OSWALD. We've urged Congress to raise the minimum wage to $3 an hour, Mr. Emme, and to provide double-time for overtime.

We also want Congress to look into the question of shortening the 40-hour workweek to a 35-hour standard. That is long overdue.

HARDEN. Thank you, gentlemen. Today's Labor News Conference guest was Rudolph Oswald, research director for the Service Employees International Union, AFL–CIO. Representing the press were Duane Emme of Press Associates, Incorporated, and Dale McFeatters of the Scripps-Howard Newspapers. This is Frank Harden, inviting you to listen again next week. Labor News Conference is a public affairs production of the AFL–CIO, produced in cooperation with the Mutual Broadcasting System.

MUTUAL ANNOUNCER. The preceding program time was presented as a public service by this station and the Mutual Broadcasting System. The opinions expressed are solely those of the participants.

SENATE—*Wednesday, May 14, 1975*

(Legislative day of Monday, April 21, 1975)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. EASTLAND).

PRAYER

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

O God, our Father, in the quiet of this moment, once more we would make our souls a sanctuary for Thy spirit. In the midst of pressing duties and complex issues, be to us the unseen source of wisdom, of beauty, goodness, and truth. Light up every hour of this day by Thy presence. And when we are hesitant and unsure, may we take counsel of Thy presence. Open our minds to Thy spirit until we hear Thee say, "This is the way; walk ye in it." With purity of heart and singleness of purpose may we first love and serve Thee, and then may we become instruments for the coming of Thy kingdom among men.

Through Jesus Christ our Lord. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Journal of the proceedings of Tuesday, May 13, 1975, be approved.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

ORDER FOR RECOGNITION OF SENATOR TALMADGE

Mr. MANSFIELD. Mr. President, due to a lapse on the part of the leadership, I ask unanimous consent that after the joint leaders have been recognized—and this is not to be considered a precedent—the distinguished Senator from Georgia (Mr. TALMADGE) be recognized for not to exceed 15 minutes. The reason is that he made the request yesterday, but I forgot to ask for it.

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

PYRAMID SALES ACT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 108.

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

The legislative clerk read as follows:

A bill (S. 1509) to prohibit pyramid sales transactions, and for other purposes.

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

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

S. 1509

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act my be cited as the "Pyramid Sales Act".

SEC. 2. As used in this Act, the term—

(1) "compensation" includes payments based on sales, when such sales are made to persons who are also participants in a pyramid sales scheme or who are purchasing the right to become such participants, but the term does not include payments based on sales at retail to ultimate consumers;

(2) "goods" includes any personal property (tangible or intangible), real property, or any combination thereof;

(3) "other property" includes a franchise, license, distributorship, or any similar right, privilege, or interest;

(4) "pyramid sales scheme" means a plan or operation (whether or not it involves the sale or distribution of goods, services, or other property) which includes a provision, means, or method for increasing the participation in such plan or operation and with respect to which a participant pays a valuable consideration for the right, privilege, license, chance, or opportunity (A) to receive compensation for introducing any other person into participation in such plan or operation (and where each such other person is eligible to receive the same or similar right, privilege, license, chance, or opportunity as such participant); or (B) to receive compensation when a person introduced by the participant introduces any other person into participation in such plan or operation (and where each such other person is eligible to receive the same or similar right, privilege, license, chance, or opportunity as such participant). The fact that the number of persons who may participate may be limited, or that conditions may be imposed with respect to eligibility shall not be construed to change the identity of any plan or operation that is a pyramid sales scheme. Nothing contained herein shall be construed to restrict personnel recruitment activities undertaken by persons, corporations, partnerships, or other business entities, so long as such recruitment activities do not entail the payment of valuable consideration for the right, privilege, chance, or opportunity to receive compensation as described herein;

(5) "sale or distribution" includes the acts of selling, leasing, renting, or consigning; and

(6) "valuable consideration" includes monetary payments to participate in a pyramid sales scheme but does not include payments made for sales demonstration equipment and materials furnished on a not-for-profit basis for use in making sales and not for resale, or payments which do not exceed $100 when paid on an annual basis, or time or effort spent in pursuit of sales or recruiting activities.

SEC. 3. Chapter 63 of title 18, United States Code, is amended by inserting therein, and amending the syllabus accordingly, the following new section:

"§ 1344. Pyramid sales scheme

"Whoever, in connection with the sale or distribution of goods, services, or other property by the use of any means or instrumentality of transportation or communication in interstate or foreign commerce or by use of the mails, knowingly sells or offers or attempts to sell a participation or the right to participate in a pyramid sales scheme (as defined in the Pyramid Sales Act) shall be fined not more than $10,000 or imprisoned for not more than one year, or both.".

SEC. 4. (a) Any contract which provides for participation or the right to participate in a pyramid sales scheme and any other contract made in furtherance of a pyramid sales scheme is void. Any person, corporation, corporate officer, or corporate agent who knowingly induces or causes to induce another person to participate in a pyramid sales scheme shall be jointly and severally liable to such other person in an amount equal to three times the amount of consideration paid together with the costs of any legal action required and a reasonable attorney's fee, as determined by the court involved. The district courts of the United States shall have jurisdiction of any action brought under this section without regard to citizenship of the parties or diversity of citizenship. An action under this section may be brought within three years from the last date on which such consideration was paid.

(b) If two or more persons induce another person to participate in a pyramid sales scheme and thereby incur a liability under this section, the amount which such other person may recover from any or all such persons is limited to the amount referred to in subsection (a) of this section.

SEC. 5. The Attorney General of the United States, or the chief law enforcement officer or the attorney general of any State in which a prohibited act or practice occurred, may upon a finding that any person is engaged or is about to engage in any act or practice which constitutes a pyramid sales scheme bring an action in the appropriate district court of the United States to enjoin such act or practice. Such courts shall have jurisdiction over such actions and shall provide appropriate relief. Such court may grant a temporary restraining order, or a preliminary or permanent injunction without bond.

SEC. 6. This Act does not annul, alter, or affect the scope or applicability of the laws of any State relating to pyramid sales schemes except to the extent that such laws permit acts or practices which are unlawful under this Act.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

CONSIDERATION OF CERTAIN MEASURES ON THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the remaining measures on the calendar, beginning with Calendar No. 116, up to and including Calendar No. 127.

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

REAPPOINTMENT OF THOMAS J. WATSON, JR., AS CITIZEN REGENT OF THE BOARD OF REGENTS, SMITHSONIAN INSTITUTION

The joint resolution (S.J. Res. 41) to provide for the reappointment of Thomas J. Watson, Junior, as citizen regent of the Board of Regents of the Smithsonian Institution was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the vacancy in the Board of Regents of the Smithsonian Institution, of the class other than Members of Congress, which will occur by the expiration of the term of Thomas J. Watson, Junior, of Connecticut, on June 17, 1975, be filled by the reappointment of the present incumbent for the statutory term of six years.

REAPPOINTMENT OF DR. JOHN NICHOLAS BROWN AS CITIZEN REGENT OF THE BOARD OF REGENTS, SMITHSONIAN INSTITUTION

The joint resolution (S.J. Res. 42) to provide for the reappointment of Dr. John Nicholas Brown as Citizen Regent of the Board of Regents of the Smithsonian Institution was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the vacancy in the Board of Regents of the Smithsonian Institution, of the class other than Members of Congress, which will occur by the expiration of the term of Doctor John Nicholas Brown, of Rhode Island, on June 13, 1975, be filled by the reappointment of the present incumbent for the statutory term of six years.

PRINTING OF ADDITIONAL COPIES OF SENATE HEARINGS ON CONSTITUTIONAL AMENDMENTS TO LIMIT ABORTIONS

The concurrent resolution (S. Con. Res. 36) authorizing the printing of additional copies of Senate hearings on proposed constitutional amendments to limit abortions was considered and agreed to, as follows:

Resolved by the Senate (the House of Representatives concurring), That there be printed for the use of the Senate Committee on the Judiciary not to exceed two thousand additional copies of each part of its hearings during the second session of the Ninety-third Congress and the first session of the Ninety-fourth Congress on proposed constitutional amendments to limit abortion.

PRINTING OF REPORT ENTITLED "REPORT TO CONGRESS ON CONTROL OF SULFUR OXIDES"

The resolution (S. Res. 125) authorizing the printing of the report entitled "Report to Congress on Control of Sulfur Oxides" was considered and agreed to, as follows:

Resolved, That the report from the Administrator of the Environmental Protection Agency to the Congress of the United States (in compliance with section 119(k) of Public Law 93-319, Energy Supply and Environmental Coordination Act of 1974), entitled, "Report to Congress on Control of Sulfur Oxides", be printed, with illustrations, as a Senate document.

SEC. 2. There shall be printed one thousand additional copies of such report for the use of the Committee on Public Works.

ADDITIONAL EXPENDITURES FOR THE COMMITTEE ON APPROPRIATIONS

The resolution (S. Res. 138) authorizing additional expenditures for the Committee on Appropriations for routine purposes was considered and agreed to, as follows:

Resolved, That the Committee on Appropriations is authorized to expend from the contingent fund of the Senate, during the Ninety-fourth Congress, $200,000, in addition to the amounts, and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act, approved August 2, 1946.

EXPENSES OF THE COMMITTEE ON APPROPRIATIONS

The Senate proceeded to consider the resolution (S. Res. 140) relating to expenses of the Committee on Appropriations, which had been reported from the Committee on Rules and Administration with an amendment on page 1, at the end of line 11, to strike out the following:

Such contracts shall not be subject to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) or any other provision of law requiring advertising.

And insert in lieu thereof the following:

Such contracts may be made in the same manner and subject to the same conditions with respect to advertising as required of other standing committees of the Senate under section 202(1)(2) of the Legislative Reorganization Act of 1946, as amended.

So as to make the resolution read:

Resolved, That within the limit of funds appropriated for expenses of inquiries and investigations for the Committee on Appropriations, the committee may expend such sums as it deems appropriate and necessary for the procurement of the services of individual consultants or organizations. Such services in the case of individuals or organizations may be procured by contract as independent contractors, or in the case of individuals by employment at daily rates of compensation not in excess of the per diem equivalent of the highest gross rate of compensation which may be paid to a regular employee of the committee. Such contracts may be made in the same manner and subject to the same conditions with respect to advertising as required of other standing committees of the Senate under section 202 (1) (2) of the Legislative Reorganization Act of 1946, as amended.

The amendment was agreed to.

The resolution, as amended, was agreed to.

RESOLUTION PASSED OVER

The resolution (S. Res. 141) providing supplemental expenditures by the Select Committee on Nutrition and Human Needs was announced as next in order.

Mr. MANSFIELD. Over, Mr. President.

The PRESIDENT pro tempore. The bill will be passed over.

THOMAS J. DONOVAN

The resolution (S. Res. 154) to pay a gratuity to Thomas J. Donovan was considered and agreed to, as follows:

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Thomas J. Donovan, widower of Maura R. Donovan, an employee of the Senate at the time of her death, a sum equal to seven and one-half months' compensation at the rate she was receiving by law at the time of her death, said sum to be considered inclusive of funeral expenses and all other allowances.

ADDITIONAL EXPENDITURES BY THE COMMITTEE ON RULES AND ADMINISTRATION

The resolution (S. Res. 153) authorizing additional expenditures by the Committee on Rules and Administration for routine purposes, was considered and agreed to, as follows:

Resolved, That the Committee on Rules and Administration is authorized to expend from the contingent fund of the Senate, during the Ninety-fourth Congress, $20,000 in addition to the amount, and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act of 1946.

PRINTING OF REVISED EDITION OF "OUR AMERICAN GOVERNMENT. WHAT IS IT? HOW DOES IT FUNCTION?"

The concurrent resolution (H. Con. Res. 44) providing for the printing of a revised edition of the House document "Our American Government. What Is It? How Does It Function?" was considered and agreed to.

PRINTING OF HEARINGS AND PANELS OF THE SELECT COMMITTEE ON COMMITTEES

The concurrent resolution (H. Con. Res. 117) providing for the printing as a House document of the hearings and panels of the Select Committee on Committees, was considered and agreed to.

PRINTING OF REVISED EDITION OF "THE HISTORY AND OPERATION OF THE HOUSE MAJORITY WHIP ORGANIZATION—94TH CONGRESS"

The concurrent resolution (H. Con. Res. 146) authorizing the printing of a revised edition of the booklet entitled

"The History and Operation of the House Majority Whip Organization—94th Congress" was considered and agreed to.

THE U.S. ENERGY SITUATION

Mr. MANSFIELD. Mr. President, on Monday, the distinguished minority leader, the Senator from Pennsylvania (Mr. HUGH SCOTT), and I called attention to a recent article in U.S. News & World Report entitled "Worse Than Before the Arab Embargo" and an article from the March 28 issue of the Washington Post entitled "Soviets Use Rocket Engine To Produce Cheap Electricity." Our purpose was to call attention again to the potential of magnetohydrodynamics—MHD—in solving a part of the energy problem facing the Nation.

It is not my intention to restate the arguments for accelerating research in this important field, as these have been made time and time again over the past several years. The intent of Congress concerning this promising source of power generation has been clearly outlined under existing law. It is clearly the responsibility of ERDA to conduct an aggressive program which will attempt to make MHD electric power generation available to the people of our Nation in the mid-1980's.

Today, I had an opportunity to read an article in The Nation, May 17, 1975, by Mary Clay Berry, entitled, "A Really Good Generator." Ms. Berry outlines the history of MHD in America, as well as the Soviet Union, and clearly illustrates that this program has suffered for a lack of interest on the part of the administration, particularly the Office of Coal Research, and insufficient past funding requests. She points out that Congress has consistently raised the amount of money devoted to MHD research above the budget requests submitted.

For fiscal year 1976, the Office of Coal Research is seeking less than $14 million for MHD research, even though solar energy development is increased from $38.4 million in fiscal year 1975 to a request for $70.3 million in fiscal year 1976.

This is the difference between the use of the Sun and the use of coal. We know that we have coal, and we know that we must do research and development in that area for a number of purposes outlined in the statement made on Monday last.

The article points out that the budget for fiscal year 1976 calls for more than $391 million for fossil fuel R. & D., gasification, liquefaction, and oil shale processing primarily, with little for MHD. And, finally, $1 billion is requested for nuclear research and development. Ms. Berry continues:

> Right now, this potential source of abundant, relatively clean energy lies just beyond our grasp; in all likelihood it will remain there unless the Federal government shows more interest in it than it has in the past.

Mr. President, I hope that the science advisers to Dr. Seamans, Administrator of ERDA, will take note of this excellent article and provide the Administrator with whatever advice is necessary to get the MHD program moving.

I ask unanimous consent that the article by Ms. Berry be printed at this point in the RECORD.

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

FIFTY PERCENT MORE EFFICIENT—A REALLY GOOD GENERATOR

(By Mary Clay Berry)

WASHINGTON—At a time when energy is on everyone's mind, relatively little thought and money are being devoted in the United States to a promising electrical generating process with a tongue twister of a name—magnetohydrodynamics, mercifully MHD for short. It promises to be a comparatively pollution-free source of electrical energy that is dramatically more efficient than either the conventional steam turbine generator or the nuclear reactor, provided the technology can ever be advanced beyond what one MHD advocate, Dr. John B. Dicks of the University of Tennessee Space Institute, has called "the baling wire stage." In the past, a general lack of interest in so-called exotic sources of energy meant that little federal money was appropriated for basic research, except in defense-related projects. Today, when even such potential energy sources as windmills are getting attention, MHD proponents claim that bureaucratic indifference is still stifling their research.

In the Soviet Union it is a different story. In March, Russian scientists announced that, using an MHD generator, they had produced enough electricity to supply 100,000 Moscow households for half an hour. It was a development "that should make some heads turn back home," according to Dr. William Jackson, acting director of the MHD program in the Energy Research and Development Agency (ERDA), who was then visiting the USSR.

MHD is relatively simple in principle; it has been described as "a rocket firing into a magnet." Extremely hot (around 5,000 degrees C.), partially ionized gases flow through a duct lined with electrodes and surrounded by coils that produce a magnetic field. The passage of the expanding gas through this magnetic field generates an electric current, just as does the rotating metal armature in a conventional generator. One of the beauties of an MHD generator is its simplicity—just a duct or chamber and no moving parts.

MHD is not new; even Michael Faraday understood the theory. During the first half of the 1960s, considerable research was done on the process in this country, principally because of its relationship to rocket technology. Foremost in this work was the AVCO Everett Research Laboratory in Everett, Mass., whose Mark V generator, now dismantled, produced 32 megawatts of electricity in erratic bursts in 1965. (The Soviets' 25-megawatt generator, heralded in a December 1971 issue of *Pravda* as "the power station of the future," is a direct descendant of the Mark V.) But despite the United States' early prominence in MHD research, the Federal Energy Administration's 1974 report on Project Independence nowhere mentions it. And the federal government proposes to spend only about $13 million on MHD research in fiscal 1976, a drop in the bucket compared to what will be spent on nuclear research and development.

Various hot gases, their conductivity improved by the addition of "seed" material, can be used in an MHD generator. The Russian generator, called U–25, is fueled by natural gas. However, other fossil fuels can be burned at high temperatures to produce gas and, since the greatest energy reserves of the United States are coal, that is another reason why MHD should be attractive.

And the MHD generator would use coal far more efficiently than do existing steam generators. Today's best power plants turn about 40 percent of the fuel's energy into electricity. Nuclear reactors have an even poorer rating, less than 33 percent. But experts believe that a successful MHD generator could turn as much as 60 percent of coal's energy into electricity.

The trick is to build a reliable MHD generator; the few in existence do not have very good performance records. The U–25, the only one actually in use, is the direct outgrowth of an informal scientific exchange between this country and the Soviet Union. In 1964, AVCO had a contract to do classified MHD research for the Defense Department. That same year, scientists organizing a Pugwash conference asked Soviet scientist V. A. Krilin to participate. Krilin indicated that he would come provided he could see the MHD work going on in this country. Accordingly, the AVCO–DOD project was declassified and Krilin and other Russian scientists took a look at it. The U–25's parent, AVCO's Mark V generator, was able to produce 32 megawatts of electricity, but only for a few seconds at a time. But scientists have great hopes for its successor, the Mark VI, and for a direct coal-fired generator at the University of Tennessee Space Institute in Tullahoma.

While there are no moving parts to wear out in an MHD generator, the duct through which the hot gas flows is subjected to extreme heat, highly corrosive chemicals and erosion by the rapidly moving gas. No substance yet discovered will stand the punishment for more than a very brief time. And the tremendous heat is essential because it turns the gas into what physicists call plasma, a highly conductive state of matter in which the electrons have been stripped from many of the atoms. Scientists do not feel that the technical difficulty is insurmountable. They have experimented with a variety of coatings for the duct walls, and some think that coal slag, the residue of coal combustion, may be the best protective covering, thus providing a cheap solution to the problem, while also making use of a waste product. At the University of Tennessee, researchers are feeding pulverized coal ash into their generator, thus continuously replenishing the protective coating of the generating chamber.

There appear to be a number of environmental advantages to MHD, although it does involve the extraction of coal. Like a conventional generator, an MHD generator that burns coal will emit both sulfur oxides and nitrogen oxides, as well as particulate matter. However, proponents believe that these emissions may be easier to control in an MHD generator than in a conventional one. Work done by the U.S. Bureau of Mines indicates that sulfur oxide emissions will combine with the seed material in the gas to form compounds that can be removed as the seed material is recycled. As a result, Stuart Way, a consultant at the Westinghouse Research Laboratories, told a Senate Appropriations subcommittee that the stack gases of an MHD generator will have twenty times less sulfur oxide content than the allowable Environmental Protection Agency standard. Also, because of the greater temperatures at which an MHD generator must operate, there is reason to believe that the nitrogen oxide concentration can be reduced to an acceptable level. Way indicated that these emissions could be reduced to one-ninth of the EPA standard. Particulate emissions, he said, could be about one-sixth of EPA standards.

Unlike coal gasification (a process for changing coal into a clean synthetic gas which can be substituted for or combined with natural gas), or the production of oil from shale, MHD does not require enormous quantities of water, a scarce commodity on the western plains where this country's largest coal supplies are located. And, unlike nuclear reactors, an MHD generator presents no problems of thermal pollution, even though it operates at incredibly high tem-

peratures. That is so because the higher the operating temperature, the more efficient the reaction and the less heat ejected into the atmosphere. And there are no dangerous wastes.

In short, the generation of electricity by MHD seems to be simple, efficient and relatively nonpolluting. The problem is that the technology is far from perfected and only limited work is being done to improve it.

To understand why more federal money has not been committed to MHD research, one must first study the pattern of federal energy research and development spending over the past decade. Until this year, there was no central place in the federal government where energy research priorities were determined. Instead, each agency doing energy research (principally the old Atomic Energy Commission and the Department of the Interior, although many other agencies had small energy-related projects) requested money independently. It was up to Congress and the Bureau of the Budget, which midway through this period became the Office of Management and Budget, to establish priorities and, with energy, this was done in a singularly haphazard fashion. There was, as Rep. Mike McCormack (D., Wash.), chairman of the House Subcommittee on Energy Research, Development and Demonstration, remarked recently, "almost no energy policy at all."

Most of the energy R&D money went to the AEC, the cumbersome, disorganized Department of the Interior being no match for the streamlined, well-organized AEC when it came to getting funds. Nor did it have a powerful friend on Capitol Hill such as the Joint Committee on Atomic Energy. The liquidation of the AEC last year and the establishment of two new energy agencies, one of them devoted to research and development, have changed this situation, but in the 1960s the AEC-JCAE-industry triumvirate set its own priorities, and first among them was the Liquid Metal-Cooled Fast Breeder Reactor (LMFBR). It was a case of putting all our energy R&D eggs in one basket—and without ever having made a formal decision to do so. The United States had decided that the most fertile field for energy research and development was the breeder solely because the AEC had sufficient political muscle to get the necessary appropriations.

Even within the Interior Department, where most of the rest of the nation's significant energy research was then going on, MHD was the ugly stepchild. Before 1970, the only government-funded MHD research had been done by the military. In fiscal 1970, MHD research within the Interior Department by both the Office of Coal Research (OCR) and the Bureau of Mines received $400,000. The following year, that figure rose to $600,000. By the time of President Nixon's 1971 energy message, the fiscal 1972 budget request for MHD research was $1 million. Nine small contracts had been let through the Office of Coal Research and some limited work was being done by the Bureau of Mines.

MHD did get a mention in the energy message, but most of the Interior Department money for energy research was going to the OCR for coal gasification. The fiscal 1972 budget request for coal gasification work, made before the energy message, was $10.8 million (as compared with $50 million for the breeder). It doubled after the message (as did the request for the breeder).

The Interior Department's energy priorities then were largely determined by the interests of its principal "client," the petroleum and coal industries which, due to a series of corporate mergers in the late 1960s, had become the energy industry. The coal people were primarily interested in coal gasification but, in those distant days of cheap petroleum, this interest was more academic than real.

One of the moving forces behind the 1971 energy message was David Freeman, then head of a small energy staff within the now-defunct Office of Science and Technology. In 1969, the energy staff had commissioned a study which concluded that MHD could effect a savings of $11 billion in fuel costs over a fifteen-year period by comparison with conventional methods of power generation. The panel then recommended spending $4 million a year for three years on MHD research, at the end of which time the committee felt the federal government would be in a position to decide whether further MHD work was worthwhile. (This was, in the eyes of Dr. Arthur R. Kantrowitz, then chairman of the AVCO Everett Research Laboratory, "a 'colossal *non sequitur*.") The report got Freeman interested in MHD and that led to its inclusion on the "shopping list" of energy research projects that constituted most of the first energy message. However, the message boosted spending for both the breeder and coal gasification but did nothing for MHD.

Then came the Arab boycott and the government was forced to alter its traditional helter-skelter way of looking at energy problems. Eventually, federal agencies were reshuffled, the AEC was disbanded, and two new agencies, the Federal Energy Administration and ERDA, emerged. Many developing technologies, such as solar energy, got a shot in the arm from the energy crisis.

