 237(a)(3) of the Revised Statutes. The Director shall prepare and submit to the Congress such additional proposed legislation as he considers necessary to accomplish this objective.

(c) The Director of the Office of Management and Budget and the Director of the Congressional Office of the Budget jointly shall conduct a study of the feasibility and advisability of submitting the Budget, and enacting new budget authority, for a fiscal year during the regular session of the Congress which begins in the year preceding the year in which such fiscal year begins. The Director of the Office of Management and Budget and the Director of the Congressional Office of the Budget each shall submit a report of the results of the study conducted by them, together with his own conclusions and recommendations, to the Congress not later than one year after the effective date of this subsection.

ACCOUNTING PROCEDURES

SEC. 504. (a) Subsection (a)(1) of the first section of the Act entitled "An Act to simplify accounting, facilitate the payment of obligations, and for other purposes", approved July 25, 1956, as amended (31 U.S.C. 701), is amended to read as follows:

"(1) The obligated balance shall be transferred, at the time specified in subsection (b)(1) of this section, to an appropriation account of the agency or subdivision thereof responsible for the liquidation of the obligation, in which account shall be merged the amounts so transferred from all appropriation accounts for the same general purposes; and".

(b) Subsection (b) of such section is amended to read as follows:

"(b)(1) Any obligated balance referred to in subsection (a)(1) of this section shall be transferred as follows:

"(A) for any fiscal year or years ending on or before June 30, 1975, on that June 30 which falls in the first month of June which occurs twenty-four months after the end of such fiscal year or years; and

"(B) for any fiscal year commencing on or after July 1, 1975, on September 30 of the second fiscal year following the fiscal year or years for which the appropriation is available for obligation.

"(2) The withdrawals required by subsection (a)(2) of this section shall be made—

"(A) for any fiscal year ending on or before June 30, 1975, not later than September 30 of the fiscal year immediately following the fiscal year in which the period of availability for obligation expires; and

"(B) for any fiscal year commencing on or after July 1, 1975, not later than November 15 following the fiscal year in which the period of availability for obligation expires."

CONVERSION OF AUTHORIZATIONS OF APPROPRIATIONS

SEC. 505. Any law providing for an authorization of appropriations commencing on July 1 of a year shall, if that year is any year after 1975, be considered as meaning October 1 of that year. Any law providing for an authorization of appropriations ending on June 30 of a year shall, if that year is any year after 1975, be considered as meaning September 30 of that year. Any law providing for an authorization of appropriations for the fiscal year 1976 or any fiscal year thereafter shall be construed as referring to that fiscal year ending on September 30 of the calendar year having the same calendar year number as the fiscal year number.

ECONOMIC REPORTS

SEC. 506. (a) Section 3 of the Employment Act of 1946 (15 U.S.C. 1022) is amended by striking out "The President shall transmit to the Congress not later than January 20 of each year" and inserting in lieu thereof the following: "Not later than January 20 of each year before 1976, and not later than February 10 of each year after 1975, the President shall transmit to the Congress".

(b) Section 5(b)(2) of such Act (15 U.S.C. 1024) is amended by striking out "(beginning with the year 1947)" and inserting in lieu thereof "before 1976 and not later than March 20 of each year after 1975,".

REPEALS

SEC. 507. The following provisions of law are repealed:

(1) The ninth paragraph under the headings "Legislative Establishment", "Senate", of the Deficiency Appropriation Act, fiscal year 1934 (48 Stat. 1022; 2 U.S.C. 66); and

(2) The proviso to the second paragraph under the headings "House of Representatives", "Salaries, Mileage, and Expenses of Members", of the Legislative-Judiciary Appropriation Act, 1955 (68 Stat. 400; 2 U.S.C. 81).

TECHNICAL AMENDMENT

SEC. 508. (a) Section 105 of title 1, United States Code, is amended by striking out "June 30" and inserting in lieu thereof "September 30".

(b) The provisions of subsection (a) of this section shall be effective with respect to Acts making appropriations for the support of the Government for any fiscal year commencing on or after July 1, 1975.

TITLE VI—AMENDMENTS TO BUDGET AND ACCOUNTING ACT, 1921

MATTERS TO BE INCLUDED IN PRESIDENT'S BUDGET

SEC. 601. Section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is amended by adding at the end thereof the following new subsections:

"(d) The Budget transmitted pursuant to subsection (a) for each fiscal year shall set forth separately the items enumerated in setcion 301(a)(1)–(6) of the Congressional Budget Act of 1974.

"(e) The Budget transmitted pursuant to subsection (a) for each fiscal year shall set forth the levels of tax expenditures under existing law for such fiscal year (the tax expenditure budget), taking into account projected economic factors, and any changes in such existing levels based on proposals contained in such Budget. For purposes of this subsection, the terms 'tax expenditures' and 'tax expenditures budget' have the meanings given to them by section 3(3) of the Congressional Budget Act of 1974.