Not so MHD. At the time of the first energy message, the OCR was asking for an unprecedented $1 million for MHD research. The following year, OCR asked for and got $3.5 million for MHD. But in 1973 the budget request for fiscal 1974 dropped to $3 million. Congress raised that by nearly $4.5 million, indicating its determination that the federal government should put more money into MHD research and earmarking $2 million specifically for the direct coal-fired generator at the University of Tennessee. But in 1974 the budget for fiscal 1975 included only $500,000 more than the previous year for MHD. Congress again raised this—to about $13 million. This year, ERDA, which has absorbed the old Office of Coal Research, is seeking $13.9 million for MHD research, an increase over past budget requests to be sure, but scarcely more than Congress authorized for the previous fiscal year. In an attempt to focus more attention on MHD, Sens. Mike Mansfield and Lee Metcalf, both from Montana where there is a great deal of coal, recently introduced legislation establishing a Division of MHD Electric Power Generation within ERDA.

By contrast, R&D spending in other energy technologies is booming. Funding for solar energy development almost doubled this year, from $38.4 million in fiscal 1975 to a request for $70.3 million for fiscal 1976. This appropriation includes money for studies such as wind energy conversion (windmills), bioconversion (changing urban and agricultural wastes into clean fuels), and ocean thermal conversion (converting heat absorbed by surface water into energy).

The budget for fiscal 1976 calls for more than $391 million for fossil fuel R&D (gasification, liquefaction and oil shale processing primarily—not MHD). And this is small compared with the $1 billion requested for nuclear R&D. In fact, more than half the total energy research and development budget is still devoted to nuclear work, both fusion and the development of fission reactors. Only geothermal steam R&D will be getting less money in fiscal 1976 than it got the previous year, if the Administration's budget is adopted by the Congress, but this technology seems to be well on its way now. By the end of the year, one geothermal field in northern California will supply all of San Francisco's power.

In 1973, a panel of scientists and MHD enthusiasts, including Kantrowitz and Dicks, pleaded with Congressional appropriations committees to embark upon a ten-year development program involving about half a billion dollars. The object was to have a 500-megawatt MHD-steam demonstration generating plant in operation by 1985. Congress more than doubled the funding for fiscal 1974 to $7.5 million, which did not fall too far short of the scientists' schedule. They were seeking gradually rising appropriations for MHD research, starting off with $8 million. The OCR bestirred itself enough to institute a "National MHD Power Generation Development Program." But the following year, much of the $7.5 million was unspent and OCR had failed to consult the most prominent MHD proponents as part of its evaluation program.

As a result of language attached to last year's Energy Research and Development Appropriations bill at the insistence of Senators Mansfield and Metcalf, ERDA is committed to the construction of a demonstration MHD generator some time in the 1980s. The first step will be an engineering test facility in Montana, which ERDA hopes will be operational by 1979 or 1980. Next will come a pilot plant (the Soviet U–25 facility is a pilot plant) after which, provided all signs are favorable, a demonstration plant, probably a 500-megawatt generator, will be constructed to test the commercial merit of the process.

At present, the federal government has a number of research contracts—with the University of Tennessee to study the problems of a direct coal-fired system; with AVCO for work with both the Mark VI generator and an alternate MHD design that is quite different in concept; with the Arnold Engineering Development Center at the Arnold Air Force Base in Tennessee to study energy extraction from gas; with Westinghouse for work on materials that will be used in building a generator as well as some downstream equipment, and with various institutes and universities in Montana for preliminary work on the test facility that will be located there.

The United States is also involved in a continuing exchange of information with the Soviet Union, the result of a 1972 agreement to cooperate on scientific research. "This field is one of the cooperative programs between the two countries in science and technology where we stand to gain at least as much as, and probably more than, we give," remarked Dr. Jackson recently in Moscow. The United States is testing a generator in the U-25 plant, according to ERDA officials, and American scientists are also interested in the super conducting magnet at another nearby Russian facility.

But the Montana Senators are determined that the federal government shall spend more on MHD than is now planned. The goal of their new MHD Research, Development and Demonstration bill is the same as ERDA's, the operation of a commercial scale demonstration MHD plant by the mid-1980s, but the bill would authorize the expenditure of $450 million over the next five years, considerably more than ERDA is planning to put into the MHD program.

At this point, the future of MHD is unclear. One problem is that MHD has no evident constituency beyond the few scientists who are working on it. Since MHD involves the extraction of coal, either by strip or deep mining, it has not had the kind of support from conservationists that self-contained solar heating units enjoy. On the other hand, the coal industry can sell more coal for conventional power generators or for gasification, which also has the support of the natural gas industry, than for MHD power generators. Perhaps the stimulus of the U-25's recent performance will give a boost to the current MHD program. Right now, this potential source of abundant, relatively clean energy lies just beyond our grasp; in all likelihood it will remain there unless the

federal government shows more interest in it than it has in the past.

THE SEIZURE OF THE "MAYAGUEZ"

Mr. HUGH SCOTT. Mr. President, while the country awaits developments with regard to the seizure of the *Mayaguez* by the present Cambodian Government, the President, having consulted with the National Security Council and others, is proceeding to take the steps he believes necessary for the protection of American citizens. While this movement is in process, I think it is necessary for all of us to exercise some coolness and restraint and not jump to conclusions.

I talked with a number of Senators yesterday; and it is my view, after those conversations with individual Senators, that it would seem to be the sense of the Senate to be supportive of the President in such action as he reasonably and carefully believes to be necessary to secure the return to their families of these 39 American seamen.

Having been a merchant seamen twice in my life, I know that they tend to feel pretty much like forgotten citizens. Many of them are without permanent residence. They are in a chancy profession, subject to numerous hazards, and it is not surprising that they do tend to think that, even in ordinary times, nobody cares very much about them or gives them much thought. They are out of sight and they are out of mind.

So, I think for their sakes, for their families' sakes, for the sake of the protection of the essential sovereignty of the United States, certain steps will have to be taken. I sincerely hope that, when they are taken, the Senate will react as individuals generally seem to be privately reacting; that is, to support what proves to be essential for the recovery of these American citizens.

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

Mr. HUGH SCOTT. I am glad to yield.

Mr. MANSFIELD. Mr. President, I applaud the President for showing the restraint that he has up to this time; for endeavoring, through diplomatic channels and otherwise, to bring about the release of the *Mayaguez* and to insure the safety of the crew of the vessel. It is my understanding that even since the *Mayaguez* was boarded at sea 60 miles from the coast of Cambodia, off an island claimed by both Cambodia and Vietnam, another vessel has been boarded, retained under Cambodian control for 2 hours, and then released. Furthermore, at least one vessel, under Panamanian registry, was boarded prior to the capture, if we can use that term, of the *Mayaguez*, and released within a 36-hour period. There are reports that even prior to that, another vessel had been boarded and likewise released.

I think we should keep in mind that this is a matter of the gravest importance, because it seems to have developed a source of friction with Thailand in the landing of 800 marines on that country's soil. I hope that we shall move with caution, but with determination; that we shall keep in mind the welfare of the crew members of the *Mayaguez* and do nothing which will place them in a situation which might cost some or all of their lives.

I hope that it will be possible, rather than to bring about another increasing difficulty in the area of the Gulf of Siam, that we shall be able to work out the situation which has arisen between this country and that land, which I mentioned earlier in my remarks.

The President is fully aware of the situation. He has not acted hastily up until this time, and I hope that he will continue to act with care and caution, keeping in mind that perhaps the lives of 39 Americans, the crew of this vessel, may be at stake if an untoward happening occurs.

Mr. HUGH SCOTT. I thank the distinguished majority leader. I am simply pointing out that there are some options between negotiation and abandonment and that, somewhere in the middle of those options, lies the course that the President will have to take and when he takes it, it will be taken after the most mature consideration. That is when I think the support of the American people will be needed.

ORDER OF BUSINESS

The PRESIDENT pro tempore. Under the previous order, the Senator from Georgia is recognized for not to exceed 15 minutes.

Mr. TALMADGE. I thank the distinguished Presiding Officer of the Senate, the President pro tempore.

THE RISK OF A BANKRUPT AGRICULTURE, AND SOME STEPS TO INSURE THAT IT DOES NOT HAPPEN

Mr. TALMADGE. Mr. President, the efforts of Congress to enact meaningful farm legislation for the 1975 crop year have failed.

The President, on May 1, vetoed H.R. 4296, a 1-year bill which would have provided modest price and income protection for the production of our basic food and fiber needs.

Yesterday, his veto was sustained in the House of Representatives.

American agriculture—indeed, America's economy—now faces a risk as potentially threatening as that which struck in the late 1920's and 1930's.

During that period, farmers had a "market-oriented" agriculture. There was little in the nature of price support, or production control. Agricultural legislation of that day was focused primarily on education, extension, and technical service to farmers.

The conditions were ripe for boom and bust. And as night follows day, boom turned to bust. Farmers celebrated Christmas in 1932 with 32-cent wheat, 5-cent cotton, and other disaster-level prices.

But 1932 also brought America a "New Deal," and corrective economic legislation was rushed through Congress with lightning speed. One such law was the Agricultural Adjustment Act of 1933 which, like many other hasty responses of that time, was declared unconstitutional 4 years later.

But despite that setback, Congress did not sit down and do nothing.

The Committee on Agriculture and Forestry, of which I am honored to be chairman today, responded by appointing a special subcommittee to investigate the agricultural crisis. The subcommittee held hearings in twenty states.

The product of the committee's efforts was the Agricultural Adjustment Act of 1938, which provides the basic statutory authority for many of the farm programs which operate today.

Mr. President, I propose today that this Congress, just as our predecessors nearly 40 years ago, refuse to sit on its hands, but instead, do whatever is necessary to prevent the farm collapse that the President's veto makes so possible.

I wish to speak for a moment about the abject irresponsibility of the veto, and then for a moment about what the Committee on Agriculture and Forestry proposes to do in its aftermath.

Almost from the inception of the legislative process of H.R. 4296, the Administration's response has been a fiasco.

Its response demonstrated a blatant lack of concern about the American farmer, the American consumer, and the entire economic chain which makes them interdependent.

The spokesmen for this administration—taking their cue from the Secretary of Agriculture—have waged an orchestrated campaign to confuse the issue and to mislead the American public.

From the start, they used irresponsible scare tactics. They sought to pin an $18 billion price tag on this legislation at one point—an estimate which was overstated by at least a factor of 10.

After extensive press coverage—and a virtual flood of negative editorials in metropolitan newspapers based on these wildly exaggerated cost estimates—the Department of Agriculture backed down to more truthful plateaus. But there was none of the press coverage, none of the fanfare that accompanied the original price tag.

These same techniques and bloated estimates were used in regard to the potential cost to the consumer. But the Secretary never discussed the potential cost to the consumer of the uncertainty and scarcity which could result from doing nothing—certainly, an impact immensely greater than the modest impact of this bill.

The administration's response demonstrated the blatant lack of concern about the American farmer, the American consumer, and the entire economic chain which makes them interdependent.

Among President Ford's most admirable traits are his candor and his honesty. But he is a victim of faulty advisers, and as a result his personal credibility is suffering.

The President's veto message illustrates this.

Clearly, the person who drafted that message for the President lacks even an elementary understanding of agriculture and American farm policy.

It says the farm bill is nonessential. It strains every bit of logic to suggest that, somehow, protection of our system of production of basic food and fiber is in any way nonessential.

Such a statement can be nothing other than the muddled thinking of know-nothing political hacks who have lost touch with the people of this Nation.

The President's veto message said H.R. 4296 did not qualify for exception to his arbitrary budget ceiling because it was not humanitarian.

Does not anyone in this administration understand that the greatest human need in this world today is food? Is it humanitarian if we endanger the basic system which produces food?

The President's veto message contends that adoption of this bill would have been a step backward from the "successful market-oriented policy adopted by the current administration."

These writers have short memories.

It was not the administration that developed the Agriculture and Consumer Protection Act of 1973—it was the Congress of the United States, in the face of continued opposition from the administration.

The so-called "success" of this "market-oriented policy" of the past 2 years has nothing to do with this administration—it has been due in part to adverse weather around the world, in part to rising standards of living and growth in population, and in part to other factors—not a single one of which the Secretary of Agriculture can claim credit for.

I submit, Mr. President, that there are farmers and consumers who would argue strongly that this "market-oriented policy" has not been successful at all.

Certainly, many grain and soybean farmers did enjoy a temporary prosperity during the wild fluctuations of the past 3 years.

But simultaneously, a large number of livestock and dairy producers have been driven to the wall by high feed costs and falling prices for meat and milk.

So what may be a short-term "success" for one farmer may also be utter disaster to another.

Mr. President, I do not wish to place undue blame on the administration for the events which created the dislocations in agriculture during these past 3 years, for clearly many of them were beyond control. But I cannot stand here and let them get by with a hollow claim of credit for them, either.

The veto of H.R. 4296 was not unexpected. But for several weeks, Members of the Congress and some farmers were taking small hope from the assurance by the Secretary of Agriculture that, if the veto did come, it would be accompanied by modest increases in loan rates for wheat and feed grains.

The veto did come, but the loan rates stayed at their depression levels.

Even the minuscule increases which the Secretary had discussed would be no more than a half-measure, but they would have at least demonstrated that this administration had some small concern, some minimum appreciation of the economic uncertainty facing our food and fiber system and the need of our people for a stable supply of food and fiber.

But no such assurances were forthcoming. Instead, we had some rather weak hints that, if prices deteriorated significantly, some action in that direction would be taken.

But if experiences of the past few years are any teacher, we can expect relief only when the lines at bankruptcy court are very long.

I do find one statement in the veto message worthy of praise. The President said:

> American farmers have responded magnificently during the past several years to produce food and fiber for this Nation and the world.

They certainly have. And, as a reward for their magnificent efforts, the Administration's response is mean and parsimonious.

Such an attitude is, at the very least, distressing. The Congress made every possible effort to meet the Administration's objections and still deal effectively with the needs of farmers and ranchers. Our attempts at compromise and reason failed.

The Secretary of Agriculture has been inflexible to the needs of agriculture. Other White House advisors dismiss the current agricultural situation as unimportant.

Neither attitude is acceptable to the Senator from Georgia.

Mr. President, I am concerned about the adversary trend in government. It is not only inefficient to have the Congress and the Executive constantly at odds, but it is dangerous.

Good faith and cooperation must undergird our dealings if we are to have a responsive Government. I propose to go the last mile to show good faith, to build a spirit of cooperation which will allow both the Congress and the Executive to meet their responsibilities more effectively.

It is in that spirit—one of cooperation, not one of confrontation, that I outline here today how the Committee on Agriculture and Forestry proposes to respond to the situation which the President's veto created.

The potential of economic disaster in rural America is very real, as are the threats of scarcity and inflationary pressures which follow therefrom.

If we are to prevent such a potential from becoming reality, we must have up-to-date knowledge about a fast-changing situation.

Therefore, I wish to announce today that the Committee on Agriculture and Forestry will inaugurate immediately an "early warning" system which will permit us to stay on top of developments affecting our food and fiber system.

We intend to monitor the general events affecting agriculture, and to require periodic assessments by the Secretary of Agriculture.

We will conduct regular quarterly oversight hearings, and ask the Secretary to report to us on the general economic conditions in the United States and in the world as they affect U.S. agriculture.

We will require him to provide detailed assessments of the supply and demand situation for each of the major crops and for the livestock sector. As part of this analysis we will request updates on food prices, the costs of processing and marketing, and the farmer's share of the consumer's food dollar.

We will require reports on the financial condition of agriculture, to include farm income, farm debt, delinquency and foreclosure rates, loan defaults, and the incidence of bankruptcy in agriculture.

Mr. President, I am very fearful of the possible consequences of further economic deterioration in agriculture. I hope that my worst fears are not realized. But we dare not hide our heads from the facts in the vain hope that our fears will vanish.

We hope, through these quarterly hearings, to have clear and factual evidence of the agricultural situation presented by the spokesman for this Administration who must bear the greatest share of the responsibility for any consequences as a result of this veto. He is the Secretary of Agriculture.

We will put Secretary Butz in the witness chair to tell us what develops over the next several weeks and months, to take the blame or the credit, whichever is appropriate.

It is our intention to call the Secretary for the first of these quarterly reports on July 11 of this year.

The Committee on Agriculture and Forestry will do everything in its power to prevent economic disaster on the American farm. If it should appear necessary to follow the example of our predecessors of 40 years ago, we too will venture into the countryside, to take testimony firsthand from the farmers, ranchers, rural bankers and businessmen, and others who will be the first victims of any economic collapse in our food and fiber chain.

We are looking down the barrel of a loaded gun. We do not propose to twiddle our thumbs while the trigger is pulled. We intend to stay alert, and to act as need dictates.

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

Mr. MANSFIELD. Mr. President, will the Senator withhold that request?

Mr. TALMADGE. Mr. President, I withhold the suggestion for a quorum call and yield to the distinguished majority leader.

Mr. MANSFIELD. Mr. President, I agree with the remarks made by the distinguished Senator from Georgia, the chairman of the Committee on Agriculture and Forestry, relative to the Presidential veto of the emergency farm bill, a bill which would have been in effect for just 1 year only, a bill which is badly needed not only by the wheat ranchers out in my part of the country, but by the cotton producers and other segments of the agriculture economy.

I think it was a most unwise decision on the part of the President, and I believe that the reason for it, in part, lies with the advice given by Secretary of Agriculture Butz.

The distinguished Senator is aware of the fact that last year, last calendar year 1974, the farm income declined by 10 percent and the costs to the farmers increased by 25 percent, meaning a 35-percent net loss in revenue.

The Senator is aware of the fact also that over the past 3 calendar years

the cost of food to the consumer has risen by $47 billion, and the income of the farmers, I believe, has fallen from $32 billion down to $20 billion. If there is a segment of our economy on which we are truly dependent and on which our farm trade is dependent to a large extent, it is the farm economy, and I do not know what is going to happen to the cotton producer, the wheat rancher, the feed producer, if he cannot get the kind of assistance to which, I think, he is entitled, and which can only be forthcoming from the Federal Government.

So this is a situation which, I think, calls not for the wringing of hands because we have done our best and, in conference, the Senate committee went a long way toward meeting the demands of the administration in trying to fashion a bill which would not be vetoed. But that effort failed.

I only hope the administration is aware of what the catastrophic consequences may well be because of this hasty, ill-advised action at this time.

I thank the Senator for making the remarks he did today.

Mr. TALMADGE. I thank the distinguished majority leader for his contributions and also for his never-failing support to assure a reasonable price to the farmers and ranchers of this country. He made a magnificent contribution. I appreciate his comments, and I associate myself completely with what he said.

I now yield to a distinguished member of our committee, the Senator from Oklahoma, who has made a magnificent contribution to the field of agriculture, and who is a valued member of our committee.

Mr. BELLMON. Mr. President, I thank our distinguished chairman for yielding.

I commend Chairman TALMADGE for the plan he has announced here this morning to monitor economic conditions as they develop in agriculture.

As someone who is very close to agriculture, I know the farm economy is in a serious slump; that it is getting more serious day by day. Prices of grain are down sharply; prices of livestock have been down for months to the point where production of livestock has been generally unprofitable.

Unless these conditions improve, then this Nation's food needs may not be met if we continue in this country to take food for granted.

But, as the chairman knows, we cannot have a strong agriculture and we cannot have abundant food supplies unless the producers receive enough for their products to meet the costs of production and in that way be able to stay in business.

I feel President Ford was badly misinformed when he vetoed the farm bill, in the first place. The statement he made at the time he vetoed the bill and the statement he issued yesterday after the House acted, I feel, show his complete misinformation about this bill. Personally I blame the Secretary of Agriculture for having misled the President and for refusing to acknowledge the facts about the true conditions in agriculture as to what they are.

I would like to say I predict that Secretary Butz is going to have a long, hot summer as conditions in agriculture develop. If we have a big corn crop, which is predicted, and a big wheat crop, which is predicted, we are going to see very sharp breaks in those grain prices, and there will be a great outcry on the part of producers who will not be able to pay their bills, and the economic ills of agriculture will get worse and worse.

I believe I can see a growing outcry in rural America for new leadership in the USDA, and I believe the chairman's plan to monitor these developments is going to make it possible for the Senate and Congress to help provide leadership which the administration seems reluctant to provide.

Again I would like to commend the chairman for his plan and to say I look forward to working with him in an effort to keep ahead of developments so we will not allow American agriculture to suffer a disaster.

Mr. TALMADGE. I thank my distinguished friend from Oklahoma for his comments. He himself is a dirt farmer and knows whereof he speaks.

I yield now to my distinguished colleague, the Senator from South Dakota, who is also a member of the committee and who has labored in the vineyard of agriculture with yeoman and distinguished service.

Mr. McGOVERN. Mr. President, I simply want to associate myself with everything the Senator from Georgia (Mr. TALMADGE), the chairman of our committee, has said this morning, and with what Senator BELLMON and Senator MANSFIELD, the majority leader, and others, have said, because I think the Senate conducted itself according to the very highest standards in our efforts to bring out a bill that would be acceptable.

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

Mr. McGOVERN. Yes.

Mr. TALMADGE. The Senator knows in conference committee we went for the last mile in an effort to avoid a veto.

Mr. McGOVERN. Absolutely, and the Senator from Georgia, of course, very prudently counseled in that direction.

The Senator knows that many of us on the Senate committee wanted an even stronger bill, but we had all kinds of indications that if we strengthened this bill any further than the House version it would draw a veto, and I think the Senator from Georgia was right in coming to the view that the only chance we had of getting legislation that might be approved by the President was to accept the House version.

We did that. We swallowed our pride. We yielded points that we thought were important to agriculture, and still what we have drawn is a Presidential veto.

This is all the harder to understand not only because of the plight of agriculture, to which Senator MANSFIELD referred, but also because agriculture is the best single foreign exchange earner we have.

Mr. TALMADGE. $20 billion last year.

Mr. McGOVERN. We would be in a desperate plight as a country if it were not for the favorable trade balance we built up in agriculture.

The Secretary is going to argue that by destroying the price levels for American farmers we can sell even more abroad. But what he does not take into account is that this spells certain bankruptcy for the farmers who produce the cotton, who produce the wheat, who produce the feedgrains and the other things that our foreign trade depends upon and, in the long run, what this veto spells, if it is not reversed either by executive action or some other course here in Congress, is the bankrupting of tens of thousands of our own farmers, the loss of production and, therefore, a consequent decline in our ability to trade with other countries.

I think this veto is catastrophic. I think it was one of the most ill-advised economic actions the President has taken. But I do commend the chairman of our committee, Senate TALMADGE, for the statesmanlike way in which he has conducted these proceedings at every step of the way.

If anyone has ever tried in every possible way to secure a compromise that was fair with all parties concerned, the Senator from Georgia has attempted that, and I am very proud to serve in the Senate with him and to serve as a member of his committee.

Mr. TALMADGE. I am, indeed, grateful to my distinguished friend from South Dakota for his remarks and I salute him again for his valiant service to agriculture.

Mr. President, I yield the floor.

ROUTINE MORNING BUSINESS

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

SUPPLEMENTAL EXPENDITURES BY THE SELECT COMMITTEE ON NUTRITION AND HUMAN NEEDS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 122 (S. Res. 141), which was passed over during the earlier call of the calendar.

The PRESIDENT pro tempore. The resolution will be stated by title.

The legislative clerk read, as follows:

A resolution (S. Res. 141) providing supplemental expenditures by the Select Committee on Nutrition and Human Needs.

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

There being no objections, the resolution was considered and agreed to, as follows:

Resolved, That section 3 of S. Res. 50, Ninety-third Congress, agreed to February 22, 1973, as amended, is further amended by striking out "$275,000" and inserting in lieu thereof "$276,100".

CONGRESSIONAL INVASION OF TAXPAYER'S PRIVACY

Mr. WEICKER. Mr. President, I would like to call the attention of my colleagues

to another foray into the sanctuary of the IRS and, more particularly, individual tax returns, except this time the foray is to be conducted not by the executive branch of Government or the President but, rather, the legislative branch of Government.

An item in the Federal Register of May 7, 1975, came to my attention yesterday, which is an Executive order from the President, in effect giving to the Senate Committee on Government Operations the authority to gain access to individual tax returns.

Mr. President, I have tried to make a point of the importance of preserving the privacy of individual tax returns. Most of my comments have been directed to the executive branch. But make no mistake, I do not have two standards. If I say that those individual taxpayer returns are not the business of the President or anybody in the White House, neither are they the business of anybody here in the Congress. Privacy is privacy.

I have written to Senator RIBICOFF expressing my strong opposition to Executive Order 11859.

It is my understanding, and I can be corrected by the individuals involved if I am wrong, that this request emanated from the Permanent Investigation Subcommittee of the Committee on Government Operations.

I want to make it clear, as indeed I have in the legislation I have introduced along with Congressman JERRY LITTON, of Missouri, that this is not the business of the Committee on Government Operations, or a subcommittee, or any Senator. This is a direct invasion of individual privacy and whatever harsh words I have uttered with respect to the White House, I shall be glad to repeat to my colleagues in the Senate, or in the House, or any aspect of the legislative branch of Government.

We are going to have one standard. One standard of privacy.

I find it especially appalling that after the factfinding of Watergate, we have not passed one single piece of legislation correcting any of the abuses. In effect, now we are going off in our own direction repeating exactly what it is that occurred, at least in one respect, over those years.

As I say, I think it stands to our discredit that we have not legislatively acted on the factfinding of the select committee. As bad as that is, this is worse.

I cannot imagine why it is that any Senator or the Committee on Government Operations, or any staff member, needs to have access to individual tax returns.

Before we go into another political year, let us get the ground rules straight. Anyone that starts this kind of "nosing around"; Democrat, Republican, Senator or President—blow the whistle.

I might add, I think we ought to do it collectively by adopting the legislation Congressman LITTON and I have proposed. Of course, we have had hearings before Senator HASKELL in the Committee on Finance which would set forth very strict guidelines as to who it is who has access. Under our proposal, only the Joint Committee on Internal Revenue Taxation will have the right to obtain from the IRS individual tax returns. They are the only ones to have access.

But we restrict other congressional committees from gaining access to confidential tax returns. We do not want congressional committees anymore than the executive agencies and the White House tramping through the IRS.

We are desperately in need of reform. At least, let us set the example by what we, ourselves, do.

Mr. President, I ask unanimous consent that the Executive order be printed in the RECORD along with my letter to Senator RIBICOFF as chairman of the Committee on Government Operations.

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

EXECUTIVE ORDER 11859

INSPECTION OF INCOME, ESTATE, AND GIFT TAX RETURNS BY THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS

By virtue of the authority vested in me by Section 6103(a) of the Internal Revenue Code of 1954 (26 U.S.C. 6103(a)), it is hereby ordered that any income, estate, or gift tax return for the years 1955 to 1975, inclusive, shall, subject to the conditions imposed herein, during the Ninety-fourth Congress, be open to inspection by the Senate Committee on Government Operations or any duly authorized subcommittee thereof, in connection with its studies of the operation of Government activities at all levels with a view determining the economy and efficiency of the Government.

Such inspection shall be in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in Treasury Decision 6132, relating to the inspection of returns by committees of the Congress, approved by the President on May 3, 1955.

The Commissioner of Internal Revenue shall ensure compliance with the applicable provisions of the Privacy Act of 1974 (5 U.S.C. 552a) by seeing that no such inspection is permitted unless (1) the Committee or subcommittee has furnished a written statement specifying the purpose of the inspection; and (2) such statement establishes that the inspection relates to a matter within the jurisdiction of the Committee or subcommittee, or the Commissioner has received the written consent of the taxpayer to the inspection.

GERALD R. FORD.

THE WHITE HOUSE, *May 7, 1975.*

[FR Doc. 75-12406 Filed 5-7-75; 2:29 pm]

MAY 13, 1975.

Hon. ABRAHAM RIBICOFF,
Chairman, Senate Committee on Government Operations, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I would like to express my strong opposition to the Executive Order 11859 authorizing, under certain restrictions, the Senate Government Operations Committee or duly authorized subcommittee, to obtain any income, estate, or gift tax return for the years 1955 to 1975.

I believe such a broad discretionary grant of authority to a Congressional committee is contrary to ongoing legislative efforts to protect the confidentiality of tax returns.

With kindest regards.

Sincerely,

LOWELL WEICKER, Jr.,
U.S. Senate.

Mr. WEICKER. In a humorous way the issue we are talking about was commented on in Mr. Oliphant's cartoon in the Washington Star, by showing an IRS man walking to the door and saying to the lady:

Congratulations, you have qualified for a rebate, but, first, a few questions about your political affiliations, sex life, and drinking habits.

We are right back at position No. 1.

Let us not engage in this practice ourselves, and let us pass this legislation to make sure that the members of the executive branch and the agencies do not have that power to come in and, in effect, take advantage of facts supplied by the taxpayer for the purpose of collecting taxes, and nothing else.

I notice in the Executive order it is stated:

With a view to determining the economy of the Government.

That is not why I submitted my tax return. It was for the purpose of collecting taxes and nothing else.

Let us keep it that way and, in any event, I would hope that the Committee on Government Operations would renounce its request for this particular information, at least by way of setting an example.

HUGH SCOTT DISTORTS THE RECORD ON VIETNAM REFUGEES

Mr. McGOVERN. Mr. President, a week ago Tuesday, May 6, the day after I left on a trip to Cuba authorized by the Senate Foreign Relations Committee, the minority leader (Mr. HUGH SCOTT) took the Senate floor to attack legislation I had introduced relative to the South Vietnamese refugees. His statement was a flagrant distortion of my proposal.

I said very clearly on the Senate floor on Monday, May 5, the day before the Senator's attack, that on both humanitarian and practical grounds, many of the Vietnamese refugees would be better off returning voluntarily to their own country. But knowing that some political demagog or careless journalist might take my words out of context, I emphasized that I was not suggesting that any Vietnamese be sent home unless they so requested.

Nevertheless, Mr. SCOTT came to the Senate floor the next day, and in a mighty display of indignation said that I had proposed that the refugees be "sent" home. He then added:

Any governmental attempt to send them back would be a people-killing measure.

Mr. President, assuming that he can understand plain English, the Senator knows that I never proposed that one single Vietnamese refugee be sent home who does not so request it. He must also know that the distinguished majority leader of the Senate (Mr. MANSFIELD) has in effect endorsed my proposal by suggesting that funds be authorized to pay the transportation of refugees who wish to return to Vietnam. That is exactly what I have proposed. Why, then, does Senator SCOTT single me out for attack?

Perhaps it is because he has been one of the loudest and most persistent cheerleaders for the Vietnam policy that sent 56,000 young Americans to their deaths, as well as millions of Vietnamese. As such, he is doubtless eager to strike out

at someone who has tried to stop the killing in Vietnam during all those years when he himself was supporting it. He is the man who has backed the "people-killing measures," and he has done it for so many years that he would not be able to rest if his conscience were as strong as his oratory.

He is the man who went on nationwide television during the closing weeks of the Watergate nightmare to tell the American people that if they knew what he knew, they would know Nixon was innocent, or as he put it on January 20, 1974, "the President would be exculpated entirely."

He is one of the Nixon hatchet men who at crucial periods of the 1972 Presidential campaign flagrantly distorted and twisted my positions on sensitive public issues.

This is a matter I have never discussed with the Senator from Pennsylvania, but I have sent him a copy of the remarks I am delivering this morning.

This kind of cheap demagoguery is the stuff of which the Watergate deception and the Vietnam illusion were made. I regret that Mr. HUGH SCOTT seems to have learned nothing from these tragedies. But I do not intend to let this longtime advocate of the killing in Vietnam—this bitter-end apologist for Richard Nixon's disgraceful conduct, distort my position with regard to the Vietnamese refugees.

The truth is now coming out, Mr. President. More and more of the Vietnamese refugees are voluntarily expressing their desire to return to Vietnam—just as I had predicted. Yesterday's New York Times tells of six ships loaded with refugees returning voluntarily from Singapore to South Vietnam. Earlier about 45 South Vietnamese pilots requested permission to return to Saigon after reporting that they had been forced to fly high-ranking officers out of the country. The Times of yesterday also carried a report from Mr. L. Dean Brown, director of the U.S. Interagency Task Force on Refugees, that 48 refugees on Guam had expressed a desire to return to Vietnam claiming that they had been forced into planes during the evacuation. And the Boston Globe reported yesterday that a Vietnamese doctor with some 18,000 refugees at Camp Pendleton has said:

If a plane were to leave for Saigon today, half of this camp would be empty.

I understand, Mr. President, that scores of voluntary agency workers are reporting back the same findings.

And yesterday's Washington Star reports that two Senate staff aides of the Senate Judiciary Subcommittee on Refugees, Dale DeHaan and Jerry Tinker, have discovered in visiting the refugee centers that "substantial numbers" of Vietnamese are having "second thoughts" about leaving their homeland.

Today's Washington Post carries a story by Lawrence Meyer relative to the findings of the Refugee Subcommittee chaired by Senator KENNEDY. The article quotes Senator KENNEDY as saying that:

Many of the refugees fled in panic from conflict and violence . . . and many give the impression of not fully understanding where they are or why they got there.

The article continues:

Kennedy and representatives of private voluntary agencies helping refugees resettle predicted that thousands would choose to return to South Vietnam.

Mr. President, as I said to the Senate on May 5, a week ago Monday, we will see growing evidence that thousands of Vietnamese came to this country in hysteria to avoid what they believed would be a final bloody battle for Saigon—a battle that never materialized. Others left in terror after hearing predictions of a massive bloodbath at the hands of the new government—a bloodbath as yet not in sight. Many of them are now having second thoughts and desire to be reunited with their country and their families.

So let us have an end to Senator SCOTT's nonsense about the legislation I have introduced—legislation which simply authorizes our Government to pay the transportation back to Vietnam for any refugee who voluntarily requests such assistance in returning to his country. This is not a "people-killing measure" as the Senator from Pennsylvania would have us believe. It is a commonsense, humanitarian proposal designed to assist those refugees who wish to return to their country—assistance offered in the same humanitarian spirit as the aid we are prepared to give those Vietnamese who may decide to stay with us.

I intend, when the refugee relief bill comes up for consideration, to offer my bill as an amendment, authorizing that part of those funds be available to the refugees who wish to return to their homes.

An incredibly distorted interpretation of that proposal appeared in the Philadelphia Inquirer of yesterday, written by a man by the name of John D. Lofton, Jr. I am reasonably certain that this is the same man who edited the Republican organ Monday, which was a little attack sheet that the Senator from Maine and all other Democrats in this Chamber have been stung by over the years, but apparently now he is doing a column for the Philadelphia Inquirer.

Believing that the editor of that paper will correct this unfortunate story in his paper, I am sending him a copy of these Senate floor remarks.

Mr. President, I ask unanimous consent that the news articles I have referred to, the Philadelphia editorial by the Republican writer I mentioned, along with a copy of my proposal of a week ago Monday, a copy of the implementing legislation and a copy of Senator SCOTT's attack on me of May 6, be printed in the RECORD.

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

[From the New York Times, May 13, 1975]

SIX SHIPS WITH REFUGEES RETURNING TO VIETNAM

SINGAPORE, May 12.—Six South Vietnamese ships carrying refugees have left Singapore to return home, the Singapore Government said today.

Its statement said that the ships, which had been anchored in the harbor here, had slipped away undetected for Saigon and that another refugee ship also planned to return to South Vietnam.

This was one of the first reports about refugees who had left South Vietnam in the evacuation and now wanted to return. Earlier, about 45 South Vietnamese pilots were handed over to authorities in Guam for return to Saigon. They said they had been forced to fly higher-ranking officers out of the country.

The Singapore statement did not disclose how many refugees were on the ships returning to Saigon.

[From the Boston Globe, May 13, 1975]

SOME REFUGEES SUICIDAL, DOCTOR SAYS

CAMP PENDLETON, CALIF.—Some refugees in the capacity crowd at this giant Marine base are desperately homesick and worried to the point of suicide about an uncertain future, a Vietnamese doctor reported yesterday.

"If a plane were to leave for Saigon today, half of this camp would be empty," Dr. Hoang Van Duc, a physician for the Camp 4 tent city of 18,000 refugees.

The waiting period—as long as two weeks—before the refugees can be cleared to settle down in other areas is stressful, Duc said.

"There is much despair here," he reported. "They are anxious about everything. They have no future at all. They are anxious about their status, anxious about jobs. They are anxious about losing their identities."

The refugee's resentment about their former Saigon leaders, combined with worry over fragmented families and the uncertain future, may lead some to suicide, Duc said.

"We must devise some form of psychotherapy," he said. "They must accept reality."

Most of the refugees in Camp 4 were fairly well off in Vietnam and some came here with small hoards of diamonds and gold, Duc noted.

But they may not cash in their gold at a mobile bank that visits each tent city. A sign on the vehicle reads "We do not buy gold."

Security and health checks on refugees have slowed the process of releasing them.

One US official said some "undesirables," such as prostitutes and black marketeers, have turned up. He said politicians charged with or suspected of corruption also have been identified in the processing.

[From the New York Times, May 13, 1975]

SENATE UNIT ASKS $405-MILLION AID FOR THE REFUGEES

(By Richard L. Madden)

WASHINGTON, May 12.—The Senate Foreign Relations Committee, moving with unusual speed, approved today legislation to aid Indochina refugees after limiting the program's cost to $450-million.

The action came after L. Dean Brown, Director of the Interagency Task Force on Refugees, told the committee that the refugee camps on Guam, and in the United States had become "blocked" because of time-consuming security checks of the incoming refugees and because voluntary agencies did not have the funds to resettle the refugees who had already been screened.

Meanwhile more than 16,000 South Vietnamese refugees streamed off four merchant vessels in Apra Harbor, Guam.

FOURTH CAMP WEIGHED

The $405-million limit, which was the same figure approved last Thursday by a House appropriations subcommittee, was less than the $507 million requested by President Ford, but Government officials administering the program for South Vietnamese and Cambodian refugees have said that they could work with the reduced amount.

The Senate committee action, which came on a 13–to–0 vote after only one three-hour hearing this morning, indicated that both houses would approve similar refugee legislation, perhaps by the end of this week.

A spokesman for the Department of Defense said the Pentagon was considered setting up a fourth refugee camp at another military installation in the United States because the three centers at Camp Pendle-

ton, Calif., Fort Chaffee, Ark., and Eglin Air Force Base, Fla., were becoming overcrowded.

Senator John J. Sparkman, Democrat of Alabama who is chairman of the Senate Foreign Relations Committee, said his panel's measure would be ready for action by the full Senate tomorrow.

The House is planning to act Wednesday on two refugee bills—one authorizing the resettlement program but without limiting the cost that was adopted last Thursday by the House Judiciary Committee, and the second bill actually appropriating the $405-million to fund the refugee program.

The Senate bill approved today also merely authorizes the program to airlift, maintain and resettle refugees.

But the Senate committee, unlike the House Judiciary Committee, decided to write in a cost limitation. The Senate will still have to approve a separate appropriations bill to provide the funds.

Administration officials are hoping that the final bills passed by both houses will not have major differences, which would require a time-consuming Senate-House conference.

One difference in the measures is that the Senate committee bill would authorize the refugee program through Sept. 30, 1977, while the pending House appropriations measure would provide funds for the next 14 months.

Another difference was a provision added by the Senate committee specifying that any unexpended funds previously appropriated for military aid to South Vietnam would be used for the refugee program, thus possibly reducing the amount of new money that would have to be provided to fulfill the $405-million outlay.

Administration officials have said that it might be 30 to 60 days before they can give a final answer on how much unexpended funds might be available.

"That's a hell of a way to run a railroad," remarked the Senate majority leader, Mike Mansfield of Montana, who is also a member of the Foreign Relations Committee.

The Administration has been operating the refugee program on $98-million borrowed from other foreign aid programs. Mr. Brown warned the Senate committee today that the available money was "virtually exhausted."

115,000 "IN THE PIPELINE"

He said about 115,000 refugees were now "in the pipeline" but added that he had heard this morning that the Government in Singapore had begun to "put out to sea" 7,000 more refugees who had been on a ship there.

Asked why other Asian nations had not offered to take in some of the refugees, Mr. Brown said that North Vietnam had put "pressure" on them not to accept the refugees and to return any to Vietnam.

Appearing later this afternoon before a House Appropriations subcommittee, Mr. Brown said he hoped that 20,000 or so of the refugees would eventually be settled in third countries.

Mr. Brown said that 48 refugees on Guam had expressed a desire to return to Vietnam. He said most of these had been pushed on planes during the evacuation and that they had been turned over to the United Nations High Commissioner for Refugees to be returned.

Leonard P. Chapman, a retired marine general who is Commissioner of the Immigration and Naturalization Service, told the Senate committee that his service was complying strictly with requirements in the immigration laws that security checks be made on the refugees so that criminals and other undesirables would not be admitted.

Of the first 55,000 refugees checked, he said, none were found to be of the type that should be excluded.

By approving the program running through 1977, the Senate committee rejected an appeal by Senator James Abourezk, Democrat of South Dakota, that the program be authorized for only three months with the Administration to be required to justify to Congress a continuance after the program has been in operation 60 days.

"What we ought not to do is to commit ourselves unnecessarily to a plan which is based on emotionalism and hastily prepared plans," he said.

CAMP PENDLETON FULL

CAMP PENDLETON, CALIF., May 12.—The refugee pipeline from Southeast Asia was closed today as far as this giant Marine base was concerned and will remain shut down until several hundred South Vietnamese and Cambodians are sent on to their new homes.

"We're completely full, more than full," a base spokesman said. "Our original capacity was 18,108, and we're way above that now. The pipeline is closed."

By this morning, 25,890 refugees had arrived here and 7,244 had been processed and sent on to their eventual destinations.

[From the Washington Star, May 13, 1975]

VIET REFUGEES BEGINNING TO HAVE "SECOND THOUGHTS"

(By Martha Angle)

Two Senate staff aides who have just completed a tour of Vietnamese refugee camps in the Pacific and this country found a "substantial number" of refugees are having "second thoughts" about leaving their homeland.

Dale De Haan and Jerry Tinker, staff aides to the Senate Judiciary subcommittee on refugees headed by Sen. Edward M. Kennedy, D-Mass., said the Ford administration appears to have given little attention to the "serious policy questions" involved in dealing with homesick refugees.

Instead, the administration has been devoting most of its attention to planning for the resettlement of refugees in the United States and persuading Congress to provide the funds needed for this purpose.

The Senate Foreign Relations Committee yesterday voted 13–0 to authorize expenditure of $405 million for refugee relief and resettlement. The House Appropriations Committee was expected to approve the funding proposal today.

De Haan and Tinker returned to Washington two days ago after spending almost a week at refugee camps on Guam, Subic Bay in the Philippines and Camp Pendleton in California. They are preparing a formal report for the refugee subcommittee, which is monitoring the resettlement program.

In testimony yesterday before the Foreign Relations Committee, Ford's refugee relief coordinator, Ambassador L. Dean Brown, said only 48 Vietnamese have asked to return to their own country thus far. All were crew members on planes commandeered by Vietnamese pilots fleeing Saigon in the last hectic hours before the Communist takeover.

De Haan said last night these men appear to be "only the tip of the iceberg." During their tour of refugee camps, De Haan said, he and Tinker talked with "dozens" of confused refugees who expressed "qualms" about their flight.

"Some didn't even know where they were," the staff aide said. "Many were fishermen, shopkeepers, peasants who were on boats and were just sort of scooped up in the evacuation. Others were young soldiers separated from their families."

A Vietnamese doctor at the Camp Pendleton relocation center also reported widespread despair and homesickness among refugees there, according to United Press International.

"If a plane were to leave for Saigon today, half this camp would be empty," said Dr. Hoang Van Duc, 50, who is practicing medicine in one of the tent city encampments at Pendleton.

Kennedy's subcommittee, which scheduled a public hearing this morning on the refugee program, was expected to question Brown about what steps the United States is taking to permit repatriation of those Vietnamese who decide to return home.

De Haan said he could make no estimate of how many Vietnamese might prefer to return home rather than resettle here or in other countries. "We don't know whether it's hundreds or thousands," he said.

But the "option" question, he said, appears to be receiving little attention from U.S. officials.

Brown said yesterday that relocation centers at Camp Pendleton, Ft. Chaffee in Arkansas and Eglin Air Force Base in Florida are full and that dispersal of refugees to new homes around the country has been delayed by a lack of funding.

So far, Brown testified, there are about 115,000 refugees "in the pipeline" although the Justice Department has authorized entry into the country of up to 150,000 if need be.

Ford had asked Congress to authorize $507 million in refugee aid, but State Department lobbyists indicated the administration can live with the $405 million approved by the Senate Foreign Relations Committee.

The House Judiciary Committee last week voted to authorize whatever sums might prove necessary for the relief program, but an Appropriations subcommittee then set a $405 million limit on actual funding.

The full House Appropriations Committee was expected to act on the funding proposal today, as was a subcommittee of the Senate Appropriations Committee.

In authorizing expenditure of $405 million, the Senate Foreign Relations Committee wrote into its bill a requirement that the administration deduct from that total any military aid money for South Vietnam which can be recovered from the pipeline and diverted to the resettlement program.

[From the Washington Post, May 14, 1975]

SEN. KENNEDY CITES MISTAKES IN EVACUATION OF VIETNAMESE

(By Lawrence Meyer)

The United States failed to evacuate thousands of Vietnamese it had intended to bring out, while thousands of Vietnamese who should not have been evacuated either were airlifted out or picked up after they fled themselves, Sen. Edward M. Kennedy (D-Mass.) said yesterday.

Continuing hearings he has held over the last several weeks, Kennedy summarized the findings of two staff members of his Senate Judiciary Subcommittee on Refugees and Escapees. The two aides spent a week touring refugee camps in the western Pacific and the United States.

The last-minute rush from Saigon left behind thousands of Vietnamese who had been designated for evacuation, according to the aides. Kennedy said the administration's evacuation plan was "ill-conceived, poorly implemented and undertaken with little command control in the field."

At the same time that the United States was unable to bring out these Vietnamese, officially designated as "high-risk" because of their U.S. associations, thousands of other Vietnamese were evacuated or fled although they would have been better off staying, according to Kennedy.

These refugees—including low-ranking soldiers, shopkeepers, an entire fishing village, and Saigon bar girls—compose the bulk of the 60,000 now crowding into western Pacific staging areas on Guam and Wake Island, according to Dale DeHaan, counsel to the refugee subcommittee.

"When over half of the refugees fall outside the categories targeted for evacuation and parole into the United States," Ken-

nedy said, "troubling questions inevitably arise over the wisdom and efficacy of the evacuation program. And these questions were known from the first days of the airlift from Saigon."

To maintain and help resettle 115,000 or more refugees, the House Appropriations Committee approved by voice vote yesterday a 14-month, $405 million bill—$102 million less than the administration requested.

The House Judiciary Committee last week approved an open-ended authorization of refugee funds with a cutoff date of Sept. 30, 1977. The House is expected to take up both bills today.

Chairman Daniel K. Inouye (D-Hawaii) said his Senate Appropriations Subcommittee on Foreign Operations won't report a refugee money bill before next Wednesday.

The Senate Foreign Relations Committee Monday authorized $405 million to aid the refugees.

Following an afternoon of hearings, during which Inouye asked members of the Inter-Agency Task Force on Vietnam several questions about the disposition of funds previously appropriated by Congress for Vietnam, Inouye said he would wait until next Tuesday for the answers before taking up the administration's request.

Inouye indicated that Senate Majority Leader Mike Mansfield who had raised similar questions on Monday, supported the delay.

Worried about "a heavy negative vote" on the Senate floor, and wanting the measure to pass "as smoothly as possible," Inouye said he wanted to be able to answer questions and avert a big "no" vote, "which might give the wrong impression."

Inouye asked Erich von Marbod, principal deputy assistant secretary of defense, how much of the $70 million appropriated for Vietnam military aid for this fiscal year could be recovered.

Von Marbod, stressing that it still is too early to say with any certainty, said he felt comfortable with an estimate of $17 million but that the figure could be as high as $40 million to $80 million.

Inouye asked von Marbod to return next Tuesday with a firmer estimate, and said he had asked the General Accounting Office to make its own estimate of Defense Department construction costs for the refugee camps on Guam and Wake Island and at Camp Pendleton, Calif., Ft. Chaffee, Ark., and Eglin Air Force Base, Fla.

Although the first waves of refugees were highly skilled, well-educated and relatively prosperous, those now in the western Pacific "are different in a number of important respects from most of those who have already landed in the United States," Kennedy said.

"Few speak English, and fewer still comprehend the implication of their plight as refugees. In fact, many of the refugees fled in panic from conflict and violence—as Vietnamese have fled for years—and many give the impression of not fully understanding where they are or why they got there."