"(f) The Budget transmitted pursuant to subsection (a) for each fiscal year shall include (1) an examination of proposed expenditures (including tax expenditures) and appropriations and estimated receipts within

a comprehensive framework of existing and proposed programs and (2) the bases used for the proposed expenditures (including tax expenditures) and appropriations and estimated receipts.

"(g) The Budget transmitted pursuant to subsection (a) for each fiscal year shall contain—

"(1) a comparison, for the last completed fiscal year, of the total amount of outlays estimated in the Budget transmitted pursuant to subsection (a) for each major program involving uncontrollable or relatively uncontrollable outlays and the total amount of outlays made under each such major program during such fiscal year;

"(2) a comparison, for the last completed fiscal year, of the total amount of revenues estimated in the Budget transmitted pursuant to subsection (a) and the total amount of revenues received during such year, and, with respect to each major revenue source, the amount of revenues estimated in the Budget transmitted pursuant to subsection (a) and the amount of revenues received during such year; and

"(3) an analysis and explanation of the difference between each amount set forth pursuant to paragraphs (1) and (2) as the amount of outlays or revenues estimated in the Budget submitted under subsection (a) for such fiscal year and the corresponding amount set forth as the amount of outlays made or revenues received during such fiscal year.

"(h) The President shall transmit to the Congress, on or before April 15 and July 15 of each year, a statement of all amendments to or revisions in the budget authority requested, the estimated outlays, and the estimated receipts for the ensuing fiscal year set forth in the Budget transmitted pursuant to subsection (a) (including any previous amendments or revisions proposed on behalf of the executive branch) that he deems necessary and appropriate based on the most current information available. Such statement shall contain the effect of such amendments and revisions on the summary data submitted under subsection (a) and shall include such supporting detail as is practicable. The Budget transmitted to the Congress pursuant to subsection (a) for any fiscal year, or the supporting detail transmitted in connection therewith, shall include a statement of all such amendments and revisions with respect to the fiscal year in progress made before the date of transmission of such Budget."

MIDYEAR REVIEW

SEC. 602. Section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is amended by inserting after "1972," in subsections (b) and (c) "and on or before July 15 of each year, beginning with 1976,".

FIVE-YEAR BUDGET PROJECTIONS

SEC. 603. Section 201(a) of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is amended—

(1) by inserting after "ensuing fiscal year" in paragraph (5) "and projections for the four fiscal years immediately following the ensuing fiscal year";

(2) by striking out "such year" in paragraph (5) and inserting in lieu thereof "such years"; and

(3) by inserting after "ensuing fiscal year" in paragraph (6) "and projections for the four fiscal years immediately following the ensuing fiscal year".

ALLOWANCES FOR SUPPLEMENTAL BUDGET AUTHORITY AND UNCONTROLLABLE OUTLAYS

SEC. 604. Section 201(a) of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is further amended—

(1) by striking out the period at the end of paragraph (12) and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following new paragraph:

"(13) an allowance for additional estimated expenditures and proposed appropriations for the ensuing fiscal year, and an allowance for unanticipated uncontrollable expenditures, for which no request for appropriations is required, for the ensuing fiscal year."

BUDGET DATA BASED ON CONTINUATION OF EXISTING LEVEL OF SERVICES

SEC. 605. (a) On or before November 10 of each year (beginning with 1975), the President shall submit to the Senate and the House of Representatives the estimated outlays and proposed budget authority which would be included in the Budget to be submitted pursuant to section 201 of the Budget and Accounting Act, 1921, for the ensuing fiscal year if all programs and activities were carried on during such ensuing fiscal year at the same level as the fiscal year in progress and without policy changes in such programs and activities. The estimated outlays and proposed budget authority submitted pursuant to this section shall be shown by function and subfunctions (in accordance with the classifications in the budget summary table entitled "Budget Authority and Outlays by Function and Agency"), by major programs within each such function, and by agency. Accompanying these estimates shall be the economic and programmatic assumptions underlying the estimated outlays and proposed budget authority, such as, the rate of inflation, the rate of real economic growth, the unemployment rate, program caseloads, and pay increases.

(b) The Joint Economic Committee shall review the estimated outlays and proposed budget authority so submitted, and shall submit to the Committees on the Budget of both Houses an economic evaluation thereof on or before December 31 of each year. The evaluation shall include a determination of whether the estimates are accurate, complete, and based on valid economic assumptions.

REMOVAL OF EXEMPTIONS FROM BUDGET PROCESS

SEC. 606. Those provisions of law, regulations, or rulings which exempt the following agencies and funds from inclusion in the Budget of the United States Government, or which exempt certain of their activities from inclusion in the budget, shall cease to apply effective with the fiscal year beginning on July 1, 1975:

(1) Environmental Financing Authority;
(2) Export-Import Bank;
(3) Federal Financing Bank;
(4) Rural Electrification and Telephone Revolving Fund;
(5) Rural Telephone Bank; and
(6) United States Railway Association.

TITLE VII—PROGRAM REVIEW AND EVALUATION

REVIEW AND EVALUATION BY STANDING COMMITTEES

SEC. 701. Section 136(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 190d) is amended by adding at the end thereof the following new sentences: "Such committees may carry out the required analysis, appraisal, and evaluation themselves, or by contract, or may require a Government agency to do so and furnish a report thereon to the Congress. Such committees may rely on such techniques as pilot testing, analysis of costs in comparison with benefits, or provision for evaluation after a defined period of time."

REVIEW AND EVALUATION BY THE COMPTROLLER GENERAL

SEC. 702. (a) Section 204 of the Legislative Reorganization Act of 1970 (31 U.S.C. 1154) is amended to read as follows:

"REVIEW AND EVALUATION

"SEC. 204. (a) The Comptroller General shall review and evaluate the results of Government programs and activities carried on under existing law when ordered by either House of Congress, or upon his own initiative, or when requested by any committee of the House of Representatives or the Senate, or any joint committee of the two Houses, having jurisdiction over such programs and activities.

"(b) The Comptroller General, upon request of any committee or Member of either House or any joint committee of the two Houses, shall—

"(1) assist such committee, Member, or joint committee in developing a statement of legislative objectives and goals and methods for assessing and reporting actual program performance in relation to such legislative objectives and goals. Such statements shall include but are not limited to, recommendations as to methods of assessment, information to be reported, responsibility for reporting, frequency of reports, and feasibility of pilot testing; and

"(2) assist such committee, Member, or joint committee in analyzing and assessing program reviews or evaluation studies prepared by and for any Federal agency.

"(c) The Comptroller General shall develop and recommend to the Congress standards for review and evaluation of Government programs and activities carried on under existing law. Such recommendations shall be reported semiannually to both Houses of Congress on or about March 1 and September 1.

"(d) In carrying out his responsibilities under this section, the Comptroller General is authorized to establish an Office of Program Review and Evaluation within the General Accounting Office. The Comptroller General is authorized to employ not to exceed ten experts on a permanent, temporary, or intermittent basis and to obtain services as authorized by section 3109 of title 5, United States Code, but in either case at a rate (or the daily equivalent) for individuals not to exceed that prescribed, from time to time, for level V of the Executive Schedule under section 5316 of title 5, United States Code."

(b) Item 204 in the table of contents of such Act is amended to read as follows:

"Sec. 204. Review and evaluation."

TITLE VIII—FISCAL AND BUDGETARY INFORMATION AND CONTROLS

AMENDMENT TO LEGISLATIVE REORGANIZATION ACT OF 1970

SEC. 801. (a) So much of title II of the Legislative Reorganization Act of 1970 (31 U.S.C. chapter 22) as precedes section 204 thereof is amended to read as follows:

"TITLE II—FISCAL AND BUDGETARY INFORMATION AND CONTROLS

"PART 1—FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION

"FEDERAL FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION SYSTEMS

"SEC. 201. The Secretary of the Treasury and the Director of the Office of Management and Budget, in cooperation with the Comptroller General of the United States, shall develop, establish, and maintain, for use by all Federal agencies, standardized data and information systems for fiscal, budgetary, and program-related data and information. The development, establishment, and maintenance of such systems shall be carried out

so as to meet the needs of the various branches of the Federal Government and, insofar as practicable, of governments at the State and local level.

"STANDARDIZATION OF TERMINOLOGY, DEFINITIONS, CLASSIFICATIONS, AND CODES FOR FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION

"SEC. 202. (a) The Comptroller General of the United States, in cooperation with the Secretary of the Treasury, the Director of the Office of Management and Budget, and the Director of the Congressional Office of the Budget, shall develop, establish, maintain, and publish standard terminology, definitions, classifications, and codes for Federal fiscal, budgetary, and program-related data and information. The authority contained in this section shall include, but not be limited to, data and information pertaining to Federal fiscal policy, revenues, receipts, expenditures, functions, programs, projects, and activities and shall be carried out so as to meet the needs of the various branches of the Federal Government and, insofar as practicable, of governments at the State and local level. Such standard terms, definitions, classifications, and codes shall be used by all executive agencies in supplying to the Congress fiscal, budgetary, and program-related data and information.

"(b) In carrying out this responsibility, the Comptroller General of the United States shall give particular consideration to the needs of the Committees on the Budget of the House of Representatives and the Senate and the Congressional Office of the Budget.

"(c) The Comptroller General of the United States shall submit to both Houses of the Congress, on or before June 30, 1975, a report containing his recommendations for the initial standard terms, definitions, and classifications, and codes referred to in subsection (a), and shall recommend legislation to implement them as may be necessary.

"(d) The Comptroller General shall monitor the various recurring reporting requirements of the Congress and committees and make recommendations to the Congress and committees for changes and improvements in these reporting requirements to meet the congressional information needs ascertained by the Comptroller General, to enhance their usefulness to the congressional users, and to eliminate duplicative or unneeded reporting.