Kennedy and representatives of private voluntary agencies helping refugees resettle predicted that thousands would choose to return to South Vietnam.

[From the Philadelphia Inquirer, May 13, 1975]

McGovern's Words Have a Hollow Ring

(By John D. Lofton, Jr.)

WASHINGTON.—Without a doubt, he is it. No contest. The man, if indeed he is a man, towers head and shoulders above all challengers. George McGovern is the most immoral hypocrite on the American political scene today.

Anyone who feels this is an overly harsh indictment has only to consider the South Dakota Democrats' remarks about the Vietnam refugees and contrast them with the unctuous moralisms this son of a Methodist minister was preaching in his presidential campaign three years ago.

Over and over in 1972, McGovern's heart repeatedly bled as a result of a matter he said had literally become an obsession for him, something that had "weighed on my conscience for nine years": The thousands of Asians burning, bleeding and dying in Indochina, many of them innocent children, many old people but none with any direct responsibility for the conflict that took their lives.

In a Truman Day Award Dinner in St. Louis, in October of 1972, McGovern observed that our nation was born in a noble vision of human existence, noting:

"The faith of our fathers was cherished by millions who followed after them. From a hundred different lands and every continent, immigrants came to America, not because they believed the streets were paved with gold, and not merely for jobs and opportunity, but because here they hoped to find a new birth of freedom for themselves and their children, a new liberation of spirit."

Declaring that almost every country in the world is a country because its people share a common culture, McGovern pointed out that America, however, was different.

"America is a land of diversity discovered by an Italian commissioned by the queen of Spain. Our independence was won by men named Kosciusko, Von Steuben, and Lafayette, as well as Jefferson, Adams and Paine.

"Chinese Americans built the transcontinental railroad from the West, and at Promontory Point in Utah they met Irish-Americans who were building it from the East. Our culture has been diversified and enriched by the American Indians, the black Americans, and the Spanish-surnamed Americans. Every language that is heard in the world today has been heard within our borders. Every religious creed finds its expression here."

This same month, at Wheaton College in Wheaton, Ill., McGovern spoke passionately of how his religious convictions shaped his view of America's destiny. He declared:

"Some Christians believe that we are condemned to live with man's inhumanity to man—with poverty, war and injustice—and that we cannot end these evils because they are inevitable. But I have not found that view in the Bible.

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

"While we know that the Kingdom of God will not come from a political party's platform, we also know if someone is hungry we should give him food; if he is thirsty, we should give him drink; if he is a stranger, we should take him in; if he is naked, we should clothe him; if he is sick, we should care for him; and if he is in prison we should visit him."

Then McGovern quoted the Lord: "For inasmuch as you have done it unto the least of these my brethren, you have done it to me."

So, now, with President Ford's courageous decision to rescue some 50,000 Vietnamese from communism—60 percent of whom are children—Sen. McGovern has been presented with the golden opportunity to practice what he has preached.

As a member of the U.S. Senate, he is in a position to vote money to give food to those who are hungry; drink to those who are thirsty; and shelter to those strangers who need to be taken in.

His reaction? Forget them.

These thousands of new Americans, so desperately in need of bread, he hands a stone. The operation that rescued them, he calls the "final blunder" of the war.

In his opinion, but he does not say how, it would be "in the best interest" of those who fled communism to now return to communism.

In 1942, George McGovern won the South Dakota Peace Oratory Contest with a speech titled, "My Brother's Keeper." If he has an ounce of moral decency left in him, which I seriously doubt, he should now return this award. But if he doesn't, the people who gave it to him should demand that he give it back.

Vietnam Refugee Assistance Act

(Remarks by Senator George McGovern, U.S. Senate, May 5, 1975)

Mr. McGovern. Mr. President, I introduce for appropriate reference a bill to assist refugees of Vietnam.

The final blunder of Vietnam may be that the Administration has chosen evacuation of nearly 100,000 Vietnamese as a substitute for accommodation in their own country. That policy should be reversed. Ninety percent of the Vietnamese refugees would be better off going back to their own land.

America will not turn away those few who might be endangered by a return to their homeland. But I have never thought that more than a handful of government leaders were in any real danger of reprisals. The great majority of Vietnamese refugees do not fall into that category. Most of them left in panic out of fear of a bloody final battle for Saigon that did not materialize. Nor is it likely that the new government will engage in the bloodbath our policymakers have talked about so much. The Saigon government has already given orders that the people are not to be molested or their personal belongings seized. That is more respect for the people than Thieu's army ever demonstrated.

It is also apparent from news accounts that the procedure for selecting evacuees on the basis of the risk of recrimination broke down entirely. Thousands of people were taken out at random and thousands of others simply headed out to sea on their own to be picked up by American ships.

I suggest that our program for dealing with these refugees should include as the highest priority steps to facilitate their early return to Vietnam.

We should express to the new government in South Vietnam our interest in implementing such a policy. We should make transportation available and we should stand ready to assist in every possible way in reuniting these people with their families and their country on a voluntary basis.

My bill would permit the use of either commercial carriers or American ships and planes to return any refugees who wish to go back to Vietnam now that the panic is subsiding. I fully believe that it will be in the best interest of the Vietnam refugees to return to their own country.

S. 1626

A bill to assist refugees from Vietnam who wish to return to their native country

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 "Vietnam Refugee Assistance Act of 1975".

SEC. 2. It is the sense of Congress that Vietnamese refugees who would not be physically endangered by a return to Vietnam should be offered an opportunity to return to that country.

SEC. 3. (a) The President shall inquire of the Government of South Vietnam, either directly or through intermediaries, concerning permission to reenter Vietnam for refugees who were evacuated. Such inquiries shall include an offer on behalf of the United States to provide transportation and to assist with other arrangements.

(b) At the earliest practicable date the President shall direct that a survey be taken among refugees from Vietnam to determine which of them would choose to return. For

those choosing to return, the President is authorized to provide transportation through the use of commercial carriers or, if the Government of South Vietnam agrees, of military transport.

SEC. 4. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

[From the CONGRESSIONAL RECORD, May 6, 1975]

VIETNAMESE REFUGEES

Mr. HUGH SCOTT. Mr. President, every now and then an idea comes along that is so appalling as to shock the conscience, so devoid of reality as to cause one to wonder in some awe as to its origins.

A statement was made yesterday of that kind in a proposal that 90 percent of the Vietnamese refugees be sent home. I had not thought the day would come when we would make that kind of statement. I regret that it was made. It shows a complete absence of understanding of the situation.

The statement says:

"The administration has chosen evacuation of nearly 100,000 Vietnamese as a substitute for accommodation in their own country. That policy should be reversed. Ninety percent of the Vietnamese refugees would be better off going back to their own land."

Nearly 700,000 Vietnamese left North Vietnam at one point walking to escape oppression. Those Vietnamese who poured into American planes and aboard American ships, who went into ships of other nations and of their own, who escaped and were received in this country, were not the product of an administration's choice, this administration's choice, to evacuate them as a substitute for accommodation. They left because they were afraid of their lives. They left because they did not want to be killed. Any governmental attempt to send them back would be a people-killing measure and an official sanction by this Government of murder in the first degree.

Now, this is not the way the statement is phrased. It is phrased that they go back if they want to.

To characterize that as other than silly would be kind. In the first place, Ambassador Brown has stated and informed me this morning again that any South Vietnamese who wish to return may do so. They are being asked at the resettlement locations if they wish to return. Their answer is noted in writing.

So far 45 of the 125,000—45 people—have asked to be returned. They were the 45 who were swept into the planes by Thailand soldiery, and whose families are still in Vietnam. Those 45 will be returned.

The people who make these suggestions are also the people who listened to Madame Binh, as other Senators will recall, asserting that nothing will happen to these people.

Well, 2,000 buried in mass graves in Hue will give the lie to that; thousands and thousands of others killed will give the lie to that; the 55,000 executed by Ho Chi Minh in a 4-year period from 1954 onward will give the lie to that; the 80 Cambodian officers above the rank of lieutenant, and their wives, who were recently killed in Cambodia, will give the lie to that.

We read of a horse who won the Derby recently named Foolish Pleasure. I do not know what foolish pleasure can be had from these foolish suggestions, but I hope that Congress and the American people will reject out of hand this kind of foolish approach. There is no pleasure to be had in it, foolish or otherwise.

There is no need for legislation providing for the use of American ships and planes to return any refugees. One plane will take the 45 back. Others can go if they wish.

There are only 35,000 heads of families in this group, and that is the resettlement problem; 125,000 can be taken care of if placement is found for these 35,000 heads of families.

Sixty percent of these refugees are children. When have the American people ever turned their backs on helpless children? What American can look into the face of these children and say, "I will send you back at the risk of death and destruction of your entire future"?

What American can deny the right of a child to live in this country and the right of children to be taken care of? What American could deny the actions of the voluntary agencies that have committed themselves to these programs?

No, Mr. President, this kind of talk shocks the conscience; it is foolish. It ought to be reconsidered.

To make such a statement, in my opinion, is a misfortune, I am sorry it was made. I do not think it will have any more impact than that of marshmallow on a feather bed, and its chance of passage is about the same as that of a celluloid dog chasing an asbestos cat through hell.

Mr. McGOVERN. Mr. President, I yield the floor.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGE REFERRED

As in executive session, the President pro tempore laid before the Senate a message from the President of the United States submitting the nomination of Maj. Gen. Martin G. Colladay to be lieutenant general, which was referred to the Committee on Armed Services:

REPORT OF THE NATIONAL COUNCIL ON EDUCATIONAL RESEARCH—MESSAGE FROM THE PRESIDENT

The PRESIDENT pro tempore laid before the Senate a message from the President of the United States transmitting the annual report of the National Council on Educational Research, which, with the accompanying report, was referred to the Committee on Labor and Public Welfare. The message is as follows:

To the Congress of the United States:

I am pleased to send you the first Annual Report of the National Council on Educational Research as required by Public Law 92–318, Title III (Section 405(c)(3)(f) of the General Education Provisions Act, as amended).

The Council is the policy-making body of the National Institute of Education which was created by the Congress to provide national leadership in the conduct of educational research and development.

I remain committed to a strong Federal role in research and development in education and to support the National Institute of Education and the National Council on Educational Research as the primary vehicles responsible for the Federal role. The Institute is now well advanced in its program directed toward specific and pressing educational problems.

The National Council on Educational Research is providing guidance to the Institute during the development of this program.

I know that the Congress will join with the Administration in supporting and strengthening the National Institute of Education and in encouraging the National Council on Educational Research to continue providing the vigorous policy direction and advice which will assist the Institute to meet its goals.

GERALD R. FORD.

THE WHITE HOUSE, *May 14, 1975.*

MESSAGES FROM THE HOUSE

At 10:30 a.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the bill (H.R. 5357) to authorize appropriations to the Secretary of Commerce for the promotion of tourist travel, in which it requests the concurrence of the Senate.

ENROLLED BILL SIGNED

At 1:15 p.m., a message from the House of Representatives delivered by Mr. Hackney, one of its reading clerks, announced that the Speaker has signed the enrolled bill (H.R. 4975) to amend the Rail Passenger Service Act to provide financial assistance to the National Railroad Passenger Corporation, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore.

At 3:29 p.m., a message from the House of Representatives delivered by Mr. Hackney announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the resolution (H. Con. Res. 218) setting forth, on an aggregate basis only, the congressional budget for the U.S. Government for the fiscal year 1976.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 4700) to authorize appropriations to the National Aeronautics and Space Administration for research and development, construction of facilities, and research and program management, and for other purposes; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. TEAGUE, Mr. FUQUA, Mr. DOWNING of Virginia, Mr. SYMINGTON, Mr. FLOWERS, Mr. MILFORD, Mr. ROE, Mr. MOSHER, Mr. WINN, and Mr. WYDLER were appointed managers of the conference on the part of the House.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

A petition seeking a redress of grievances from a citizen of Lyons, Ill.; to the Committee on Government Operations.

A petition seeking a redress of grievances from a citizen of Bowie, Md.; to the Committee on Government Operations.

Mr. MATHIAS. Mr. President, I recently received three resolutions adopted by the Maryland State Senate regarding

the earnings of persons receiving social security benefits, Foster Parents Day, and medicare, medicaid, and food stamps.

I ask unanimous consent that these resolutions be laid before the Senate and appropriately referred.

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

Senate Resolution No. 74, adopted by the Senate of the State of Maryland; to the Committee on Finance:

"SENATE RESOLUTION No. 74

"A Senate Resolution concerning earnings of Persons Receiving Social Security Benefits for the purpose of requesting appropriate action by the Congress of the United States to make it lawful for all persons over 65 years of age to earn unlimited income

"Whereas, Many senior citizens desire to be productive and useful; and

"Whereas, Many find that their income is not adequate during times of inflationary living costs; and

"Whereas, Many individuals could and would work at full-time or part-time positions; now, therefore, be it

"Resolved by the Senate of Maryland, That the United States Congress is requested to lower the age for persons to earn unlimited income, from 72 to 65 years of age; and be it further

"Resolved, That a copy of this Resolution be sent to the Maryland Congressional Delegation: The following Senators are Charles McC. Mathias, Jr., J. Glenn Beall, Jr., Senate Office Building, Washington, D.C. 20510; The following Representatives are Robert E. Bauman, Clarence D. Long, Paul S. Sarbanes, Marjorie S. Holt, Gladys N. Spellman, Goodloe E. Byron, Parren J. Mitchell, Gilbert Guide, House Office Building, Washington, D.C. 20515."

Senate Resolution No. 63, adopted by the Senate of the State of Maryland; to the Committee on the Judiciary:

"SENATE RESOLUTION No. 63

"A Senate resolution concerning Foster Parents Day for the purpose of requesting the Governor to declare the second Sunday in April Foster Parents Day in recognition of the devoted men and women of the State of Maryland who give their time, money and hearts to disadvantaged children throughout the State

"Whereas, There is a need to emphasize the role of the devoted men and women of the State of Maryland who give their time, money and hearts to disadvantaged children throughout the State; and

"Whereas, These children, as well as the entire State, should have an opportunity to demonstrate special gratitude for these men and women; and

"Whereas, We honor our natural mothers and fathers on special Sundays, but there is no day set aside for the specific appreciation of Foster Parents; now, therefore, be it

"Resolved by the Senate of Maryland, That the Governor of Maryland is requested to designate the second Sunday in April as 'Foster Parents Day'; and be it further

"Resolved, That it is requested that "Foster Parents Day" be on the second Sunday of April in each calendar year hereafter; and be it further

"Resolved, That copies of this Resolution be sent to each member of the Maryland Congressional Delegation with the suggestion that action be taken in Congress to designate the second Sunday in April 'National Foster Parents Day.' "

Senate Resolution No. 14 adopted by the Senate of the State of Maryland; to the Committee on Finance:

"SENATE RESOLUTION No. 14

"A Senate resolution concerning Medicare, Medicaid and Food Stamps for the purpose of opposing the federal proposal to increase the cost of Medicare, Medicaid and food stamps.

"Whereas, The Republican Administration in Washington has proposed to weaken the Medicare and Medicaid programs; and

"Whereas, This proposal would shift additional costs onto the shoulders of America's elderly; and

"Whereas, It is unfair to hang the millstone of inflation around the necks of the elderly poor; and

"Whereas, In addition to increased Medicare and Medicaid costs there is a further proposal to increase, as of March 1st, the cost of food stamps for elderly poor; and

"Whereas, Under the food stamp proposal a single elderly person with a total monthly income of $185, the cost of food stamps would increase from $36.00 per month to $55.50; and

"Whereas, It is a recognized fact that an elderly person living on a set monthly income has the greatest difficulty surviving because of continuing inflation; now, therefore, be it

"Resolved by the Senate of Maryland, That the United States Senators and House Members of the Maryland delegation are requested to oppose vigorously these unfair additional financial burdens on the elderly poor of our State and Nation; and be it further

"Resolved, That copies of this Resolution be sent to the following members of Congress: Senators Charles McC. Mathias, Jr., and J. Glenn Beall, Jr., Senate Office Building, Washington, D.C. 20510; and Representatives Robert E. Bauman, Goodloe E. Byron, Gilbert Gude, Marjorie S. Holt, Clarence D. Long, Parren J. Mitchell, Paul Sarbanes, and Gladys Spellman, House Office Building, Washington, D.C. 20510."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HUDDLESTON, from the Committee on Agriculture and Forestry, with amendments:

S. Res. 122. A resolution expressing to the Secretary of Agriculture the sense of concern felt by the Senate for the present plight of potato growers across the country (Rept. No. 94–135).

By Mr. HARTKE, from the Committee on Commerce, without amendment:

S. 1462. A bill to amend the Federal Railroad Safety Act of 1970 and the Hazardous Materials Transportation Act to authorize additional appropriations, and for other purposes (Rept. No. 94–136).

By Mr. McCLELLAN, from the Committee on Appropriations, with amendments:

H.R. 5899. An Act making supplemental appropriations for the fiscal year ending June 30, 1975, and for other purposes (Rept. No. 94–137).

HOUSE BILL REFERRED

The bill (H.R. 5357) to authorize appropriations to the Secretary of Commerce for the promotion of tourist travel, was read twice by its title, and referred to the Committee on Commerce.

S. 1632—ORDER FOR STAR PRINT

Mr. MOSS. Mr. President, I ask unanimous consent that there be ordered a star print of the bill (S. 1632) to authorize in the Energy Research and Development Administration a Federal program of research, development, and demonstration designed to promote electric vehicle technologies and to demonstrate the commercial feasibility of electric vehicles, which I introduced for myself and Senator HUMPHREY on May 5. Through an inadvertence, the last page of the bill was left out.

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

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. HUGH SCOTT:

S. 1731. A bill for the relief of Mamerto C. Comia. Referred to the Committee on the Judiciary.

S. 1732. A bill for the relief of James Torgboy Saye. Referred to the Committee on the Judiciary.

By Mr. TALMADGE (by request):

S. 1733. A bill to amend the Farm Credit Act of 1971 to enlarge the access of production credit associations to Federal district courts. Referred to the Committee on Agriculture and Forestry.

By Mr. PROXMIRE:

S. 1734. A bill to prohibit the Federal Home Loan Bank Board from permitting Federal savings and loan associations to offer variable interest rates mortgages unless authorized by law. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. PEARSON:

S. 1735. A bill to require the Budget and the reports of the Congressional Budget Committees to contain information and data on the impact of Federal borrowing. Referred to the Committee on Government Operations.

By Mr. McINTYRE:

S. 1736. A bill to incorporate the National Ski Patrol System, Incorporated. Referred to the Committee on the Judiciary.

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

S. 1737. A bill to amend the Public Health Service Act to encourage the establishment of uniform standards for licensing and regulation of clinical laboratories, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. BUCKLEY:

S. 1738. A bill to authorize the Secretary of the Navy to transfer ownership of two naval vessels no longer needed by the Navy to the city of New York, N.Y. Referred to the Committee on Armed Services.

S. 1739. A bill to authorize the Secretary of the Interior to establish a National Law Enforcement Heroes Memorial within the District of Columbia, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

S. 1740. A bill to reestablish and extend the program whereby payments in lieu of taxes may be made with respect to certain real property transferred by the Reconstruction Finance Corporation and its subsidiaries to other Government departments. Referred to the Committee on Government Operations.

By Mr. McGOVERN:

S. 1741. A bill for the relief of Photios N. and Panagiota Tsiakalos. Referred to the Committee on the Judiciary.

By Mr. BROOKE (for himself and Mr. METCALF):

S. 1742. A bill to amend the Federal Energy Administration Act of 1974 in order to provide for the prohibition of certain practices which encourage additional use of electricity and natural gas. Referred to the Committee on Commerce.

By Mr. WILLIAMS (for himself and Mr. JAVITS):

S. 1743. A bill to provide improved safety and health standards for railroad employees, and for other purposes. Referred to the Committee on Labor and Public Welfare and the Committee on Commerce, jointly, by unanimous consent.

By Mr. MOSS (for himself, Mr. PHILIP A. HART, Mr. MAGNUSON, and Mr. MANSFIELD):

S. 1744. A bill to regulate commerce by discouraging the needless depletion of natural resources through programs and incentives for recycling and conservation, and for other purposes. Referred to the Committee on Commerce.

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

S. 1745. A bill to facilitate the economic adjustment of communities, industries, and workers who may be substantially and seriously affected by reductions in Defense contracts and facilities which are undertaken to realign Defense expenditures with changed national security requirements and to prevent the ensuing dislocations from contributing to or exacerbating recessionary effects on the aforementioned groups. Referred, by unanimous consent, jointly, to the Committee on Armed Services, the Committee on Banking, Housing and Urban Affairs, the Committee on Government Operations, the Committee on Finance, and the Committee on Labor and Public Welfare.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. TALMADGE (by request):

S. 1733. A bill to amend the Farm Credit Act of 1971 to enlarge the access of production credit associations to Federal district courts. Referred to the Committee on Agriculture and Forestry.

Mr. TALMADGE. Mr. President, at the request of the Farm Credit Administration, I am today introducing a bill to amend the Farm Credit Act of 1971. The bill would eliminate any restrictions on production credit associations to sue and be sued in Federal district courts.

I ask unanimous consent that the letter from the Governor of the Farm Credit Administration explaining the need for that legislation be printed in the RECORD at this point.

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

FARM CREDIT ADMINISTRATION,
Washington, D.C., May 9, 1975.

Chairman, Senate Committee on Agriculture and Forestry, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN TALMADGE: The Federal Farm Credit Board, this Agency's top policy-making body, has endorsed the proposal that would enlarge the access of production credit associations to Federal district courts. This proposal in bill form is enclosed. It would delete from current law those provisions which now preclude the Federal district courts from entertaining actions by or against production credit associations on the same footing as for other petitioners.

There are 432 production credit associations throughout the United States which make loans to farmers, ranchers, and producers and harvesters of aquatic products. The Farm Credit Act of 1933, under which the production credit associations were established, restricted their access to the Federal district courts. The argument against access was based on the remoteness of the Federal courts to farmers. Consequently, it was thought to be more satisfactory to have the resolution of PCA matters in State courts. The Farm Credit Act of 1971, under which PCAs now operate, similarly restricts PCA access to the Federal district courts except in limited circumstances.

This proposal would simply amend the Farm Credit Act of 1971 to eliminate any restrictions on production credit associations to sue and be sued in Federal district courts. Then, all Farm Credit institutions—Federal land banks, Federal land bank associations, Federal intermediate credit banks, banks for cooperatives, and production credit associations—will have the same access to the Federal district court system.

NEED

The Farm Credit Act of 1971 contains, among several new authorities, one which allows production credit associations to make loans to producers and harvesters of aquatic products. In making such loans, production credit associations frequently find it prudent and desirable to take liens on fishing boats. These liens are called "preferred ship mortgages." The Maritime laws of the United States, however, place exclusive jurisdiction of the foreclosure of preferred ship mortgages in the Federal district courts.

One of the factors on which all PCA loan decisions are made involves collateral. The collateral needs are usually dictated by the strengths and weaknesses of other credit factors. The collateral taken must reasonably protect the lender, provide the necessary control of equity and repayment, and leave the borrower in a position to constructively manage his business. Under present circumstances, the difficulty in enforcing a lien of a preferred ship mortgage, if that becomes necessary, is an impediment to financing fishermen.

EFFECT ON PRODUCTION CREDIT ASSOCIATIONS

The amendment of the Farm Credit Act to permit production credit associations access to the Federal district courts will provide a mechanism by which the associations themselves can enforce a lien on ships if the need arises.

The adoption of the proposal will also give PCAs the same access to the Federal district courts as is enjoyed by private citizens, corporations, and other legal entities.

EFFECT ON BORROWERS

The ability of a production credit association to take an enforceable lien on a fishing vessel, just as it now can on a farmer's property, equipment, or livestock, will make credit service more readily available to producers and harvesters of aquatic products.

EFFECT ON OTHERS

The proposal, if enacted into law, will permit persons and other entities to pursue their claims against production credit associations in Federal district courts, if jurisdictional elements are present, the same as if the defendant were not the PCA.

Access to Federal district courts would result in little, if any, additional costs to PCAs. Improved transportation and communications permit ready access to Federal district courts by everyone and, therefore, the proposal should not result in significant increased costs to litigating parties.

The proposal has the endorsement of Federal intermediate credit banks and production credit associations involved in loans to producers and harvesters of aquatic products. No known opposition to the proposal exists and none is expected.

The Farm Credit Administration is authorized by the Farm Credit Act of 1971 to recommend legislative changes in the Act directly to Congress. Therefore, it has not been necessary to submit this proposal to the Office of Management and Budget for clearance.

Sincerely,

W. M. HARDING,
Governor.

By Mr. PROXMIRE:

S. 1734. A bill to prohibit the Federal Home Loan Bank Board from permitting Federal savings and loan associations to offer variable interest rates mortgages unless authorized by law. Referred to the Committee on Banking, Housing and Urban Affairs.

VARIABLE RATE MORTGAGES

Mr. PROXMIRE. Mr. President, I introduce for appropriate referral a bill to prohibit the Federal Home Loan Bank Board to permit Federal savings and loan associations to offer variable rate mortgages unless specifically authorized by the Congress. The need for this legislation has been prompted by proposed regulations published by the Bank Board last February which would permit Federal savings and loan associations to offer variable rate mortgages. The Board has indicated it plans to go ahead with these regulations unless it receives a strong signal of disapproval from Congress.

Last Thursday the House of Representatives by a vote of 291 to 104 approved a bill similar to the one I am introducing today. Since the House of Representatives has expressed itself so decisively on this issue. I would think the Bank Board would rescind its proposed regulations on variable rate mortgages. Nonetheless, I believe the issue also deserves consideration by the Senate Committee on Banking, Housing and Urban Affairs and the full Senate. For that reason, I am introducing a companion bill to prohibit the Board's regulations from taking effect unless and until authorized by the Congress.

Mr. President, following the publication of the Board's regulations on variable rate mortgages, the Senate Committee on Banking, Housing and Urban Affairs held 4 days of hearings on the Board's regulations—April 14 through April 17. These hearings revealed that there is considerable opposition to the concept of variable rate mortgages on the part of consumer organizations, labor unions, and academic experts. The arguments against the variable rate mortgage concept raised by these witnesses include the following:

First, variable rate mortgages transfer the cost of an anticipated increase in interest rates from the lender to the borrower. Such an arrangement might be justified if both parties had an equal knowledge of financial markets and an equal ability to adjust to inflationary developments. However, this is not the case in the home mortgage business. The average person buys a home only once or twice in his lifetime and is in no position to judge whether he is being charged a fair rate, given the additional risk he would assume on a variable rate mortgage. Moreover, the average family would have greater difficulty in adjusting to higher mortgage payments compared to a large financial institution which has

a range of options for increasing its income during a period of rising interest rates.

Second, variable rate mortgages will tend to restrict homeownership opportunities to upwardly mobile borrowers who would be in a better position to afford an increase in monthly payments. Those families whose incomes are relatively fixed would find it difficult to obtain a mortgage loan under the variable rate mortgage proposal. These tend to be working class, middle-income families, many of whom have already been priced out of the housing market.

Third, the variable rate mortgage proposal could exacerbate the upward shift in interest rates during a period of tight money. This would come about if thrift institutions bid more aggressively for funds with the knowledge that they could pass the higher cost of money on to their existing mortgage holders. This increased ability of thrift institutions to bid for funds would drive up interest rates in all financial markets. However, because homebuyers are unable to compete for credit with large corporations or the Federal government, the housing sector of the economy would still wind up with about the same share of the existing credit resources. In the final analysis, variable rate mortgages are simply a device for redistributing income from the debtor class to the creditor class.

Even if these inherent difficulties in the variable rate mortgage concept could be overcome, the hearings by the Senate Banking Committee also indicated that the consumer safeguards included in the Bank Board's proposed regulations contained a number of serious deficencies. For example, the lender was given the option of selecting the index to be used in determining changes in the interest rate; lenders were not required to offer buyers a clear and meaningful option between a fixed rate mortgage and variable rate mortgage; escalation of the interest rate was permitted during the first 3 years of the mortgage contract, in direct violation of the law in the State of Wisconsin and perhaps other States; and the lender was permitted under certain circumstances to increase the interest rate on the loan by as much as 2½ percentage points at one time. If exercised, this would result in an increase in monthly payments on a typical loan by as much as $55.

In response to some of the criticisms raised against variable rate mortgages during the hearings held by the Senate and House banking committees, the Bank Board has recently indicated its intention to revise and strengthen the consumer safeguards contained in the proposed regulations. I commend the Bank Board for moving in a direction to protect the borrower against some of the hazards involved in the use of variable rate mortgages. However, I believe the question of variable rate mortgages is so important that any decision on the use of these mortgages and appropriate safeguards should be left to the Congress and not to the Home loan Bank Board. In that connection, I might point out that one of the industry witnesses testifying in favor of the Board's regulations on variable rate mortgages freely acknowledged that the limited safeguards contained in the Board's proposal were really "political" and were put in in order to convince the Congress and other critics that variable rate mortgages were in the public interest. Given this perspective on the part of the savings and loan industry, it is safe to predict that if the Board's regulations go into effect, the Board will be under substantial pressure within a year or two to weaken the consumer safeguards contained in the Board's original regulation.

If the Congress does ultimately conclude that variable rate mortgages serve a useful purpose—I might add that I have severe doubts that they do—then I feel strongly that the terms and conditions of variable rate mortgages, together with the consumer safeguards, should have a statutory base rather than a regulatory base. I have no reason to believe that the present members of the Home Loan Bank Board are not doing an effective job in regulating the savings and loan industry. Notwithstanding this record, I do not believe the Board should be delegated the sweeping power to determine all of the terms and conditions of a mortgage loan contract or to protect borrowers from unfair contractual provisions. These responsibilities belong to the Congress and should not be delegated to a regulatory body whose perspective and view is inevitably associated with the industry it regulates.

For these reasons, Mr. President, I support legislation to prohibit the Board's regulations on variable rate mortgages from taking effect. This prohibition, if enacted into law, will give Congress further opportunity to study and investigate all of the advantages and disadvantages of variable rate mortgages. It is conceivable that an appropriate statute can be devised with adequate consumer protections built in. I would not want to make a final judgment that the variable rate proposal should never under any circumstances be implemented. Nonetheless, enough concern has been raised about the Bank Board's proposed regulations that I believe the best course of action for the Congress to take is to prohibit any action by the Board pending further study by the Congress.

By Mr. PEARSON:

S. 1735. A bill to require the Budget and the reports of the Congressional Budget Committees to contain information and data on the impact of Federal borrowing. Referred to the Committee no Government Operations.

THE FEDERAL BORROWING IMPACT ACT OF 1975

Mr. PEARSON. Mr. President, I am today introducing legislation which would require both the administration and Congress to provdie estimates regarding the potential impact of budget deficits on financial markets. Such an analysis of the budget impact is long overdue and would constitute an invaluable tool to economic policymakers to aid them in determining how much pressure budget deficits put on the marketplace. While special analysis E of the 1976 budget addresses the impact that the Federal Government has on financial markets, it does so only in retrospect, citing past trends, without making relevant projections about the future. My proposal would eliminate this deficiency and would result in authoritative predictions which could be instrumental in resolving the current debate over the impact of the budget on financial markets.

Mr. President, the United States is presently in the grip of the most sustained and serious economic slump since the Great Depression. To combat this deteriorating situation, the administration, heeding the advice of most leading economists, submitted an ambitious budget proposal to Congress designed to provide an economic stimulus to the economy. It is now projected that the Federal Government may spend some $332 billion in fiscal year 1975 and more than $356 billion in fiscal year 1976. Federal expenditures will far outpace receipts; and it is expected that the Federal Government could wind up with a $40 to $50 billion deficit for the current fiscal year, and perhaps as high as a $70 billion deficit in fiscal year 1976.

In a normal recessionary period, the impact of government borrowing on private markets is not so keenly felt because credit demand by private borrowers is reduced. However, in the first months of 1975, corporate borrowing has climbed to record levels, fueled by optimistic economic projections, a falling inflation rate, and declining interest rates. The impact of government borrowing becomes a prominent factor in corporate attempts to seek financing for such endeavors as plant construction, production of consumer goods, and housing.

The Government will be in direct competition for available capital with private borrowers, creating what Henry Kaufman, economist and general partner of Salomon Bros., have called a "vicious struggle for funds between private borrowers and the Government." This competition between the Government and the private sector for the investment dollar will inevitably be decided in the Government's favor. Investors turn to Government securities because of their guaranteed income and negligible risk factor. Less credit-worthy borrowers are, therefore, "crowded out" of the investment and credit markets. If they are unable to receive adequate financing, continued economic recovery could be stifled. Additionally, Government demand for private capital could lead to higher interest rates, less credit availability, and a new round of inflation.

The crowding out argument, it should be noted, does not take into account the positive impact of the Federal deficits. The funds borrowed by the Government often go into programs designed to stimulate the economy, such as unemployment compensation, public works projects, defense spending, and housing construction. These funds are also used to assist smaller corporate concerns who have been crowded out of the capital markets because of their low credit ratings.

But to the extent that Government borrowing could impact adversely on ma-

jor private borrowers which are normally considered excellent investment opportunities, crowding out becomes a significant and possibly crippling obstacle on the road to economic recovery. Many small- and medium-sized firms, already threatened by the recession, could be crowded out.

Up to now, little attention has been focused on the crowding out argument. Previously both Government experts and their counterparts in the private sector felt that normal market demand could absorb the impact of increased Federal borrowing. But with rising deficits and increasing demand for credit in the private sector, many experts are beginning to take a closer look at this aspect of Federal fiscal policy. Some observers believe considerable crowding out is already taking place.

During his January 23, 1975, statement before the House Ways and Means Committee, Secretary of the Treasury William Simon stated that—

The deficits anticipated by the President's program will cause some strains in the market.

Simon added:

In the event that the Congress is unwilling to accept the strong discipline the President is trying to impose upon Federal spending, the higher deficits that will result will certainly threaten the private capital markets with intolerable burden. We could quickly clog up those markets and create genuine havoc in the nation's financial system.

At the time Simon testified, the deficit was anticipated to be in the range of $25 billion, but since that time the projected deficit has increased almost threefold according to best estimates.

It is important that both the Government and the private sector begin to focus more attention on this problem. What is needed is an institutional approach, through the creation of a permanent mechanism which will require that Congress and the excecutive branch address on a continuing basis the impact of Federal deficits on the economy.

Approval of the Budget and Impoundment Control Act of 1974 constituted a major step in this direction by forcing attention on the need to determine Federal spending programs on a more orderly basis. However, no specific mention of the impact of Federal borrowing and credit programs on the economy is made in this act. The bill I have proposed meets this need by requiring the President, with the submission of his proposed budget, to report on the following:

First. The impact of Federal borrowing on overall private capital markets, as well as specified markets; that is, short-term, long-term, et cetera;

Second. The amount of credit which will be provided by direct and indirect Federal lending; that is, loan guarantees, and its relationship to credit available throughout the economy;

Third. The amount of borrowing to be undertaken by Government which is not included in the budget and the extent to which such credit will generate credit throughout the economy; and

Fourth. The flow of Federal credit to particular sectors of the economy such as housing, agriculture, small business, education, transportation, or energy research.

In addition to the responsibility of the executive branch in this regard, the bill would place the same requirements on the House and Senate Budget Committees. Their projections would be submitted in the reports which accompany budget resolutions containing proposed spending ceilings for the subsequent fiscal year. It is probable that if differences between executive and legislative spending priorities existed, the calculations of Federal debt and credit would also differ. This, nevertheless, would have a positive effect insofar as Members of Congress and the public would have a better understanding of the impact of each alternative on the overall economy.

In short, Government expenditures, regulations, and tax policies have a direct impact on capital formation, and will either reinforce or frustrate the ability of the private sector to raise the money it needs to sustain and generate economic activity. A high rate of capital formation is necessary in any industrial economy to underwrite expanding productivity and the growth of real per capita income. Low rates of capital growth, by contrast, result in a static or declining standard of living and sluggish economic growth.

In this connection, the New York Stock Exchange has estimated that between now and 1985, there will be an estimated $650 billion shortfall in the amount of capital needed by private enterprise and the amount actually raised. Such a shortfall could severely retard the future performance of the economy and have far-reaching social ramifications in this country. The difficulties associated with capital formation in the years ahead cannot be exaggerated; it is for this reason that we must have a clear understanding of what the projected impact of the financing of the Federal deficit will be.

Mr. President, for the first time, Congress has set a ceiling on the amount it intends to appropriate in the upcoming year. With the passage of House Concurrent Resolution 218, the Congress has taken a significant step in rationalizing its budget machinery. The bill I am introducing today would carry this process one step further. In a society which has allowed more and more government intervention in the private marketplace, it is essential that more emphasis be placed on determining how this intervention affects the economy.

Mr. President, I ask unanimous consent that the text of the Federal Borrowing Impact Act of 1975 be printed in the RECORD at this point.

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

S. 1735

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 "Federal Borrowing Impact Act of 1975".

SEC. 2. 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 subsection:

"(j) The Budget transmitted, pursuant to subsection (a) of this section, for each fiscal year, beginning with the fiscal year commencing October 1, 1977, shall contain a description, analysis, and evaluation of—

"(1) the impact of Federal borrowing on the pool of funds, which will be available for borrowing by all interested persons and governments;

"(2) the impact of Federal borrowing on particular markets, including but not limited to, short-term money markets, long-term capital markets, bond markets, equity markets, and commercial bank loans;

"(3) the amount of credit which will be provided by direct Federal lending under loan programs and indirect Federal lending under loan and obligation guarantee programs, and insurance programs, and the relationship between such credit and all credit;

"(4) the amount of borrowing by, and on behalf of departments, agencies, instrumentalities, corporations, and establishments of the Federal Government which amounts are not included in the Budget, and the extent to which the programs of these departments and establishments will provide or generate credit for other sectors of the economy; and

"(5) the flow of all Federal credit, regardless of form, to particular sectors of the economy, including but not limited to housing, small business, education, agriculture, transportation, and energy research."

SEC. 3. Section 301 of the Congressional Budget Act of 1974 (31 U.S.C. 1322) is amended by adding at the end thereof the following new subsection:

"(e) IMPACT OF BORROWING.—The report required by subsection (d) shall also include an analysis and explanation of—

"(1) the impact of Federal borrowing on the pool of funds, which will be available for borrowing by all interested persons and governments;

"(2) the impact of Federal borrowing on particular markets, including but not limited to, short-term money markets, long-term capital markets, bond markets, equity markets, and commercial bank loans;

"(3) the amount of credit which will be provided by direct Federal lending under loan programs and indirect Federal lending under loan and obligation guarantee programs, and insurance programs, and the relationship between such credit and all credit;

"(4) the amount of borrowing by, and on behalf of, departments, agencies, instrumentalities, corporations, and establishments of the Federal Government which amounts are not included in the Budget, and the extent to which of the programs of these departments and establishments will provide or generate credit for other sectors of the economy; and

"(5) the flow of all Federal credit, regardless of form, to particular sectors of the economy, including but not limited to housing, small business, education, agriculture, transportation, and energy research."

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

S. 1737. A bill to amend the Public Health Service Act to encourage the establishment of uniform standards for licensing and regulation of clinical laboratories, and for other purposes. Referred to the Committee on Labor and Public Welfare.

CLINICAL LABORATORIES IMPROVEMENT ACT OF 1975

Mr. JAVITS. Mr. President, laboratory testing is occupying an increasingly important place in both diagnostic and preventive medicine. In 1972, the most recent year for which statistics are available, an estimated 3 billion laboratory

procedures were performed at an annual cost of $8 billion for laboratory services.

Unfortunately, there is mounting evidence indicating that the quality of laboratory testing is inadequate. I ask unanimous consent that a series of six articles in the Newark Star-Ledger about poor lab conditions, and a Washington Post Potomac magazine article about laboratory testing which offered cause for concern 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. Mr. President, I authored the Clinical Laboratories Improvement Act of 1967, with then Senator MURPHY of California. Today I am introducing with Senator KENNEDY the Clinical Laboratories Improvement Act of 1975 (S. 1737). Our bill would extend the act's coverage to approximately 11,700 independent and hospital laboratories which now operate free of Federal regulation, because too few States have enacted meaningful laboratory legislation. In addition many thousands of physicians perform laboratory services in their offices for their patients. As a result of this vacuum, all these laboratories perform testing services without having to fulfill quality assurance prerequisites, which causes the disturbing findings I have inserted in the RECORD.

In 1967, Senator Murphy and I reintroduced the Clinical Laboratories Improvement Act which was enacted into law, Public Law 90–174. I stated in my individual views of Senate report 974:

> Today adequate medical care is impossible without adequate and efficient laboratories providing information for the diagnosis and treatment of disease and the assessment of the patient's medical condition. Repeated investigations and studies show that an important proportion of clinical laboratories are substandard and have uncovered instance after instance of incorrect diagnosis which have resulted in unnecessary hospitalization, unneeded operations, inappropriate treatment, injury, or even death.

This statement remains as true today as it was in 1967.

Studies indicate that unsatisfactory performance is demonstrated by 10 to 40 percent of laboratories in bacteriological testing; by 30 to 50 percent in various simple clinical chemistry tests; by 12 to 18 percent in blood grouping and typing; by 20 to 30 percent in hemoglobin measurements; and by 20 to 30 percent in measurement of serum electrolytes. This information indicates that erroneous results are obtained in more than 25 percent of all tests analyzed by these studies. These results have been derived from performance evaluation programs where the laboratories know they are being tested, and thus may represent the best which the laboratories can do, according to the Center for Disease Control. Furthermore, one study indicated that in microbiology, 7.6 percent of the interstate laboratory determinations were incorrect, while 16.5 percent of the determinations by other large laboratories were incorrect.

Yet only the interstate laboratories are now regulated by the Clinical Laboratories Improvement Act—CLIA.

An article in the January 1973 Changing Times magazine has pointed out what this could mean in human terms. One study showed that a screening procedure for a type of female cancer either overlooked suspicious cells or wrongly reported malignancy about 30 percent of the time. In another instance, a private laboratory failed to recognize in a pregnant woman an Rh blood factor that could react with the blood of the unborn child and result in delayed therapy which would cause neurological impairment or death. I ask unanimous consent that the Changing Times article be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. JAVITS. Mr. President, the Department of Health, Education, and Welfare is involved directly in many aspects of standard setting through its licensure of interstate laboratories, its authorization of reimbursement for medicare and medicaid benefits and its support of manpower accreditation studies. In addition HEW's Food and Drug Administration has wide powers for regulations and enforcement of standards for clinical materials, and also regulates blood banks.

Yet, there is not one coordinating body in HEW to deal with this large problem.

There are also State programs and voluntary associations involved in laboratory regulation. A 1971 survey showed that 66 percent of all laboratories received some form of approval, but few of the programs involved are comparable to that set up under CLIA. For example, only 14 States presently have laboratory licensing programs. Hospital laboratory regulation is generally left to the Joint Commission on the Accreditation of Hospitals, which examines hospitals generally, but pays little specific attention to their laboratories in particular.

Perhaps the most serious problem is that of overlapping programs. The Department of Health, Education, and Welfare is certainly aware of this problem. To quote from an HEW internal memorandum:

> Today, DHEW has two separately administered, but overlapping, programs for enforcing standards in clinical laboratories. Under Medicare, approximately 3,000 independent and 7,000 hospital based laboratories are certified annually for program participation. Under the Clinical Laboratories Improvement Act of 1967 (CLIA), CDC certifies annually 259 hospital based and 601 independent laboratories which engage in interstate commerce. Virtually all the laboratories licensed by CDC also participate in the Medicare program . . . SSA and CDC administer their survey/certification programs in different ways . . . Not only are standards enforced by different organizations under the Medicare and CDC programs, but also the standards themselves are not identical . . .

Mr. President, I pledged in my previously cited individual views:

> To continue * * * strong interest in clinical laboratory safety * * * review * * * to ascertain * * * the necessity, if any, for further corrective measures.

Certainly, corrective measures are clearly indicated.

To achieve that goal the major provisions of the bill provide:

First. Licensure and establishment of quality standards for all laboratories. Those in hospitals and the laboratory services physicians provide in their offices are included. However, in recognition of the administrative inspection difficulties that may insure—by including the thousands and thousands of individual physician office laboratories—the Secretary may exempt the physican office lab—to such extent and upon such conditions necessary to insure the public health. Although the bill assures that where medicare reimbursement is dealing with such laboratories, the medicare regulations will continue to apply.

Second. Delegation of licensure authority to the States, providing the Secretary of Health, Education, and Welfare determines the State standards meet or exceed the Federal standards. In essence the standards are those elements that eminent laboratory authorities agree result in quality laboratory performance—employment of qualified personnel, maintenance of internal quality control, participation in a proficiency testing program and maintenance of proper laboratory management procedures.

States are encouraged to establish regulatory programs that are equivalent to the program formulated by HEW through cooperative funding—75 percent of cost grants—and the provision of technical advice.

Third. Centralized Federal laboratory activity within a single HEW agency, the Office of Clinical Laboratories. This would consolidate the present fragmentary and duplicative approach to laboratory regulation which results in an unfair burden on clinical laboratory operation. Until now, as previously indicated in the HEW memorandum, three different Federal agencies have had jurisdiction over laboratories.

The office's location—whether in BQA—Bureau of Quality Assurance—or CDC—Center for Disease Control—within HEW is not defined in the bill. However, I believe the hearing record will provide the evidence required for that decision.

An interesting memorandum which the Undersecretary of Health, Education, and Welfare sent to then Senator Bennett in 1973—describing the Bureau of Quality Assurance—provides an interesting insight into how this might be achieved.

The memorandum states:

> I would want to emphasize that the Bureau of Quality Assurance has a number of additional responsibilities other than the PSRO effort, including standard-setting activities as they relate to chronic disease, such as the kidney disease program. As you are well aware, there long has been a need to bring together the Department's efforts in standard-setting, utilization review, and medical care review now being carried out in SSA, SRS, and H. The creation of the Bureau of Quality Assurance will allow this important amalgamation to occur.

Certainly, CDC should be closely involved for it has taken a leadership role and has substantial technical expertise for validation of State programs.

Fourth. An Advisory Council is established, composed of appropriate interested entities and the public. This in-

sures that the States and the Federal Government work together in formulating laboratory programs and policy.

Fifth. The definition of laboratory is broadened to include facilities for collection, processing, and transmission of specimens. This gets at the problem of the need for standards in blood collection activities.

Sixth. The standard-setting function of HEW includes a review of all appropriate personnel directly engaged in the lab testing, not limited as in existing law to merely the supervisory personnel. Model certification procedures are also authorized to be established for technical laboratory personnel.

Seventh. The Secretary is prohibited from making any grants, under other legislative authorities, to any entity or facility which has a laboratory that does not meet the standards established hereunder. And he is authorized to enjoin any laboratory from an activity that would constitute a "significant" hazard to public health, rather than "imminent," as required in existing law.

Mr. President, this measure would provide the American people with protection from the shocking and tragic practices of inaccurate and unreliable lab tests by unregulated clinical laboratories. At the same time it would encourage cooperation and coordination between and among State programs and the states and the Federal Government. Thus, unnecessarily expensive, duplicate and repetitive laboratory enforcement by several States and the Federal Government would not occur. Waste and overlap are discouraged by encouraging States to implement laboratory programs based upon the Federal model.

We are dealing with the health and lives of millions of Americans. I urge my colleagues to support this measure.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 1737

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 "Clinical Laboratories Improvement Act of 1975".

DECLARATION OF FINDINGS

SEC. 2. The Congress finds that—

(1) clinical laboratory testing is a vital element of health care throughout the Nation;

(2) health care in this Nation will only be effective and of high quality if procedures utilized for testing by clinical laboratories assure accurate and reliable results;

(3) it is essential in the public interest that the health and welfare of consumers of health care be protected by requiring that all clinical laboratories comply with uniform standards of performance which assure such accuracy and reliability;

(4) testing in clinical laboratories which is inaccurate and unreliable impairs the effective regulation of those laboratories which operate interstate is injurious to the public health and welfare, destroys markets for testing in laboratories which is accurate and reliable and results in losses to those who operate clinical laboratories and to health care providers and impairs the provision of safe and high quality health care to consumers;

(5) testing in laboratories which do not comply with standards to assure accuracy and reliability can be performed at less expense and thus are able to compete unfairly with the laboratories which do comply with such standards to the detriment of consumers of health care and public generally;

(6) requiring compliance with standards to assure accuracy and liability by laboratories which operate interstate without provision for requiring such compliance by other laboratories would discriminate against and depress interstate commerce and adversely burden, obstruct, and affect such interstate commerce; and

(7) all clinical laboratory testing is either in interstate commerce or substantially affects such commerce and regulation by the Secretary in cooperation with the States as contemplated by this Act are appropriate to prevent and eliminate burdens upon interstate commerce, and to effectively regulate health and welfare of consumers of health care.