"AVAILABILITY TO AND USE BY THE CONGRESS AND STATE AND LOCAL GOVERNMENTS OF FEDERAL FISCAL BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION

"SEC. 203. (a) Upon request of any committee of either House, of any joint committee of the two Houses, of the Comptroller General, or of the Director of the Congressional Office of the Budget, the Secretary of the Treasury, the Director of the Office of Management and Budget, and the heads of the various executive agencies shall—

"(1) furnish to such committee or joint committee, the Comptroller General, or the Director of the Congressional Office of the Budget, information as to the location and nature of available fiscal, budgetary, and program-related data and information;

"(2) prepare summary tables of such data and information and any related information deemed necessary by such committee or joint committee, the Comptroller General, or the Director of the Congressional Office of the Budget; and

"(3) furnish any program evaluations conducted or commissioned by any executive agency as deemed necessary by such committee or joint committee, the Comptroller General, or the Director of the Congressional Office of the Budget.

"(b) The Comptroller General, in cooperation with the Director of the Congressional Office of the Budget, the Secretary of the Treasury, and the Director of the Office of Management and Budget, shall—

"(1) develop, establish, and maintain an up-to-date inventory and directory of sources and information systems containing fiscal, budgetary, and program-related data and information and a brief description of their content;

"(2) provide, upon request, assistance to committees, joint committees, and Members of Congress in securing Federal fiscal, budgetary, and program-related data and information from the sources identified in such inventory and directory; and

"(3) furnish, upon request, assistance to committees, joint committees, and Members of Congress in appraising and analyzing fiscal, budgetary, and program-related data and information secured from the sources identified in such inventory and directory.

"(c) The Comptroller General and the Director of the Congressional Office of the Budget shall, to the extent they deem necessary, develop, establish, and maintain a central file or files of the data and information required to carry out the purposes of this title. Such a file or files shall be established to meet recurring requirements of the Congress for fiscal, budgetary, and program-related data and information and shall include, but not be limited to, data and information pertaining to budget requests, congressional authority to obligate and spend, apportionment and reserve actions, and obligations and expenditures. Such file or files and their indexes shall be maintained in such a manner as to facilitate their use by the committees of both Houses, joint committees, and other congressional agencies through modern data processing and communications techniques.

"(d) The Comptroller General, in cooperation with the Director of the Congressional Office of the Budget, the Director of the Office of Management and Budget, the Administrator of General Services, and appropriate representatives of State and local governments, shall develop procedures to assure access by State and local governments to such fiscal, budgetary, and program-related data and information as may be necessary for the accurate and timely determination by these governments of the impact of Federal assistance upon their budgets."

(b) The table of contents of title II of the Legislative Reorganization Act of 1970 is amended by striking out—

"TITLE II—FISCAL CONTROLS

"PART 1—BUDGETARY AND FISCAL INFORMATION AND DATA

"Sec. 201. Budgetary and fiscal data processing system.
"Sec. 202. Budget standard classifications.
"Sec. 203. Availability to Congress of budgetary, fiscal, and related data.

and inserting in lieu thereof—

"TITLE II—FISCAL AND BUDGETARY INFORMATION AND CONTROLS

"PART 1—FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION

"Sec. 201. Federal fiscal, budgetary, and program-related data and information systems.
"Sec. 202. Standardization of terminology, definitions, classifications, and codes for fiscal, budgetary, and program-related data and information.
"Sec. 203. Availability to and use by the Congress and State and local governments of Federal fiscal, budgetary, and program-related data and information."

TITLE IX—MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

CONFORMING AMENDMENTS TO STANDING RULES OF THE SENATE

SEC. 901. Paragraph 1 of rule XXV of the Standing Rules of the Senate is amended—

(1) by striking out "Revenue" in subparagraph (h) 1 and inserting in lieu thereof "Except as provided in subparagraph (r), revenue";

(2) by striking out "The" in subparagraph (h) 2 and inserting in lieu thereof "Except as provided in subparagraph (r), the"; and

(3) by striking out "Budget" in subparagraph (j) (1) (A) and inserting in lieu thereof "Except as provided in subparagraph (r), budget".

AMENDMENTS TO LEGISLATIVE REORGANIZATION ACT OF 1946

SEC. 902. (a) Section 134(c) of the Legislative Reorganization Act of 1946 (2 U.S.C. 190b(b)) is amended by inserting "or the Committee on the Budget" after "Appropriations".

(b) Section 136(c) of such Act (2 U.S.C. 190d(c)) is amended by striking out "Committee on Appropriations of the Senate and the Committees on Appropriations, the Budget,".

EXERCISE OF RULEMAKING POWERS

SEC. 903. (a) The provisions of this title (except section 904) and of titles I, III, and IV and the provisions of section 701 are enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(b) Any provision of title III or IV may be waived or suspended in the Senate by a majority vote of the Members voting, a quorum being present, or by the unanimous consent of the Senate.

(c) Appeals in the Senate from the decisions of the Chair relating to any provision of title III or IV shall be limited to one hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, concurrent resolution, or reconciliation bill, as the case may be.

EFFECTIVE DATES

SEC. 904. (a) Except as provided in this section, the provisions of this Act shall take effect on the date of its enactment.

(b) Title II (except section 201(a)), section 403, and section 503(c) shall take effect on the day on which the first Director of the Congressional Office of the Budget is appointed under section 201(a).

(c) Except as provided in section 905, title III and section 402 shall apply with respect to the fiscal year beginning on October 1, 1976, and succeeding fiscal years, and section 401 shall take effect on the first day of the second regular session of the Ninety-fourth Congress.

(d) The amendments to the Budget and Accounting Act, 1921, made by sections 601, 603, and 604 shall apply with respect to the fiscal year beginning on July 1, 1975, and succeeding fiscal years, except that section 201(h) of such Act (as added by section 601) shall apply with respect to the fiscal year beginning on October 1, 1976, and succeeding fiscal years.

APPLICATION OF CONGRESSIONAL BUDGET PROCESS TO FISCAL YEAR 1976

SEC. 905. (a) If the Committees on the Budget of the Senate and the House of Representatives agree that it is feasible to report and act on a concurrent resolution on the budget referred to in section 301 for the fiscal year beginning on July 1, 1975, and submit reports of such agreement to their respective Houses on or before February 15, 1975—

(1) to the extent specified in such reports, title III (except sections 310 and 311) and section 402 shall apply with respect to such fiscal year:

(2) to the extent specified in such reports, section 401 shall take effect in each House on the day on which the Committee on the Budget of that House submits such report to its House; and

(3) there shall be substituted, for the dates specified in titles III and IV on which any action is to be taken or completed in connection with such concurrent resolution on the budget, those dates set forth in such reports.

(b) If the Committees on the Budget of the Senate and the House of Representatives agree that it is feasible to report and act on a concurrent resolution on the budget referred to in section 310 for the fiscal year beginning on July 1, 1975, and submit reports of such agreeemnt to their respective Houses on or before May 1, 1975—

(1) to the extent specified in such reports, sections 310 and 311 shall apply with respect to such fiscal year; and

(2) there shall be substituted, for the dates specified in section 310 on which any action is to be taken or completed in connection with such concurrent resolution on the budget, those dates set forth in such reports.

(c) Either House may, by resolution or order, disapprove the report described in subsection (a) or (b) submitted by the Committee on the Budget of that House. In the case of such disapproval, the provisions of titles III and IV, referred to in subsection (a) or (b), respectively, shall not apply in that House for the fiscal year beginning July 1, 1975.

TITLE X—APPROPRIATION RESERVES

AMENDMENT TO ANTIDEFICIENCY ACT

SEC. 1001. Section 3679(c)(2) of the Revised Statutes, as amended (31 U.S.C. 665), is amended to read as follows:

"(2) In apportioning any appropriation, reserves may be established solely to provide for contingencies, or to effect savings whenever savings are made possible by or through changes in requirements or greater efficiency of operations. Reserves shall not be established for fiscal policy purposes or to achieve less than the full objectives and scope of programs enacted and funded by Congress. Whenever it is determined by an officer designated in subsection (d) of this section that such reserves should be established, the officer shall notify the Comptroller General of the United States at least ten days in advance of such establishment together with his reasons therefor. The Comptroller General is authorized as a representative of Congress through attorneys of his own choosing to bring a civil action in the United States District Court for the District of Columbia to enforce the provisions of this paragraph. The courts shall give precedence to civil actions brought under this paragraph, and to appeals and writs from decisions in such actions, over all other civil actions, appeals, and writs. Whenever it is determined by an officer designated in subsection (d) of this section to make apportionments and reapportionments that any amount so reserved will not be required to carry out the full objectives and scope of the appropriation concerned, he shall recommend the rescission of such amount in the manner provided in the Budget and Accounting Act, 1921, for estimates of appropriations. Except as specifically provided by particular appropriations Acts or other laws, no reserves shall be established other than as authorized by this paragraph."

DISCLAIMER

SEC. 1002. Nothing contained in this Act shall be interpreted by any person or court as constituting a ratification or approval of any reservation of budget authority by the President or any other Federal officer or employee, in the past or in the future, unless done pursuant to statutory authority in effect at the time of such reservation.

CAPITAL PUNISHMENT

Mr. PERCY. Mr. President, I am very grateful that the distinguished Senator from Iowa (Mr. HUGHES) is in the Chamber this evening.

Very seldom are votes really influenced by the debate we hear on the floor. Many times on major issues, we have reached a conclusion based on a lifetime experience, and we vote those convictions and those conclusions. In this particular case, on the bill we considered today, the imposition of a death penalty in Federal courts, I have been deeply troubled by the entire issue.

Together with my colleagues, I deplore the heinous crimes that have been committed in this country—murder, kidnaping, hijacking, and so forth. I earnestly have sought, along with my colleagues, to find ways in which we could arrest the crime wave we have experienced in this country over a period of years and the types of crimes that have been committed with such visibility in recent days, weeks, and months.

After listening to the debate on the floor, and feeling that the Committee on the Judiciary has given this matter a great deal of thought and consideration, I would have expected to find more solid evidence that the death penalty would in fact be a deterrent to the crime and would provide a solution to the problems that we as a society have faced.