SEC. 3. Section 353 of the Public Health Service Act (42 U.S.C. 263a) is amended to read as follows:

"LICENSING OF LABORATORIES

"SEC. 353. (a) DEFINITIONS.—As used in this section—

"(1) the term 'laboratory' or 'clinical laboratory' means a facility for the biological, microbiological, serological, chemical, immuno-hematological, hematological, biophysical, cytological, pathological. or other examination of materials derived from the human body, for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, man, or a facility for the collection, processing, and transmission of such materials for such purposes.

"(2) the term 'interstate commerce' means trade, traffic, commerce, transportation, transmission, or communication between any State or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, and any place outside thereof, or within the District of Columbia.

"(b) PROHIBITED ACTS.—

"(1) No person may solicit or accept, directly or indirectly, any specimen for laboratory examination or other laboratory procedures or otherwise operate a clinical laboratory in any State unless there is in effect a license (applicable to such procedures or operations) for such laboratory issued—

"(A) in the case of any laboratory soliciting or accepting any such specimen in interstate commerce, by the Secretary; or

"(B) in the case of any laboratory located within a State which has been designated by the Secretary pursuant to subsection (o) hereof, by an appropriate officer of that State; or

"(C) in the case of any laboratory located in a State which has not been designated by the Secretary pursuant to subsection (o), by the Secretary until such date as the Secretary so designates such State.

"(2) If the Secretary, upon the recommendation of the Advisory Council, determines that a State program contains and enforces requirements relating to laboratory licensing and performance standards which are more stringent than the standards set forth in regulations issued by the Secretary under this section, a laboratory licensed under (1) (A) of this subsection (b) shall meet those additional requirements of such State program which the Secretary determines the State has appropriately imposed.

"(c) (1) LICENSES ISSUED BY THE SECRETARY.—The Secretary is authorized to issue licenses under this section applicable to all laboratory procedures or only to specified laboratory procedures or categories of laboratory procedures.

"(2) A license issued by the Secretary under this section shall be valid for a period of one year, or such shorter period as the Secretary may establish for any clinical laboratory or any class or classes thereof, and may be renewed in such manner as the Secretary may prescribe.

"(3) The Secretary may require payment of reasonable fees for the issuance and renewal of licenses, but the amount of such fee shall not exceed ——— dollars per annum.

"(d) APPLICATION REQUIREMENT.—A license shall not be issued by the Secretary in the case of any clinical laboratory unless—

"(1) the application therefor contains or is accompanied by such information as the Secretary finds necessary, and

"(2) the Secretary determines that such laboratory will be operated in accordance with the standards delineated in subsection (e) and such other standards as the Secretary (after consultation with the Advisory Council established under subsection (j)) promulgates to carry out the purposes of this section.

"(e) STANDARDS—

"(1) Standards shall be designed to assure consistent performance by the laboratories of accurate laboratory procedures and services, and shall include, among others, standards to assure—

"(A) maintenance of an internal quality control program adequate and appropriate for accuracy of the laboratory procedures and services;

"(B) maintenance of records, equipment, and facilities necessary for proper and effective operation of the laboratory;

"(C) qualifications of the director of the laboratory, and other supervisory and technical personnel, and any other personnel to the extent deemed necessary for adequate and effective operation of the laboratory with respect to the accuracy and reliability of testing performance (which qualifications shall include criteria relating to (i) the extent to which training and experience may be substituted for formal education, and (ii) evidence of continued competency); and

"(D) participation in a proficiency testing program and on-site inspection program acceptable to the Secretary.

"(2) Such other standards shall be designed to assure consistent performance by facilities limited in function to the collection, processing and transmission of materials derived from the human body, as referred to in subsection (a).

"(f) REVOCATION, SUSPENSION, OR LIMITATION.—A laboratory license issued by the Secretary may be revoked, suspended, or limited if the Secretary finds, after reasonable notice and opportunity for hearing to the owner or operator of the laboratory, that such owner or operator or any employee of the laboratory—

"(1) has been guilty of misrepresentation in obtaining a license;

"(2) has engaged or attempted to engage or represented himself as entitled to perform any laboratory procedure or category of procedures not authorized by the license;

"(3) has failed to comply with the standards with respect to laboratories and laboratory personnel prescribed by the Secretary pursuant to this section;

"(4) has failed to comply with reasonable requests of the Secretary for any information or materials, or work on materials, the Secretary deems necessary to determine the laboratory's continued eligibility for its license hereunder or continued compliance with the Secretary's standards hereunder;

"(5) has refused a request from the Secretary or any Federal officer or employee duly designated by the Secretary for permission to inspect the laboratory and its operations

and pertinent records at any reasonable time; or

"(6) has violated or aided and abetted any violation of any provision of this section or of any rule or regulation promulgated hereunder.

"(g) SIGNIFICANT HAZARD TO PUBLIC HEALTH.—Whenever the Secretary has reason to believe that continuation of any activity by a laboratory licensed under this section would constitute a significant hazard to the public health, he may bring suit in the district court for the district in which such laboratory is situated to enjoin continuation of such activity and upon proper showing, a temporary injunction or restraining order against continuation of such activity pending issuance of a final order under this section shall be granted without bond by such court.

"(h) JUDICIAL REVIEW.—(1) Any party aggrieved by any final action taken under subsection (f) of this section may at any time within 60 days after the date of such action file a petition with the United States Court of Appeals for the circuit wherein such person resides or has his principal place of business, for judicial review of such action. A copy of the petition shall forthwith be transmitted by the Clerk of the Court to the Secretary or other officer designated by him for that purpose. The Secretary thereupon shall file in the Court the record on which the action of the Secretary is based, as provided in section 2112 of title 28 of the United States Code.

"(2) If the petitioner applies to the Court for leave to adduce additional evidence, and shows to the satisfaction of the Court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the Court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary and to be adduced upon the hearing in such manner and upon such terms and conditions as the Court may deem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendations, if any, for the modification or setting aside of his original action, with the return of such additional evidence.

"(3) Upon the filing of a petition referred to in paragraph (1) of this subsection, the Court shall have jurisdiction to affirm the action, or to set it aside, in whole or in part, temporarily or permanently. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

"(4) The judgment of the Court affirming or setting aside, in whole or in part, any such action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

"(i) OFFICE OF CLINICAL LABORATORIES.—The Secretary shall establish within the Department of Health, Education, and Welfare an Office of Clinical Laboratories, the purposes of which shall be—

"(1) to centralize the regulatory functions authorized under this section and the laboratory certification and regulation functions presently administered under titles XVIII and XIX of the Social Security Act and under the Federal Food, Drug, and Cosmetic Act, and the Public Health Service Act, and

"(2) to assume responsibility for the laboratory component of other health programs administered and enforced by the Secretary.

The Office of Clinical Laboratories, after consultation with the Advisory Council established under subsection (j) shall establish, within 13 months after the date of enactment of this Act, a uniform set of testing, quality control, personnel, proficiency testing, and other necessary guidelines for clinical laboratories that will assure quality performance and otherwise serve the purposes of this section as well as the purposes of other programs within the Department of Health, Education, and Welfare. The Office of Clinical Laboratories shall report annually to the Congress through the Secretary concerning its activities under this section together with such findings and recommendations as it deems necessary.

"(j) (1) ADVISORY COUNCIL.—There is established in the Department of Health, Education, and Welfare an Advisory Council on Clinical Laboratories (hereinafter referred to as the 'Council'). The Council shall advise, consult with, and make recommendations to the Office of Clinical Laboratories with respect to—

"(A) the development of uniform guidelines relating to laboratory licensing and personnel and performance standards required by this title;

"(B) the implementation and administration of this title;

"(C) the implementation of standards concerning the internal operations of laboratories, including, but not exclusively, recommended methods for carrying out specified laboratory procedures, standards on laboratory kits, and standards with regard to chemical reagents; and

"(D) coordination between the different Federal and State laboratory regulatory programs, including the avoidance of duplicate enforcement. The Council may take appropriate action, if it so chooses for the purposes of revealing problems or developing its recommendations.

"(2) The Council shall be composed of individuals who, as a result of their training, experience, or attainments, are well qualified to assist in carrying out the functions of the Council. The membership shall include representatives of nationally recognized laboratory accrediting bodies, Directors of State laboratory licensing programs, and members of the public.

"(k) GRANT RESTRICTIONS.—No grant or reimbursement which the Secretary is authorized to make, or contract which he is authorized to award, whether to or for any health care facility, including but not limited to health maintenance organizations, hospitals, skilled nursing or intermediate care facilities, or in connection with the procurement and reimbursement for clinical laboratory services shall be entered into unless the laboratory meets the standards established hereunder by the Secretary.

"(1) (1) MODEL CERTIFICATION FOR TECHNICAL LABORATORY PERSONNEL.—The Secretary, in cooperation with apporpriate organizations, associations, and institutions, is authorized to develop a working model or a system of national (non-Federal) certification for technical laboratory personnel. Such certification system shall assure—

"(A) uniform certification standards at a level consistent with quality laboratory performance;

"(B) increased geographic and career mobility;

"(C) continued evaluation of the certification system; and

"(D) consistency with certification procedures developed in the Department of Health, Education, and Welfare.

"(2) There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subsection.

"(m) EXEMPTIONS.—The Secretary may by regulation exempt from the provisions of this section, to such extent and upon such conditions as he may prescribe to insure the public health, any clinical laboratory owned and operated by a licensed physician or osteopath, or group of such practitioners, who perform laboratory tests or procedures, personally or through their employees, solely as an adjunct to the treatment of their own patients. Any such regulation, promulgated under the preceding sentence, shall conform to regulations dealing with such laboratories promulgated under the Social Security Act.

"(n) COORDINATION OF FUNCTIONS.—In carrying out his functions under this section, the Secretary is authorized pursuant to agreement, to utilize the services or facilities of any Federal or State or local public or private non profit agency, organization or institution. The administration of regulatory functions authorized under this section shall be under the direction of and coordinated by the Office of Clinical Laboratories. The Secretary may pay for such services in advance or by way of reimbursement, and in such installments, as he may determine.

"(o) DELEGATION TO STATES.—(1) The Secretary, pursuant to subsection (b)(1)(B), may delegate his authority to issue licenses under this subsection to an appropriate health authority of each State—

"(A) which he determines has enacted a law and has adopted regulations applicable to clinical laboratories which laws and regulations meet or exceed the standards established under this section; and

"(B) which is enforcing the provisions of such laws and regulations with respect to all clinical laboratories within its jurisdiction in a manner which does not discriminate against any type or class of such laboratories.

"(2) The Secretary shall review and approve or disapprove the laws and regulations applicable to clinical laboratories of any State submitted to him and notify the Governor of such State of the results of his review within 180 days of such submission.

"(3) The Secretary shall approve the laws and regulations applicable to clinical laboratories of any State if he determines that such laws and regulations provide for licensing on the basis of standards and other regulatory requirements that impose standards of performance equal to or higher than that imposed by the requirements adopted by the Secretary pursuant to this section and if such State submits an administrative and enforcement plan which shall—

"(A) provide for the administration and enforcement within the State of such laws and regulations in a manner satisfactory to the Secretary;

"(B) designate a single agency in the State as the sole agency, for the administration and enforcement of such laws and regulations;

"(C) contain satisfactory evidence that the State agency designated in accordance with subparagraph (B) will have authority to administer and enforce such laws and regulations in an effective manner;

"(D) contain satisfactory assurances that in the case of any State which has an approved licensure program which exceeds the national standards, as determined by the Secretary under this section, such State shall provide that a laboratory shall be qualified for licensure in such State upon compliance with the additional requirements imposed by the licensure program of such State;

"(E) contain satisfactory assurances that the State coordinates inspections with other State laboratory programs and with the Federal laboratory program authorized by this section so as to avoid unnecessary duplication of enforcement expenditures.

"(F) contain satisfactory assurances that the State enters into reciprocal arrangements with other States and with the Federal government to minimize differences between laboratory programs and enforcement.

"(G) not contain any requirement for licensure to the effect that the individual applying for licensure reside in such State

for a designated period of time prior to the issuance of such license;

"(H) contain satisfactory assurances that each State shall apply any requirements of a personnel licensure or certification program equally to all individuals who apply to be licensed or certified as laboratory personnel in such State, and that each State licesure or certification program shall have only one set of licensure requirements for each class of laboratory personnel;

"(I) provide that the State agency of each State notify the Secretary of any denial of licensure to any laboratory personnel;

"(J) contain any other information which the Secretary may find necessary for purposes of evaluating the adequacy of the State's laws and regulations and of its enforcement of such laws and regulations.

"(4) Whenever the Secretary determines, after reasonable notice and opportunity for hearing to the Governor of any State, that such State no longer meets the requirements of this subsection he shall terminate the authority delegated to such State. Such termination shall not preclude subsequent redeleation to any State which subsequently meets the requirements of this subsection.

"(5) (A) With respect to each State to which authority to issue licenses has been delegated under this subsection, the Secretary shall from time to time but not less often than annually conduct a review including onsite inspection of a random sample of laboratories to determine whether such State continues to meet the requirements of this subsection. In connection with such review, the State under review shall provide the Secretary with such information as he deems necessary to conduct the review.

"(B) The results of any review conducted under this paragraph shall be reported to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Labor and Public Welfare of the Senate.

"(p) Assistance to States For the Development and Administration of a Regulatory Program.—(1) The Secretary is authorized to provide technical assistance to any State agency designated in an administration and enforcement plan submitted pursuant to subsection (o) in developing and administering a program for the effective regulation of clinical laboratories, which assistance shall include—

"(A) assistance in planning and developing an adequate program for the regulation of clinical laboratories, including, proficiency testing;

"(B) assistance in the administration of such a program, and

"(C) assistance in training laboratory personnel (including the provision of instructional material and equipment).

"(2)(A) The Secretary is authorized to make grants to States to assist them in meeting the costs of existing programs and the development and administration of new programs for the regulation of clinical laboratories.

"(B) No grant may be made under this subsection unless an application therefor has been submitted to and approved by the Secretary. Such application shall be submitted in such form and contain such information as the Secretary may reasonably require.

"(C) The amount of any grant made under this subsection shall be determined by the Secretary, but no such grant to any State may exceed 75 percent of such State's cost of administering and enforcing its program of regulation of clinical laboratories.

"(3) No technical or financial assistance under this subsection shall be provided to any State which has not developed an approved administrative plan pursuant to subsection (o).

"(4) There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subsection.

"(q) INSPECTION AUTHORITY.—(1) For purposes of enforcement of this section, officers, employees or agents designated by the Secretary upon presenting appropriate credentials to the owner, operator, or agent in charge are authorized—

"(A) to enter, at reasonable times, any clinical laboratory in any State; and

"(B) to inspect, at reasonable times and in a reasonable manner, such clinical laboratory and all pertinent equipment, materials, containers, records, files, papers, processes, controls, facilities, and all other things therein bearing on whether such clinical laboratory is being operated in compliance with this section and the regulations issued hereunder or otherwise bearing upon violation of this section.

"(2) No inspection authorized under this subsection shall extend to—

"(A) financial data,

"(B) sales data,

"(C) pricing data, and

"(D) personnel data (other than data as to qualifications of personnel performing functions subject to this section).

"(3) Upon completion of any such inspection and prior to leaving the premises, the officer, employee or agent making the inspection shall give to the owner, operator or agent in charge a report which summarizes any conditions or practices observed by him which, in his judgment, indicate a violation of this section. He shall also prepare a written report of his findings and send it to such owner, operator or agent within a reasonable time.

"(4) No officer, employee or agent designated by the Secretary to enter a laboratory and conduct and inspection pursuant to this subsection shall be required to obtain a search warrant from any judicial officer prior to entering any laboratory and conducting any inspection which is within the scope of this subsection.

"(r) VIOLATIONS AND PENALTIES.—Any person who willfully violates any provision of this section or any rule or regulation promulgated thereunder shall be guilty of a misdemeanor and shall, upon conviction thereof, be subject to imprisonment for not more than 1 year, or a fine of not more than $1,000, or both.

EXHIBIT 1

FAULTY ANALYSES CAN CAUSE DEATH; HOW ACCURATE ARE MEDICAL LAB TESTS?

(By Randy Young and Joan Whitlow)

The rapidly-growing science of clinical laboratory medicine is at times practiced in New Jersey by inept, inexperienced and unscrupulous operators who deliver with startling frequency faulty analyses that have resulted in numerous cases of improper medical treatment as well as patients' deaths.

The state's network of 325 registered laboratories—193 independent commercial labs, the remainder located within hospitals—is exposed to a patchwork collection of controls and regulations that provides no single government agency with the power to insure that lab facilities and their personnel are providing the public with quality medical service.

In many cases, there is a complete absence of controls.

Other than laboratory directors, for example, personnel from supervisors on down are unlicensed and unregulated by the state. And while commercial labs participating in the federal Medicare program must submit to state inspections and performance testing, there is no mandatory surveillance effort for all laboratories.

According to Dr. Martin Goldfield, assistant state health commissioner for laboratories and epidemiology, there are between 30 and 40 facilities qualifying as clinical laboratories that have never opened their doors to government inspectors.

When inspection teams do make their rounds, they sometimes find the conditions appalling.

Dirty and broken laboratory equipment soaking in filthy, soapy water; use of reagents outdated since the early 1960; premises strewn with unlabelled vials and specimens, making proper identification next to impossible; inability on the part of lab workers to make the most elementary clinical determinations . . . these are some of the recurring abuses cited in health department inspection reports on several commercial laboratories reviewed by The Star-Ledger.

"Coin-tossing would very likely produce safer bacteriology reports," declared one recent write-up on a north Jersey lab whose director subsequently had his license suspended by the state.

As part of its study, The Star-Ledger ran its own independent test of 20 randomly-selected hospital and commercial labs in a six-county area (Essex, Bergen, Union, Middlesex, Monmouth and Ocean). Each lab was asked to perform a battery of four common and basic determinations (sodium, potassium, uric acid and blood urea nitrogen) on identical samples provided to The Star-Ledger by the State Department of Health.

In no instance did the laboratory know it was being tested.

Of the 17 labs from which results were received and subsequently analyzed by the state, nine recorded results within acceptable range for all four tests. Five laboratories had unacceptable or marginal results for one of the analyses, while the remaining three labs reported in each case multiple errors.

The deviation from the true value permitted by the state before a determination would be labelled "unacceptable" varied between five percent for the sodium and 15 per cent for the uric acid and blood urea nitrogen tests. These are the same acceptability standards applied by the state in its own proficiency testing program and are described by officials as most generous.

All told, the 17 laboratories registered unacceptable or marginal results 22 percent of the time.

Interestingly, the one laboratory which reported gross errors on all four tests was the most expensive commercial facility, charging $35 compared to $24 as the average for the entire group.

Overall, the combined price for the same four tests ranged from $10.50 charged by a north Jersey commercial lab to $45 billed by a north Jersey hospital.

Even more graphically, the health department's own proficiency testing program shows all categories of labs—hospitals, doctor-directed independent and non-doctor-directed independent—doing pitifully bad when asked to analyze performance samples sent to them periodically by the state.

While direct comparisons between categories are hard to make since different numbers of labs in each group participated, the results show:

When asked to test for drugs of abuse, hospitals reported—satisfactory results only 52 per cent of the time, non-doctor-directed labs recorded satisfactory results 65 per cent of the time, and doctor-directed labs reported satisfactory results 71 per cent of the time.

The tests, which began last December, have included 13 hospitals, and 14 independent labs. All laboratories routinely doing such testing were asked to participate, although state officials suspect some labs have continued to stay under cover.

In the field of clinical chemistry, only 52 per cent of 225 hospital and independent labs tested over the period 1964 to 1973 registered acceptable performance (meaning their re-

sults were within the acceptable range 75 per cent of the time or better).

In the field of bacteriology, only 47 per cent of 115 participating hospital labs recorded acceptable results during the testing period 1968 through 1973. In the case of 44 participating doctor-directed labs, only 26 per cent achieved acceptable results, while 33 per cent of the non-doctor-directed labs were found acceptable.

What makes these figures even more dismaying to experts in the field is the fact laboratories will often assign their most competent personnel to handle the proficiency samples since they know they are being tested. Some laboratories are even suspected of sending the testing samples to outside, better equipped laboratories for analysis and yet still passing off the findings as their own.

The tests themselves are based on common and simple determinations. Even so, there has been no significant improvement in laboratory quality over the years as evidenced by the findings of the proficiency testing program.

"A very significant percentage of lab work anywhere will lead to misleading results," stated Goldfield, "It is not a question of the good guys and the bad guys, but rather the fact that laboratories have grown tremendously in New Jersey without adequate growth of training, educational and regulatory mechanisms."

To be sure, many Jersey laboratories, particularly the larger ones which come under the strict arm of the federal government, if they handle interstate trade, maintain responsible operations with competent personnel.

But at its worst, Goldfield emphasized, shoddy laboratory work anywhere can "result in a direct threat to life and can lead to grossly distorted medical care."

The following cases were described by state health officials.

A north Jersey hospital lab diagnosed a disease that killed six newborn infants as caused by a bacteria known as pseudomembramous enterocolitis. The symptoms in the six fatal cases, however, differed from those normally associated with the bacteria.

An investigation by the Department of Health revealed that a disease totally unrecognized by the hospital lab was sweeping the facility. Some babies born at the hospital were taken home, became ill, and then taken to other hospitals where the disease also spread.

The reason the original hospital lab failed to identify the real disease was because its media had become contaminated with the pseudomonas organisms and thus all specimens brought into the lab were showing up with the bacteria. Consequently, newborns were given an improper form of treatment that had no effect on their actual disease.

Before the outbreak was finally brought under control with the proper treatment, 20 babies had lost their lives.

Health department officials said contamination of the lab's media could be traced directly to ineptness on the part of personnel.

Another lab ran a urine test for drug abuse on a young man and reported to the local police that he had been using barbiturates. Word spread and the man was soon tagged as a drug addict. His father, however, remained adamant that his son was not using drugs, and to prove it sent a sample of his own urine to the same lab.

The lab reported back that the father too was using drugs. In both cases, the reports were subsequently proven false.

In addition, some labs that have been labeled wretchedly bad by the health department have continued to receive Medicare recertification by the federal Social Security Administration which administers the health insurance program. In some instances, these labs have received Medicare's top rating.

"I don't see how some of these laboratories get licensed and then get recertified (for Medicare)", remarked Boniface Damiero, chief of Medicaid's bureau of medical care surveillance, who has seen firsthand some of Jersey's labs. "I just don't see how they could pass inspection and stay in business."

For their part, clinical laboratories in Jersey range from a small number of large, highly-sophisticated operations performing complex tests for private physicians, hospitals and other labs, to cramped one-or-two man enterprises working out of basements and even garages of private homes.

Personnel range from pathologists and clinical chemists with years of laboratory experience to technicians or lab assistants just breaking into the field. Several individuals without high school degrees or chemistry backgrounds are still functioning as laboratory directors thanks to a "grandfather clause" written into the 1953 lab director's licensing act permitting the heads of labs at the time to retain their status regardless of their educational histories.

If the standards applied to hospital and independent laboratories are minimal, they are non-existent for the literally thousands of small lab workshops situated inside the private offices of physicians to serve their individual patients. It is here that experts in the laboratory field claim some of the most dubious clinical medicine is practiced.

"You can imagine what kind of results you're getting when the person performing the work is usually a nurse or office assistant totally untrained in lab medicine," commented one observer.

For the most part, physicians confine themselves to simple analyses such as urines and blood sugars, referring the rest to outside facilities.

The best regulated lab facilities in Jersey are the handful engaging in interstate trade. These facilities must meet the rigid standards of the federal government's Center for Disease Control (CDC) headquartered in Atlanta, Georgia. The standards include unannounced on-site inspections (which sometimes last two days), a comprehensive proficiency testing program, maintenance of safety codes and licensing of personnel.

Under a new federal ruling slated to take effect in several weeks, all commercial labs nationwide accepting Medicare business will be required to meet the CDC standards. Some authorities are doubtful of its impact, however, since labs that know they cannot meet the standards may simply drop out of the Medicare program, as some have already done. Since Medicare trade is crucial to the survival of many labs, some of the smaller commercial enterprises may ultimately fold completely.

Hospital labs will remain unaffected by the new federal ruling. Medicare currently accepts certification by the Joint Commission on Hospital Accreditation in lieu of its own certification process. Some hospitals participate voluntarily in performance testing and inspection programs run by the state and national and local professional societies such as the College of American Pathologists and the New Jersey Society of Pathologists.

There is presently no mandatory state inspection or performance testing program for hospital laboratories in Jersey.

Indeed many authorities in the clinical laboratory field maintain it is the maze of voluntary programs and the decided lack of mandatory ones that has wrought such havoc with effective laboratory enforcement.

"Voluntary programs always fail because the most highly trained individuals, those most committed to quality, tend to most actively participate in all voluntary programs," noted one authority. "It's the poor performers who stay away."

What is needed, according to reformists, is a mandatory effort embracing licensure of laboratory personnel, unannounced inspections of lab facilities, and required participation in a comprehensive program of performance testing. To be effective, it is felt this venture should apply to hospital and independent labs without exception, and that it should be administered by a single government agency with adequate resources to do the job.

The State Department of Health has drafted legislation which would attempt to upgrade clinical laboratories through a strict facility licensure and monitoring program. Among other things, the bill would grant the department power to summarily suspend the license of a laboratory which it feels "poses an imminent threat to the public health, safety or welfare . . ."

Officials say the program would prevent laboratories from performing tests which they have neither the competence nor resources to do. Where a lab has demonstrated a weakness in a particular area, the health department's program would require attendance by lab workers at regular workshop sessions held by the state.

Many of the lab practitioners themselves strongly endorse a revamped system of regulating their facilities, providing it applies uniformly to all hospital and commercial labs.

Most strongly in favor of a tough enforcement code seems to be the heads of the larger interstate labs who must already meet the guidelines of the Center for Disease Control. The smaller labs are the ones that stand to be most seriously affected by any rigid enforcement program.

Some lab chiefs would carry the state's plan even further by applying it to laboratories * * * vidual physicians—regardless of their size.

"In order to have a thorough program, you must include those places where the public needs protection the most—inside the doctors' offices," insisted Bernard Kaplan, president of Diagnostic Sciences, which maintains a chain of ten labs in Jersey.

Other states have acted within the past few years to strengthen their laboratory codes. New York, California and Maryland are rated as especially strong. New York's law provides for licensing of lab personnel at a variety of levels.

Pennsylvania enacted in June a clinical laboratory improvement act which provides for licensing of directors, supervisors and technologists. It also holds that failure of a laboratory to satisfactorily perform on a proficiency test can result in revocation of its approval to offer to the public tests in the same area.

The State Board of Medical Examiners, which registers labs and licenses their directors on the basis of charges brought by inspectors from the State Department of Health. Moreover, the state's Medicaid program (which deals only with Medicare certified labs) recently severed all ties with five other labs after uncovering several irregularities, including the practice of sending Medicaid work to out-of-state labs after certifying they would do the work on their own premises.

Among the laboratories dropped was a Paterson facility which last year recorded the largest volume of Medicaid business of any lab in the state.

The slipshod nature of Jersey's laboratory laws gives rise to several irregularities of their own.

It is possible, for example, for a laboratory to lose its Medicare-Medicaid certification in one or more specialty fields due to atrocious performance, yet still continue to legally

serve the general public in those same fields. And since Medicare-Medicaid certified labs are required to undergo state inspections and proficiency testing, some labs have shielded themselves from any government supervision by voluntarily dropping out of the Medicare-Medicaid programs.

In like manner, it is possible for a laboratory to lose its state certification to perform prenatal and premarital syphilis testing—again due to poor workmanship—and still be legally entitled to perform diagnostic syphilis testing for anyone who is not involved in a prenatal or premarital exam.

It is also possible for a laboratory director to have his license suspended or revoked by the State Board of Medical Examiners and yet still continue to perform as a laboratory supervisor inside the same lab facility doing basically the same work as before. All he need do is hire a new director whose presence may be required for as little as two hours per day.

The Department of Health brought charges against a North Jersey lab director late last year, excoriating him as a menace to the public's health based on findings of several inspection tours of his lab. A summary report by the department carried the stern warning that the director "should never again be allowed to hold a director's license."

Based on this data, the Board of Medical Examiners lifted the director's license in December of last year. But at the same time it ruled that the director could continue to be employed by the same facility provided it was operated by a "responsible" licensed director. The Board further ruled that it could fully reinstate the license of the director after six months if it was satisfied with his performance.

BOARD HAMPERED BY LIMITED ENFORCEMENT POWERS—STATE STUDY UNCOVERS DIRTY, OBSOLETE MEDICAL LABS

(By Randy Young and Joan Whitlow)

Some New Jersey laboratories operate under the most squalid and primitive of conditions and pose a clear-cut threat to the public's health.

That is the picture that emerges from a review of laboratory inspection reports on file with the State Board of Medical Examiners and the State Department of Health in Trenton.

"This lab is tiny, cluttered, unbelievably disorganized and absolutely filthy," stated the inspector's report on Clinipath Laboratory in Westfield, whose director voluntarily surrendered his license in January after the state board had initiated suspension proceedings against him. This action was taken on the basis of findings of examiners from the health department's division of laboratories and epidemiology.

While limited enforcement powers have resulted in the suspension of five licenses of laboratory directors by the board, there are approximately 15 more who would be put out of business if the state had unbridled authority to act against shoddy laboratories, according to Dr. Martin Goldfield, assistant health commissioner for laboratories and epidemiology.

In most cases, said Goldfield, these laboratories are small commercial facilities employing but a handful of workers.

At the same time, he feels that well over half of the state's 325 independent and hospital labs are in need of improvements.

Yet, even the suspension of a director's license is no guarantee he will no longer ply his trade. Since laboratory personnel other than directors are unregulated by the state, several individuals, after losing their director's credentials, have continued performing in the same or other laboratories under fresh titles and under the supervision of new directors.

Moreover, suspended directors are usually free to take the laboratory director's examination given by the Board of Medical Examiners as an important step in regaining their licenses.

The former director of a Bergen County laboratory had his license lifted by the board in December of last year on the basis of charges brought by the State Department of Health. Inspection reports, based on several visits in 1973 by more than one examiner, were devastatingly bad.

"Lab is unbelievably tiny, cluttered and dirty, and fumes from concentrated acids are overpowering," stated a summary report prepared in November of last year. "Blood samples are drawn in the lab, but there are absolutely no facilities to do this hygenically or comfortably."

As for the lab's director, state inspectors charged him with "accepting fees without giving any receipts or making any record of the transaction." They also found that he was incapable of making some of the most basic clinical determinations.

On the basis of the director's participation in the state's proficiency testing program, the inspectors concluded that his record of chemistry analyses "suggests patients have a 50–50 chance of receiving a reasonably accurate analytical result." the monitoring team noted his hematology testing record was somewhat better: "Only one patient in three need fear that an erroneous report will be sent to his doctor.

"Patients with infections are probably the most victimized because the lab's bacteriology proficiency record indicates they are likely either to be treated for organisms they do not harbor or remain untreated for pathogens that are, in fact, in their systems.

"Thus, not only will patients be endangered, but their families and anyone they come even indirectly in contact with may be similarly threatened."

The report stressed that the Bergen lab was no small operation and probably performed $1,000 worth of tests per day. In addition, its director did not confine himself to routine testing, but undertook "many of the most difficult assays that are usually only attempted in a few of the largest, best equipped labs in the state," according to the report.

In conclusion, the Health Department urged that the laboratory be closed down completely, and that "most important of all," its director "should never again be allowed to hold a director's license."

Based on this evidence, the Board of Medical Examiners instituted proceedings against the lab chief late last year, culminating in suspension of his license. The Board ruled, however, that he could continue to be employed by the same laboratory provided the facilities was operated under the "responsible" supervision of another licensed director whose control could consist of not less than two hours of personal guidance daily.

The Board further ruled that it could fully reinstate the license of the suspended director after June 1, 1974, if it was satisfied the lab "may be operated with safety to the public and the clients it serves."

Meanwhile, a fully licensed lab director notified the state in April that he was assuming the directorship of the Bergen facility and that the suspended director would be his supervisor. "I will personally supervise the lab at least two hours a day to insure complete compliance with all the laboratory regulations," wrote the new director.

Prior to this, the Board had levied a $500 fine against the suspended director on charges he continued performing as a lab head and signed lab reports while his license was under suspension.

In June, the newly turned supervisor wrote to the Board requesting restoration of his director's license. While it was denied at a formal meeting of the board soon afterwards, he was informed by the Board that he could apply for an application to take the lab director's examination to be given in December as a prelude to restoring his license.

Another suspended director who continued his lab chores is the former head of a Newark-based commercial facility.

Among the conditions described in an inspection report based on four tours of the now-defunct lab in 1973 were "unbelievable filth," dirty pipettes (instruments used to measure fluids) stored on a piece of dirty gauze, use of reagents outdated since the early 1960s, lack of quality control procedures "even in their most primitive form," and incorrect performance of throat cultures.

To correct all the glaring abuses cited in the report, claimed inspectors, "would, in effect, amount to setting up a laboratory from scratch."

The director's license was suspended by the Board last November on the basis of health department charges, although he was still permitted to work under any "responsible" director approved by the Board and would be eligible for reinstatement of his license once the Board was satisfied with his performance.

In March, the Board approved a request by the one-time director to work as a technician under a new lab chief in a Union County commercial laboratory. In May, its director petitioned the Board to restore his technician's license. The Board subsequently ruled to restore the license contingent on his successfully passing the bioanalytical director's examination.

In another case, the Board voted overwhelmingly in August to revoke the director's credentials of the head of a Morris County laboratory. Stated an inspector's report on his facility:

"This lab must be one of the worst in the state. It is so unbelievably bad it begs description; the lab is filthy and so tiny and cluttered that (the director) had to spend ten minutes clearing enough space to make analysis of my specimen physically possible."

The lab was reportedly left unlocked and untended with "syringes and needles visible and there for the taking." During the course of one visit, an inspector observed the director use his finger to cover the test tube while inverting it to mix reagents with a sample.

His proficiency testing record showed only 45 acceptable analytical results out of a total of 81 for which he was tested. The director claimed, according to the report, that he referred many bacteriological and chemistry analyses to another lab whose director was a friend of his. Further checking uncovered the fact this referral lab was itself responsible for a 40 per cent unacceptable rate on its analyses of proficiency samples and had been marked 'unsatisfactory' for Medicare participation in 1971 and again in 1973.

"Unlike the directors of many of Jersey's worst clinical laboratories," claimed the health department report, the director of the Morris County facility did not appear to be losing business. "On the contrary, he claims he is moving shortly to new premises in which he intends to do 'as many different clinical chemistry procedures as possible'."

Following the revocation of the director's license, his attorney wrote to the state inquiring if his client could obtain registration as a lab technician. The state apprised the attorney that there was nothing to stop him from serving in that capacity since there is no certification of lab personnel in Jersey, except for directors.

A further case saw the Board accept in January the voluntary surrender of the director's credentials of the head of an Ocean County commercial laboratory. It ordered him not to reapply for a director's certificate for at least six months.

Inspectors found the director operating

out of a laboratory in a garage without a sink and without proper electrical wiring. Examiners found no test tubes on the premises. And since there was no way to dry glassware, the director spent almost ten minutes in front of one inspector trying to dry his wet cuvette with Q-tips.

The inspection team charged that the director's laboratory records, "such as they were," couldn't be deciphered—even by the director himself. "We spent, without any success, almost an hour together trying to relate apparent optical density readings to patients' names," recalled the inspector.

Moreover, the state found records of throat cultures processed in the laboratory, although the director, in refusing proficiency testing of respiratory specimens, claimed he never attempted such cultures. Also found in the process of being completed were slips requesting Medicare reimbursement, although the lab was not certified to perform Medicare work.

The report found the "most frightening aspect" of this case the fact the lab's director "is a young man and therefore presumably has no intention of retiring but, on the contrary, might be expected to try to expand his operation."

As part of its study. The Star-Ledger also reviewed confidential Health Department files on several labs cited for severe deficiencies but against which no administrative action has been taken.

One South Jersey facility was performing so poorly on syphilis serology proficiency tests that its director was asked to attend training sessions at the state health department's laboratory in Trenton. At these workshops, according to the file, the director "was unable to follow what was being taught. In short, we feel that (the director), far from being qualified to direct a clinical laboratory, is incapable of functioning as a bench technician (the lowest level of lab worker)."

Inspection of a north Jersey private laboratory produced findings of "pipettes so discolored and/or etched that it is impossible to tell whether they are dirty or clean, and many have broken tips, laboratory glassware is routinely washed in a dishwasher and usually receives no final distilled water rinse before being used."

Inspectors also found improperly sterilized equipment, and told of an "unbelievably sloppy technique" employed by the director on chemistry analyses.

DEATHS REPORTED FROM OVERSIGHTS: SLIPSHOD LABS RISK LIVES WITH FAULTY TESTS

(By Randy Young and Joan Whitlow)

Careless clinical laboratory work performed in some Jersey facilities has been directly responsible for countless cases of improper medical treatment—at times resulting in needless deaths.

Because of the lax regulatory system governing labs in the state, no one knows for sure how many facilities are performing in a manner dangerous to the public's health or how many cases of faculty diagnoses have ended in tragedy.

Officials from the state health department's division of laboratories and epidemiology recounted, however, several cases which vividly illustrate the severity of the problem.

One case involved a private laboratory which did a blood study for a pregnant woman and failed to recognize that she had an Rh blood factor which could react with the blood of her child and cause the baby's death.

Fortunately, the hospital where the baby was delivered ran another blood test, recognized the problem in time, and took the necessary steps to prepare for the birth of an Rh infant. The child's life was saved.

The next set of parents were not as lucky.

The same private lab performed a blood study on another pregnant woman and again missed the Rh factor. This time, the mistake was not picked up by the hospital lab, and no preparations were made for the birth of an Rh baby.

The infant died shortly after birth.

State officials say there have been cases of faulty Rh analyses from a variety of other labs.

Another unrelated case centers on an infant rushed to a hospital in convulsions. The hospital lab ran a blood test and reported the baby had a very high blood sugar level. As a result, the infant was given a dose of insulin in efforts to restore it to normal.

But instead of improving, the child went into severe convulsions and had to be taken to an out-of-state specialty hospital where it was found the baby's blood suger level was down to zero. As a result of this total depletion, the child's brain was permanently destroyed.

The baby died soon afterwards.

An investigation by the state revealed that the child had originally suffered nothing more than mild convulsions associated with fever, not an uncommon occurrence in young children. It was the dose of insulin that directly led to the child's death, according to investigators.

In another case, a south Jersey hospital ran lab tests on several people who became extremely ill following a church supper, and failed in each case to recognize the true source of their illness—typhoid. Several other persons, stricken during the same outbreak, were admitted to another hospital which referred the specimens to the health department's laboratory in Trenton.

The specimens were finally correctly identified and the patients given proper treatment. Twenty-four cases of typoid were finally identified.

At the same time, there are instances where labs have managed to find disease causing organisms present in specimens when independent testing showed there really were none.

A central Jersey lab, for example, was reporting a high number of instances of patients infected with a fairly rare intestinal parasite. The lab insisted there was an outbreak of this parasitic disease, and as a result a number of patients were treated with medications which were very potent and potentially toxic.

Finally, there was an outbreak of an illness at a nearby college, and the first specimens for testing were sent to this same lab. Again, the lab reported finding the intestinal parasite.

The state finally intervened and took some of the specimens to its own lab for analysis. It showed no evidence of the parasite the lab claimed to have found. Instead, the private lab had completely missed the presence of a common bacteria (Salmonella) that had been spread through improper handling of food.

Meanwhile, scores of people had received the improper form of treatment.

While the performance of hospital laboratories is often regarded as superior to that of commercial establishments, a mistake made at a hospital facility is often more dramatic and more tragic since it is dealing with very sick people whose lives may depend on the results of a correct laboratory determination.

Even hospitals with good performance during the day, can drop to dangerously substandard levels during the nights and on weekends when the regular staff is not on duty.

Such was the case when an outbreak of St. Louis encephalitis occurred in South Jersey. Hospitals in the area were doing hundreds of spinal fluid exams over one particular weekend. The results, however, were so grossly inaccurate that the state health department asked doctors not to take any further samples until the regular lab crews returned to duty.

The Department of Health itself feels that many cases of erroneously reported results are caused by ineptness on the part of laboratory personnel, rather than any dishonesty.

The state says it has uncovered, though, several probable instances in which labs have been "sink testing" certain specimens, which means discarding them (usually pouring them down the sink) without really performing the analyses called for. Fictitious results are then reported.

Health department officials also have grave doubts about the quality of lab medicine practiced in the offices of private physicians, where a nurse, receptionist or clerk totally unschooled in laboratory techniques may attempt to perform procedures.

WIDE GAP FOUND IN PRICES FOR THE SAME LAB TESTS

(By Randy Young and Joan Whitlow)

New Jersey's clinical laboratory system lacks any standardization of pricing, with cost variations of 400 per cent and more not uncommon on identical tests run in different facilities.

What's more, the usual practice in Jersey is for doctors to ask the laboratories to bill them directly for services rendered for their patients. The doctor will then increase the charges—sometimes significantly—and in turn bill the patient.

A recent battery of identical laboratory tests run by The Star-Ledger at 17 different facilities—nine hospital outpatient and eight commercial—showed prices ranging from $10.50 at a large north Jersey commercial lab to $45 at one urban area hospital. The tests included sodium, potassium, uric acid and blood urea nitrogen analysis.

Costs within the hospital group varied from $17 to $45. Within the commercial category, the range was $10.50 up to $35, the latter charged by one central Jersey lab located in the basement of a private home.

The average cost for the hospital group was slightly higher than for the commercial: $26.70 for the hospital labs, and $24.18 for the commercials.

Another survey showed the price of a 12-test chemistry profile ranging from $8.50 at a large north Jersey lab to $35 at a north Jersey hospital. The price of a throat culture varied from $4 at a large commercial lab to $15 at a smaller one.

MANY DOCTORS ARE UNAWARE OF "TRUTH-IN-BILLING"

One sizeable Jersey lab bills the patient directly $15 for a panel of tests consisting of a 25-test chemistry profile, a complete blood cell count, protein-bound iodine test, and a serologic test for syphilis. Many smaller labs are known to charge between three and six times that amount.

The differences in costs can often be traced to automation. The larger, more mechanized labs are able to perform analysis much cheaper than the smaller facilities which must work manually. Hospital labs are often more expensive than private facilities since the laboratory there is expected to help underwrite the costs of other hospital departments which are not nearly as profitable.

Some of the smaller labs will send out certain tests to other, better equipped laboratories. The bill is then typically hiked when it gets back to the original lab, and upped still more by the doctor before it is remitted to the patient.

The head of one private laboratory says he bills a physician $1.65 for a blood sugar analysis. The same lab would bill the patient directly $2.50 for the blood sugar. But almost

no physician in Jersey, he added, will charge a patient less than $5 for a blood sugar, whether it is performed inside his office or at an outside lab.

New Jersey has attempted to prevent doctors from overcharging their patients for work performed in clinical laboratories by requiring, under the terms of a nine-month-old law, a complete disclosure of laboratory costs. But according to knowledgable sources in the field, the law has had negligible impact.

Formally entitled the "truth-in-billing" act, the statute requires physicians to inform their patients, or third-party payers such as Medicare and Blue Shield, how much they, the physicians, were charged by the laboratory for performing specific work. It also obliges doctors to disclose the name and address of the laboratory.

While the law itself does not prohibit laboratory mark-ups by doctors, the theory behind it is that doctors will be reticent about excessive charging if their patients know precisely how much the lab work was worth.

But information from authorities in the field indicates that no more than a small percentage of doctors is fully in compliance.

"Very few doctors in Jersey are adhering to the law," commented the president of a large private laboratory, "and those who are take the simplistic view of telling the labs, 'I won't bill the patient, you do it.' "

Stated the director of another north Jersey lab: "I haven't heard of one doctor who's following it. The public doesn't even know about it. If it did, people would start demanding receipts."

One prominent Mercer County physician told The Star-Ledger the only time he notifies his patients of the actual lab costs is when that information is requested by the patient. The doctor said he tacks on a nominal $1 fee to the real lab costs to cover his own professional services.

The medical profession itself feels that vast numbers of doctors are totally unaware of the truth-in-billing edict, but that those who do know about it are in substantial compliance.

"I think there's a legitimate question if one-half of the doctors know it exists," contended Vincent A. Maressa, executive director of the New Jersey Medical Society. "But I feel those who know about it are following it."

Maressa claims the burden should be on state government to fully inform the medical profession of the law's existence. "You can't expect doctors to sit down and read the New Jersey statutes," he said.

The Society has traditionally regarded laboratory markups—meaning those charges beyond a reasonable remuneration to the doctor for drawing the specimen and interpreting the lab results—an unethical practice. While according to most authoritative accounts the number of doctors who exploit the public through profiteering on lab bills is not large, it is still not uncommon for a doctor to take a $5 lab fee and hike it to $10 $15 or even $20.

Assemblyman Carl Orechio (R-Essex), sponsor of the truth-in-billing act, said he had evidence of doctors charging $60 for $12 lab bills. "To some degree, it's still going on," he added.

One byproduct of the truth-in-billing law, according to Dr. Edwin Albano, chairman of the State Board of Medical Examiners, has been for doctors in increasing numbers to perform lab work inside their own offices. Since the services of an outside lab are not employed, truth-in-billing does not apply, and doctors are free to bill the patient directly whatever they wish.

Albano emphasized that the public is largely unaware of the law's provisions.

Beyond this, many claim it is impossible to effectively enforce truth-in-billing since it would require monitoring the offices of 11,000 physicians throughout the state.

"Who's going to enforce it?" asked Maressa. "The law creates a criminal act, yet the State Board of Medical Examiners doesn't have criminal law jurisdiction. You could leave it up to the county prosecutors, but I don't think even they know it exists. And even if they did, they have a lot more pressing concerns."

Orechio expressed uncertainty over the law's impact to date, but claimed, "it cannot hurt. The mere fact the patient has recourse to legal action is psychologically helpful."

One lab director said it would be helpful if doctors were required to post large signs inside their offices informing patients that they are required by law to disclose the name and address of the laboratory used and the charges involved.

An official for New Jersey Blue Shield, the medical-surgical plan which covers limited laboratory expenses for some three million members under Rider J, said the plan sent out a newsletter earlier this year to 12,000 people in the medical field spelling out the new truth-in-billing law. It was further covered at seminars held in hospitals throughout the state.

Through a review of doctors' claims forms submitted to the plan for laboratory expenses, Blue Shield found that most doctors were billing properly, according to John Gould, vice president of finance for the medical-surgical plan. He said this meant that doctors "for the most part" were billing the plan the same charges they were billed by the laboratories.

He noted, however, that Blue Shield has requested that all participating laboratories (about 80 per cent of the nearly 200 commercial labs in the state) bill the plan directly, resulting in limited contact between Blue Shield and doctors in the area of lab charges.

Some critics find an inherent flaw in the fact truth-in-billing does not impose an absolute ban on lab mark-ups by doctors, but seeks to achieve that end through the roundabout method of disclosure. A more sensible device, say reformists, would be institution of direct patient billing by the laboratories, eliminating the doctor altogether as middleman.

While it is conceded laboratory costs would undoubtedly rise under such a scheme, since the labs would be given an extra administrative responsibility, proponents of direct patient billing claim the rise would be far less than the cost of a laboratory test paid directly by the patient to the physician.

Orechio has introduced legislation providing for direct patient billing by labs and appears to favor it over truth-in-billing. But the bill has languished in committee, and Orechio holds little hope for its release.

Meanwhile, New York has been using direct patient billing since May of 1970. According to Albano, the Jersey Board of Medical Examiners took the New York program under "serious review," but concluded it would not be "feasible or practical" in this state.