I think it is unconscionable for a human life to be taken by an individual or by society. Before I could condone the Government of the United States, and before I could cast a vote for our Government, to establish the procedure for the mandating of the death penalty, I would have to be absolutely convinced that it would be a deterrent and would prevent another crime that might have been committed against mankind—in fact, against the whole idea of God and creation. I did not see that evidence.

Mr. President, I have given a great deal of thought to the legislation now before the Senate which would reinstate the death penalty. The debate has been of a high quality and it has helped me to reach a conclusion.

For many reasons the taking of human life is unconscionable. It is a basic affront to the dignity of each human. The murder of a human being is an irrevocable act, whether committed by a vicious criminal, or whether committed by the Government of the United States, or any of the 50 States.

Before I could cast my vote to institute legalized murder on behalf of the Goverment, I would have to be convinced that such a vote is absolutely essential and fully justified. The burden of proof must be on those who argue for the death penalty. Before any of us can vote for death, I believe we must be convinced, "beyond a reasonable doubt," if you will, that the death penalty is necessary and justified.

To my mind, this proof has not been forthcoming.

Every study that I have seen on this question has concluded that the death penalty is not a deterrent to crime. Perhaps if I could be convinced that the death penalty was in fact a deterrent, then I might be more inclined to vote for this bill. But I have not been so convinced.

I share the concern which others have stated over the finality of the act. If we later discover that we have executed the wrong person, there is no recourse. As Lafayette said, and as was so eloquently quoted by the distinguished Senator from Iowa (Mr. HUGHES) yesterday:

I shall ask for the abolition of the penalty of death until I have the infallibility of human judgment demonstrated to me.

This problem is, in and of itself so serious that I feel it must be resolved. Yet, there is no way to resolve it, precisely because we all are indeed fallible—we do make mistakes. Fortunately, in most instances we can overcome our mistakes when we find we are in error. But in the case of death, a mistake would indeed be fatal. Thus a vote for the death penalty only invites our society, at some time, in the future, to make such a terrible mistake. I am not prepared to vote for our Federal Government to take that risk when I cannot see any clear-cut advantage to society and our citizens if we do.

If my vote for the death penalty would mean that any victim could be brought back to life by the execution of the assailant, then I would vote for this bill. But, as the distinguished Senator from Michigan (Mr. HART) has so forcefully pointed out, the Government's murder of the criminal does not bring back the victim, and no vote today by any Senator will bring back the life any victim of a murder. What it does do, though, is contemplate more deaths, sanctioned, authorized, and mandated by the Government.

I admit that I have been mentally torn by this issue, and I have reached my conclusion only with great difficulty. I have been moved by the eloquent statements of my two distinguished colleagues, Senator HUGHES and Senator HART. To my satisfaction, they have rebutted the arguments of the proponents of this legislation, and thus the respect for life still stands as the ultimate criterion upon which I base my judgment.

For those who argue that without the threat of the death penalty there is no

effective deterrent to serious and violent crime, I say this does not seem to be the view of leading professional penologists. In my judgment, and that of many others, the way to deter crime is through the certainty of swift justice. Through the centuries that we have imposed the death penalty, criminals have not been deterred by the threat of death.

But clean up the criminal justice system, provide for speedy trials, swift but sure justice, and that will be the deterrent which we all so earnestly want. Senator ERVIN has introduced legislation to accomplish this that I have cosponsored.

Mr. President, every citizen has felt the sting of crime. Many have felt the pain of having a loved one taken from them by a senseless murder. But I say to them, with deep feeling, the death penalty is not the way to react to this barbarism. Violence only breeds more violence. If we indeed believe that we are a civilized society, we must try to overcome our visceral, emotional responses, and instead heed the counsel of wisdom, the counsel of humanity, and the counsel of experience, and refuse to authorize the Government's cold blooded and premeditated murder of any person.

Mr. President, in conclusion, if some time in the future I could be convinced that the death penalty could be a real deterrent, I might change my mind. But with the evidence before us today, I am not so convinced.

I am also concerned that the specter of a mandatory death penalty might influence some jurors and cause them to acquit a guilty person. Certainly, we do not want to take any action which would have such an adverse result.

In addition, the presence of the death penalty will only prolong the process of the trial, delaying a final determination, and this is contrary to having speedy justice.

Finally, the penalty of life imprisonment is still present, and by voting against the death penalty, no one in this body is voting for permissiveness nor is anyone being soft on crime. The penalties are and will remain severe. But the penalty of death is neither necessary nor justified. Those who have argued for it have, in my judgment, failed to overcome the presumption of every citizen's right to live.

Before reaching a final conclusion I put to myself the ultimate test. What if I were called upon to decide what sentence should be imposed upon the vicious murderer of my own daughter?

I would not impose the death penalty.

I would want that person removed from society, so that he could not commit another crime. During a life of imprisonment, I would want that person hopefully some day to realize the gravity of the crime against God and one of his children that he had committed. I would hopefully want this person to be convinced that he had committed a sin against God as well as against society and ask for God's forgiveness for that act. Death for such a person would in a way be too easy. I would not want to be guilty of committing another crime in the name of society.

Consequently, I cast my vote against this legislation.

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

Mr. PERCY. I am happy to yield.

Mr. HUGHES. Mr. President, I wish to commend the distinguished Senator from Illinois and also thank him for restoring in my own heart a great deal of satisfaction to stand here and witness a father who has lost a beloved daughter by a savage and vicious murder, to this date unsolved in the annals of criminal history, and say that if he were given the right to make the decision as to whether the murderer might live or die, that he would choose that the murder might continue to live and eventually find redemption and forgiveness through repentance. It is a statement which I think few men would make, even if they had the opportunity under similar circumstances.

This body today, I think, has witnessed something unique, in both the Senator from Illinois, who has lost his daughter, and whose family has suffered one of the most grievous crimes in our history, and the Senator from Massachusetts (Mr. KENNEDY), whose own family has suffered so grievously from murder, explaining the bill to this body, that they see light in the society and hope in humanity by not reinstituting a savage means of so-called justice again in our society.

I have known the Senator from Illinois so well and his own deep faith that has borne him through in these many troubling hours.

In biblical history we know that Moses, after 40 years, was led to the Promised Land, to lead his people to freedom from Egypt. We read of King David, who sent his own son into battle, and then took his wife in adultery, but who was forgiven by God.

We can look at the Master himself, and those who were followers of Christ, when a capital crime was committed by a woman and she was condemned for committing adultery. He said to her, "Where are those who have condemned you?"

She said, "Master, they are not here," and he said, "Neither do I condemn you."

A father who has lost his daughter knows the pangs and the pains of the event. Having three daughters of my own, and thinking how I would feel, placed in a similar situation, makes me at this moment say to my distinguished colleague from Illinois that I will always be indebted to him for having witnessed to the magnificent feeling of heart and soul that he has expressed when he was faced with this most difficult pain that has touched his family.

I commend him for the forgiveness that is in his own soul, and I express the hope of all mankind that we might share in comparable compassion if we were faced with a comparable problem which faced the distinguished Senator from Illinois.

Mr. CRANSTON. Mr. President, I, too, want to express my gratitude to the Senator from Illinois for his statement. It was a powerful one, one that I trust will be heeded by many Americans as they reflect upon where we stand and what we are doing when we consider the problem.

I wish to commend the courage of the Senator from Iowa for expressing himself as he has, and also the Senator from Massachusetts for the position he took, in light of the history of his own family.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had agreed to the concurrent resolution (S. Con. Res. 75) providing for an adjournment of the Senate from March 13, 1974, until March 19, 1974.

U.S. MILITARY PERSONNEL ALLEGEDLY SERVING AS MILITARY ADVISERS IN CAMBODIA

Mr. CRANSTON. Mr. President, this morning, during the morning hour, I called attention to reports of U.S. military personnel allegedly serving as military advisers in Cambodia, which would be in violation of the law. I indicated that I intended to send a letter to Chairman JOHN STENNIS of the Armed Services Committee, requesting an immediate investigation of this situation. I also indicated that I would seek to have other Senators join me in that letter and would include their names in the RECORD at the end of the day.

I would like at this point to reread that letter into the RECORD and indicate the number of Senators who have joined. All together, there are 39. Counting myself, there are 40 who have joined in this letter.

I would like to state that had I had time, I am sure a very substantial majority of the Senate would have joined in this letter. The only reason they have not is that I was unable, during a very busy day, to talk to that many Senators. While pursuing this effort, I was attending one committee, attending another committee markup, attending the swearing in of a new California Representative, attending here during the consideration of S. 1401 and amendments thereto, and participating in the consideration of that material, and also working with Senators to clear passage of S. 3063, along with many other matters.

I list those activities, which are similar to those of other Senators, simply to indicate that had I had time to focus on this particular matter, which I think is of great importance, we would have a larger number of Senators joining in sending this letter to Senator STENNIS.

The letter to Chairman JOHN STENNIS reads as follows:

We respectfully request that the Armed Services Committee conduct an immediate investigation into the activities of United States military personnel, including Major

Lawrence W. Ondecker of the Third Infantry Brigade, who allegedly are serving as military advisors in Cambodia which would be in violation of the law.

The Senators who have joined me in sending the letter are as follows: Senators ABOUREZK, BAYH, BIDEN, BURDICK, CASE, CHILES, CHURCH, CLARK, DOMENICI, GRAVEL, HART, HARTKE, HASKELL, HATHAWAY, HUDDLESTON, HUGHES, HUMPHREY, INOUYE, KENNEDY, MAGNUSON, MATHIAS, MCGOVERN, METCALF, METZENBAUM, MONDALE, MONTOYA, MOSS, MUSKIE, PELL, PROXMIRE, RANDOLPH, RIBICOFF, SCHWEIKER, STAFFORD, STEVENSON, TUNNEY, WEICKER, and WILLIAMS.

PRIVILEGE OF THE FLOOR DURING CONSIDERATION OF BUDGET REFORM BILL

Mr. CRANSTON. Mr. President, on a different matter, I ask unanimous consent that the following persons may be granted the privilege of the floor during the consideration of the budget reform bill: Jon Fleming, Jon Steinberg, and Win Farin.