Albano claimed such a method would pose a "hardship" on the labs and would result in escalating laboratory costs to the public. Labs, he said, would likely be saddled with delinquent bills from the public (a problem they rarely have with physicians), pushing lab rates even higher.

William J. Jones, Jersey's Medicaid director, said laboratories are presently hiking the bills they submit for Medicaid reimbursement about 50 per cent above what they charge physicians for the identical tests. Jones objected to the practice, claiming "laboratories should charge patients the same as they charge the doctors. If a test is worth $5, the patient certainly shouldn't be billed $10."

Medicaid has adopted Blue Shield's "500 policy" rate schedule for reimbursement purposes and will pay no more than the ceilings set by Blue Shield for specific procedures.

LICENSING LABS: STATE HOPES BILL WILL BRING UNIFORMITY, SAFETY

(By Randy Young and Joan Whitlow)

New Jersey's clinical laboratories would be subjected for the first time to a tough program of licensing based on their ability to perform efficiently under the terms of a proposal drafted by the State Department of Health.

The plan—entitled the New Jersey Laboratory Improvement Act—would apply uniformly to the state's 325 hospital and independent labs and would replace the patchwork collection of rules and regulations that have done little over the years to improve the quality of Jersey laboratories.

Past efforts at laboratory reform have made virtually no headway in the Jersey Legislature despite the importance attached to them by the past two administrations in Trenton. Meanwhile, other states like New York, Pennsylvania, Maryland and Connecticut have taken giant strides in the field by adopting strict surveillance programs.

New Jersey Health Commissioner Dr. Joanne Finley regards the proposed improvement act as essential to insure the safety of the public and generally upgrade the standards of the lab industry.

Dr. Edwin Albano, chairman of the State Board of Medical Examiners, has also endorsed the proposal and would carry it one step further by applying it to lab facilities located inside the office of private physicians. "They should be compelled to participate to see if they're putting out quality work," said Albano. "It would be for the patient's benefit."

As conceived by the Department of Health, the laboratory improvement act would accomplish the following:

Establish a laboratory evaluation program based on proficiency testing (sending labs test samples for analyses) as well as unannounced on-site inspections for the purpose of evaluating the supervision, records, procedures and general operation of the lab "to determine their effect upon the health and safety of the people of this state."

Prevent labs from performing analyses in those areas where they are incompetent. In addition, the act grants the health commissioner the power to summarily suspend without a hearing the license of a lab which he or she feels "poses an imminent threat to the public health, safety or welfare," and may order immediate corrective action as a requisite to restoration of the license.

Machinery would exist for a licensee who contests the summary suspension to be granted a hearing within 48 hours, although the lab would still remain closed during that interval.

Develop appropriate consultation and training activities for the purpose of improving those laboratories which fail to meet acceptable standards.

Require the licensing of all hospital and independent labs as well as any lab facility serving four or more private doctors. Each facility would require a license, even if separate ones have a common owner.

Assistant State Health Commissioner Dr. Martin Goldfield, one of the prime architects of the improvement proposal, claims that up to 15 laboratories in the state—most of them small commercial facilities—would be put out of business if a stringent lab enforcement law was enacted.

But he explained, "The purpose of the act

is not to put labs out of business. Rather its goal is to require the upgrading of the quality of laboratory tests and to stop labs from offering to perform tests which they have neither the competence nor resources to perform."

Goldfield feels that the threat of lab closure and fines for violators will serve as important levers in compelling laboratories to undergo proper education and training to improve their performance.

The Department of Health presently sponsors laboratory workshops and seminars as a means of providing lab personnel with information on updated techniques, quality control procedures and a host of related matters. But according to Goldfield, these sessions are attended most consistently by those people from the best performing labs.

"The worse the performance of the lab, the less interested the lab is in improving its performance," he asserted.

While Goldfield insisted that ineptness is the greatest contributing factor to poor lab work, some facilities engage in far more reprehensible activities. For example, Goldfield said the state has uncovered several probable instances in which labs have been "sink testing," which means discarding the specimens (pouring them down the sink) without really testing them, and then fabricating results.

In addition, Goldfield said he had knowledge of some labs sending out the proficiency testing samples mailed them by the state to other labs for analysis. One South Jersey lab, he said, is directed by a doctor who in the past has put his secretary's name on the testing vials and had them analyzed at a local hospital.

"Apparently he doesn't trust his own lab to perform unknowns (proficiency samples), although he trusts it to perform on patients," the assistant commissioner observed.

Goldfield's answer to this practice is a system whereby some proficiency testing would be carried out through samples handdelivered to the labs by state inspectors.

Goldfield further feels the lab improvement plan would strike at the current practice whereby some medical technologists employed at a hospital or commercial lab will "moonlight" at night by reading Pap smear slides for doctors. These are the tests used to diagnose cervical cancer and each slide should ideally receive a certain amount of time for scrutiny by the examiner. If they reveal irregularities, the proper procedure is for someone with more expertise to review them.

But Goldfield said that some moonlighting technologists are operating assembly-line style, performing the work for several doctors and in such volume that it is not humanly possible for them to devote the proper amount of time to each slide. And because they are moonlighting, there is no supervisory personnel on hand to provide the additional expertise that might be required.

The provision in the lab improvement act granting the state jurisdiction over any operation serving four or more doctors would at once take many of these moonlighters under the regulatory arm of the Department of Health, according to Goldfield.

While laboratories themselves would be subject to licensure under the health department plan, no mention is made of accrediting personnel. Other states like New York and Pennsylvania have enacted lab improvement laws providing for the licensing of different grades of lab workers, including directors, supervisors and technologists.

Goldfield, however, frowned upon such a program, claiming it is costly and cumbersome to administer. It requires setting up separate exams and standards for each level of lab worker, and then a program to keep track of them as they move from job to job to insure that people with currently valid licenses are working in the labs, he said.

Goldfield also pointed to the fact that personnel licensure laws inevitably contain a "grandfather clause" allowing anyone currently in the field, regardles of qualifications, to become automatically licensed. This weakens the law immensely, he said, because it allows the very incompetents the law seeks to restrain to remain in the field until they retire or die.

Jersey's 1953 law providing for the licensure of laboratory directors contained a grandfather clause, the result being that some individuals without high school degrees and without formal chemistry backgrounds are still serving as lab chiefs.

Goldfield also stressed that to date there is no standardization of educational programs for lab personnel—some are good, others are deplorable. And until that standardization is achieved, Goldfield feels personnel licensure should not be attempted.

"I'm not opposed to licensing of personnel in the long run," he noted. "But there should be a few years of licensing of facilities first and let's see what mechanics will be developed for the graded education of personnel from lab assistant to Ph.D. in clinical lab work before personnel licensing is instituted."

Goldfield also claimed his agency should continue to regard as confidential data gathered from its on-site inspections and proficiency testing program. That information is generally unavailable to the public, although one Jersey lab is known to have published the results of its proficiency tests and made them available to doctors.

If labs knew their results would be for public consumption, said Goldfield, the testing program would become a form of competition, not evaluation. Labs would attempt to use the data to gain a competitive advantage over others, he said.

"There would be a greater incentive than ever to attempt to cheat on performance testing, by whatever means, fair or foul, in order to pass the policeman," he commented.

FINAL ANALYSIS: LAB DIRECTORS SPLIT ON BEST ROUTES TO REFORM

(By Randy Young and Joan Whitlow)

The critical need for a uniform and vastly improved program of clinical laboratory surveillance to replace the existing labyrinth of rules and regulations is openly voiced by many of the lab practitioners themselves.

The specifics of such a program, however, produces a wide variety of opinions.

The New Jersey section of the American Association of Clinical Chemists (AACC) favors the licensing of laboratories as well as their directors, supervisors and technologists. New York and Pennsylvania have already adopted licensure programs for these different grades of personnel.

Such an effort, according to Jersey AACC chairman James A. Foreman, would "insure that people in clinical labs are competent" while checking "those people with a marginal knowledge who put out poor work causing treatment for a disease that a person really doesn't have. We want to keep the charlatans out."

Dr. Leonard Dunikoski, legislative chairman for the clinical chemists' group, called for a comprehensive monitoring program embracing mandatory inspection of labs, proficiency testing and accreditation of personnel.

"These are all essential for good quality laboratories," he observed. "But you must have all three components. One or two of them won't go far enough."

Both Foreman and Dunikoski stressed the need for more public information on laboratory quality. The State Department of Health's inspection reports on laboratories and the results of its proficiency testing program are not normally opened to the public.

"Physicians should be aware of the kind of results labs put out," contended Foreman. "There should be some way of pressuring labs to come up to a certain set of standards or meet a level of performance—and those which do not should be closed down."

Dunikoski, director of clinical chemistry at Perth Amboy Hospital, said he favored the publication of performance data on laboratories—a concept strongly opposed by the Department of Health.

Foreman said he thought the public, aware of the massive automation that has overtaken the laboratory industry in the past few years, has come to believe that automation means protection against shoddy work. But he emphasized that the quality of work produced by mechanization is directly linked to the quality of the people who control the machines.

"People are too prone to accept the answers as they come out of the machines, and this can result in numbers of automated mistakes," he remarked.

A number of lab officials strongly favor a surveillance one now administered by the federal government's Center for Disease Control (CDC) to all labs nationwide that engage in interstate trade. That program consists of unannounced on-site inspections, on-going proficiency testing, required safety standards and licensing of personnel.

Dr. Paul A. Brown, president of the American Clinical Laboratory Association, maintains the state should set up an "impartial" monitoring program patterned on CDC's, and run the program itself. By "impartial," Brown insists that no state inspector should survey labs located in his home geographic area, nor should any inspector be permitted to review the same lab more than once.

Brown, chairman of MetPath in Hackensack, the state's largest commercial laboratory, took sharp exception to the fact the results of the state's proficiency testing program are not made public.

"The results are frightening, and because of this, everyone hides them," he said. Brown claimed that MetPath is the only laboratory in the nation to publish in booklet form its testing results and make them available to doctors.

At the same time, Brown claimed the state's proficiency exams are inadequate in terms of type, frequency and depth. "If New Jersey labs had to undergo New York's rigid testing program, more than half would fail," he maintained.

The New Jersey Department of Health has drafted a proposed laboratory improvement act calling for mandatory inspections of labs, proficiency testing and licensure of laboratories, although not personnel. The program would apply to all labs in the state, hospitals as well as commercial.

Bernard Kaplan, president of Diagnostic Sciences, which runs a chain of ten labs in Jersey, said the state's plan "could be of good value," but expressed fear that it might simply add another layer of bureaucracy by requiring interstate labs to be inspected by still another authority in addition to Medicare and the CDC.

The money for such a program, he added, might better be spent by the state for seminars and training programs for laboratory personnel.

"What we lack in Jersey is an ongoing educational program at the state colleges for laboratory personnel," he said. Kaplan claimed the Department of Health" could be of positive value" in providing instructional programs for the independent labs, but complained, "We don't get that kind of cooperation from them."

Kaplan, a lab director for 27 years, also feels the state health department would be handed a dangerous amount of power if its

lab improvement act—enabling the health commissioner to summarily suspend without a hearing the license of a lab he or she feels poses a danger to the public's health—is ever enacted. (The proposal does insure a licensee a hearing within 48 hours, although the lab could be ordered closed in the meantime.)

Asserted Kaplan: "Even if you are closed down for one day, the adverse publicity would be so great you couldn't survive it. We agree anyone not performing correctly should get the hell out of the business. But a person's rights should be adequately protected against any arbitrary act of some bureaucrat."

A recent interview by The Star-Ledger with the directors of four independent labs—all of them members of the New Jersey Association of Bioanalysts—produced no clear-cut consensus on what form of lab regulation is needed in Jersey, other than that it should include hospital and private physicians' labs. The members did, however, express deep suspicions about the proposed laboratory improvement act.

Kenneth C. Sutphen, director of Nutley Medical Laboratory, claimed the proposal could concentrate all regulatory powers in the hands of the assistant health commissioner of laboratories. "This is absolutely horrible," he declared. "It should be in the hands of the pathologists, the doctors and other laboratory people."

The bioanalysts pointed out they were instrumental in helping enact the 1953 laboratory director's licensing act, and contended this phase of the industry has been strongly regulated since then. In addition, they stressed that some 40 independent laboratories in Jersey (out of a total of 193) participate voluntarily in the American Association of Bioanalyst's national proficiency testing program.

Another voluntary program aimed at upgrading the quality of work in laboratories has been conducted over the past several years by Dr. Martin J. Salwen, lab director at Monmouth Medical Center.

The program, sponsored by the New Jersey Society of Pathologists, provides for a daily program of quality control in which labs check the performance of their reagents and equipment by running independent tests with special samples sent to them by the program. The results are compiled by Salwen, who groups the labs according to equipment and methodology, and reports back to the labs, enabling them to compare their quality control performance with that of comparable labs participating in the program.

One of the results of the effort, said Salwen, has been that labs which started out as poor performers have shown with time definite improvement. In addition, some labs in comparing their performance with that of other participants (identified only by numbers so that confidentiality is maintained) have realized they were incompetent to perform certain laboratory procedures, and consequently stopped doing these tests, referring them out instead to other labs.

Salwen's program, which can cost a large lab $2,000 or more annually to join, includes some 50 participants—almost all of them hospital facilities.

But the fact that only 50 out of the 325 independent and hospital facilities eligible to participate have actually done so, points up the severe shortcomings of voluntary programs that New Jersey has relied so heavily on in the past to insure quality lab performance.

How Good Are Our Medical Labs?

(By Aileen Jacobson)

During the past year, a 2½-year-old child was hospitalized for observation in a local suburban hospital after eating what turned out to be some harmless tablets. As a precaution her pediatrician requested 24 hours of routine lab testing. The child remained healthy and active and returned home two days later.

But a routine hematology test, the last one run and analyzed after the patient's discharge from the hospital, showed acute infection, perhaps hepatitis. Shocked, frightened, the parents hurried the child back for more testing and blood samples.

Results of these new tests showed no infection. It seemed the hospital lab had made a mistake. The result indicated so much infection that either the sample was drastically contaminated before analysis or two children's test results were mixed up.

If there had been a mix-up, the mother asked the pediatrician, had a hepatitis-stricken child been sent home because of "normal" test results? "That's a good point," the doctor said, "I'll check it."

When the head of the Communicable Disease Center (CDC) testified at a 1967 congressional hearing that one in four laboratory tests in the United States was "erroneous," he set off a bombshell in the industry. The public shock waves have long since stopped. But not the laboratories' problems. Many American Laboratories today are not much better, on the basis of government studies, than when the fuse of doubt was first sparked.

Checking into a hospital with a case of gastroenteritis brought on by a bad crabmeat salad sandwich, you may be confident of a quick cure. After all, you've seen enough of the good Dr. Welby to trust in hospital care. But you may find yourself being tested by one of a shocking number of government-licensed laboratories—84.6 per cent to be exact—that couldn't identify the guilty, and rather common, microorganism in a proficiency testing sample in 1973. What you might be treated for instead, and with what effect, not even a Marcus Welby would care to speculate.

Only a handful of American laboratories are regulated even today. The CDC licenses only Washington, D.C., labs and those with interstate operations, a mere one-tenth of the nation's estimated 15,000 clinical laboratories. No national agency and few states test the labs in doctors' offices, which bring the total number of medical laboratories up to 200,000. And no government studies ever release the names of laboratories that perform poorly or well.

"Opening a clinical laboratory in Virginia is easier than opening a saloon," says an employee of one of that state's large "independent" (non-hospital-connected) laboratories—which undergoes tests because it performs interstate work and takes Medicare-Medicaid payments.

Maryland recently passed a law, as yet unenforced, that would regulate, to some extent, the laboratories in doctor's offices. Often great money-makers, these labs perform an estimated one quarter of this nation's annual 3 billion laboratory tests. Yet a Maryland study showed that secretaries and office assistants sometimes performed the tests.

And only 16 per cent of these laboratories had an internal quality control program, which the CDC considers essential to assuring reliability.

A few decades ago, American laboratories were often the dumping ground for doctors who couldn't make it in more respected fields of medicine. Today they are the fiefdoms of many $200,000-a-year pathologists, and are part of that circle of mystery and mystification that much of American medicine seems to thrive on. Nationwide scrutiny of the inner processes of these chrome and glass emporiums that transform blood or urine samples into multi-decimaled numbers on a chart started only five years ago.

But in those five years, the volume of laboratory testing has climbed steadily at a rate of 15 per cent per year. Overworked doctors, increasingly substitute additional lab tests for the time they once spent talking with a patient about symptoms and general health.

This growing dependence on lab tests for health care is not something you think about until your own body and future are at stake. It happened once, ironically, to a local pathologist.

Dr. Frances Norris, a Washington area free lance pathologist, has long been an outspoken critic of the hospital laboratory: "Much of clinical testing is incorrect—but it's never discovered . . . A lab technician, irate at a cheated salary, can do slipshod work. This makes it impossible for a pathologist to arrive at a precise diagnosis, because the slide is shoddily prepared. But the pathologist is an employee of the chief pathologist, and if he complains his job is jeopardized."

She is lobbying now for disclosure laws that would allow patients to see their diagnoses and their pathology reports. (One such law has been introduced in the Maryland state legislature.) For now, she won't name names, out of a fear of being sued: "These are very well-monied people," she says.

One lab error, though, affected her personally and helped to stoke her indignation. It was the kind of mistake that would go undetected had she not been a doctor herself and become suspicious.

Dr. Norris had a case of post-partem thrombophlebitis, in which anti-coagulant therapy keeps the blood from clotting more. Periodic blood-clotting and prothrombin tests have to be taken to see how thin the blood is.

She was using a doctor-owned, larger commercial laboratory, but she started to distrust the results. She went to a friend, an internist at a larger hospital. He agreed that additional work was needed . . . "and, sure enough, the prothrombin was far different. I was lucky, being a physician. I could have suffered severe bleeding. This is especially bad for old people, or if I had gotten a severe cut or internal injury."

Name the lab? "To tell you the truth, I'm chicken."

Doctors, and their patients, tend to put great trust in the sleek new machines that have replaced many of the manual pipette-and-test-tube procedures in many labs.

Laboratory work is not as much a "science" yet as some would like to think, though. "Mistakes are always being made," says medical technologist Alice Aldrich, formerly at two local hospitals and now working at Georgetown's Free Clnic. "They're a fact of life in laboratories."

Ms. Aldrich, whose experience is not atypical, remembers that when she first started working at an area hospital, she read the wrong results from blood charts several times—and found out only when the ward personnel called to question her about the suspiciously high results that would indicate that a patient's kidney had shut down.

Human error factors should not, it seems at first glance, affect machine-run tests. But while the CDC sprinkles its reports with expressions like "Unfortunately . . ." and "Even more startling . . ."—phrases to give pause to even the most slavish idolators of American medicine—the new technology itself is being called to the examining table.

At George Washington University Hospital, where the laboratory relies on the manufacturers for training of its personnel and maintenance of the machines, medical technologist Valda Lindbergs, supervisor of the hematology department, has a book full of dozens of pink slips that represent each time a repairman has had to come—and each time the lab had to revert to less pre-

cise, much slower manual methods for a day or two.

At Mt. Sinai Hospital in New York, a special department now tests medical equipment before it is used in the laboratory or elsewhere in the hospital. The department's director estimates that 30 to 40 per cent of incoming equipment has defects.

The Food and Drug Administration has just started a program to monitor the quality of these machines—and of the chemical reagents, used to help determine a sample result, which the CDC has often faulted for some poor laboratory performances. Likewise, diagnostic "kits," often used in small laboratories, are sometimes recalled by the FDA—but only *after* they have reached the market. No licensing is required.

Many laboratories cannot afford the large machines, which cost tens of thousands of dollars each, and many tests, especially in the field of microbiology which involves the growing and identification of cultures, do not adapt themselves well to mechanization. In these manual tests more than in machine-run procedures the accuracy of the results depends on the carefulness and delicate skill of the medical technologist who himself is caught up in the squeeze of a technological society that expects concentrated rote work for long hours for the low pay of a non-professional.

The problems that the CDC uncovers sometimes touch on the bizarre. In one 1972 incident, for instance, 52 per cent of reporting laboratories failed to identify a crucial characteristic of "the world's most common type of anemia." The CDC advised: "one should investigate the possible color blindness in technical personnel . . ."

Opinions differ on how good a laboratory should be. At NIH, one doctor doesn't blink an eyelid at what he calls a "normal" inaccuracy rate of 10 per cent. A 1969 onetime proficiency testing sampling in Virginia that found that 12.6 per cent of the microbiology tests were incorrect did not move state legislators sufficiently to pass a regulation bill. Yet an HEW study called even a 7.6 per cent misidentification rate in microbiology "not satisfactory."

By any of these standards, though, the CDC figures demonstrate an unsatisfactory level of laboratory performance. The accompanying graphs illustrate the progress that CDC-regulated laboratories have made on proficiency testing samples in three areas (the law included D.C. labs in the CDC program). But even that progress is not exactly heartening.

Stated roughly, about half the labs tested in 1970 could not make a grade of 75 (which sometimes is not the actual passing grade). By 1973, only a quarter to a third couldn't get three out of four identifications right—hardly enough to help you face with stout heart a lab's evaluation.

Sources outside the CDC are even more pessimistic about American laboratories today: A National Bureau of Standards study published in 1973 concluded, from its own proficiency testing sampling, that only 28 per cent of laboratories in clinical chemistry could reproduce a correct assay consistently within acceptable limits. It further concluded that the causes of such error were probably systematic—such as miscalibration of equipment.

Of course, many laboratories do fine, fast and accurate work, and many lab technicians, pathologists and Ph. D.s working in labs are competent and dedicated. Some laboratories, though, do not meet the scientific standards essential to a laboratory: accuracy, precision, and systematic reproducibility.

Trying to place blame for shoddy laboratory work when it occurs is like trying to throw a dart at an ever-turning wheel-of-fortune: Doctors blame pathologists and technicians for poor or slow identification. Pathologists blame doctors for sending in poorly marked slides or unnecessary tests or for not interpreting the results properly. Lab directors blame "lazy" or incompetent technologists. Technologists blame poor pay, bad working conditions and inadequate supervision.

What the errors can result in are such episodes as these, garnered from Washington area sources:

An 11-year-old boy suffering an added week of agonizing pain from a hip-joint infection because the laboratory of the hospital he lay in was using an antiquated technique that couldn't determine the right antibiotic to relieve his pain.

A Vietnam veteran dying of black fever when he finally was transferred from another hospital to Walter Reed. There, his malady was correctly identified as malaria—but too late.

A man wasting away with an unidentified but advanced, potentially fatal, contagious case of tuberculosis at a small community hospital, until a sample was sent to the National Institutes of Health laboratories. They found the sample "loaded with TB."

Shoddy work, careless management, poorly trained personnel don't matter much in some fields. But the clinical laboratory is different.

"We can kill people here real easy," said Albert Riggs, vice-president of Litton Bionetic, an independent laboratory, as he looked back toward the rows of labeled test tubes, the sparkling machines, the young man perched over a microscope with a pencil poised over a printed form. "No trouble at all."

The quality of laboratories—or, rather, the frequent lack thereof—first came under public scrutiny in 1967 with Dr. David J. Sencer's one-out-of-four-erroneous testimony.

Dr. Sencer, then and now head of CDC, told the congressional subcommittee of the death of twin babies whose mother's blood had been wrongly analyzed as RH positive. And of a woman who had a breast removed because a test erroneously showed she had cancer. He cited a California study that showed that 34.5 per cent of 328 newborn babies who had died of blood cell disease died because of "avoidable laboratory factors." In another case, 33 patients had been diagnosed and treated for malaria—and turned out not to have it, when specimens were submitted to the CDC for verification.

Another witness at the hearings told of 250 Pap smear specimens that had been thrown out at one laboratory—though "reports" were still sent to the physicians.

Sen. Philip A. Hart (D-Mich.), chairman of that subcommittee, dramatized the lack of trained laboratory personnel by sending off for a medical technician's license through the mail for $15, for one Straybourne Betts. Straybourne Betts was a dog.

According to Dr. Sencer, people with mail order degrees—or no degree at all—can be, and still are, hired in some unregulated laboratories.

Today some people still insist that Dr. Sencer's statistics were based only on American Indian health centers and therefore not valid. Dr. Sencer denies this and says that the figure was, indeed, reflective of the entire country