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

ORDER FOR NO ROLLCALL VOTES ON TUESDAY, MARCH 19, PRIOR TO 2:30 P.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be no yea-and-nay votes on Tuesday, March 19, prior to 2:30 p.m.

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

ORDER FOR RECOGNITION OF SENATORS ON TUESDAY NEXT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Tuesday next, after the two leaders or their designees have been recognized under the standing order, the following Senators be recognized, each for 15 minutes, and in the order stated: The Senator from Massachusetts (Mr. KENNEDY), the Senator from Maryland (Mr. MATHIAS), and the Senator from Rhode Island (Mr. PELL).

The PRESIDING OFFICER. Without objection it is so ordered.

ORDER FOR TRANSACTION OF ROUTINE BUSINESS ON TUESDAY NEXT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Tuesday next, following the aforementioned orders, there be a period for the transaction of routine business of not to exceed 15 minutes, with statements therein limited to 5 minutes each, and that at the conclusion of routine morning business, the Senate proceed to the consideration of S. 1541, to provide for the reform of congressional procedures with respect to the enactment of fiscal measures.

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

AUTHORIZATION FOR SENATOR McGOVERN TO INTRODUCE A BILL TOMORROW, MARCH 14, 1974

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senator from South Dakota (Mr. McGOVERN) may be authorized to introduce tomorrow, March 14, a bill entitled "Rail Revitalization and Energy Conservation Act of 1974," and that the bill be appropriately referred.

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

ORDER FOR VICE PRESIDENT, PRESIDENT PRO TEMPORE, AND ACTING PRESIDENT PRO TEMPORE TO SIGN BILLS DURING ADJOURNMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the adjournment of the Senate over until Tuesday next the Vice President, the President pro tempore, and the Acting President pro tempore be authorized to sign duly enrolled bills and joint resolutions.

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

AUTHORIZATION TO RECEIVE AND REFER MESSAGES FROM HOUSE AND THE PRESIDENT OF THE UNITED STATES

Mr. ROBERT C. BYRD. I ask unanimous consent that the Secretary of the Senate be authorized to receive messages from the House of Representatives and from the President of the United States.

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

AUTHORIZATION FOR COMMITTEES TO FILE REPORTS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the adjournment of the Senate over to Tuesday next, committees may be authorized to file reports on Monday, March 18, between the hours of 10 a.m. and 4 p.m.

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

ADJOURNMENT TO TUESDAY, MARCH 19, 1974

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the provisions of Senate Concurrent Resolution 75, that the Senate stand in adjournment until the hour of 12 noon Tuesday, March 19, 1974.

The motion was agreed to; and, at 7:34 p.m., the Senate adjourned until Tuesday, March 19, 1974, at 12 noon.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 13, 1973:

DEPARTMENT OF THE INTERIOR

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

AMERICAN REVOLUTION BICENTENNIAL ADMINISTRATION

John W. Warner, of Virginia, to be Administrator of the American Revolution Bicentennial Administration.

DEPARTMENT OF STATE

John Gunther Dean, of New York, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Khmer Republic.

Leonard Unger, of Maryland, a Foreign Service officer of the class of career minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of China.

Robert W. Dean, of Illinois, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Peru.

Hermann F. Eilas, of Pennsylvania, a Foreign Service officer of the class of career minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Arab Republic of Egypt.

U.S. ADVISORY COMMISSION ON INTERNATIONAL EDUCATIONAL AND CULTURAL AFFAIRS

Lawrence Y. Goldberg, of Massachusetts, to be a member of the U.S. Advisory Commission on International Educational and Cultural Affairs for the remainder of the term expiring May 11, 1975.

The following-named persons to be members of the U.S. Advisory Commission on International Education and Cultural Affairs for terms expiring May 11, 1976:

Leo Cherne, of New York.

Rita E. Hauser, of New York.

Leonard H. Marks, of the District of Columbia.

(The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

EXTENSIONS OF REMARKS

FEDERAL CIVILIAN EMPLOYMENT, JANUARY 1974

HON. GEORGE H. MAHON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 13, 1974

Mr. MAHON. Mr. Speaker, I include a release highlighting the January 1974 civilian personnel report of the Joint Committee on Reduction of Federal Expenditures:

FEDERAL CIVILIAN EMPLOYMENT, JANUARY 1974

Total civilian employment in the Executive, Legislative and Judicial Branches of the Federal Government in January 1974 was 2,802,769 as compared with 2,810,239 in the preceding month of December 1973—a net decrease of 7,470. Total pay for December 1973, the latest month for which actual expenditures are available, was $3,063,013,000.

Employment in the Legislative Branch in January totaled 33,968—a decrease of 137, and the Judicial Branch increased 269 during the month to a total of 8,951.

These figures are from reports certified by the agencies as compiled by the Joint Committee on Reduction of Federal Expenditures.

EXECUTIVE BRANCH

Civilian employment in the Executive Branch in January 1974, as compared with the preceding month of December 1973 and with January a year ago, follows: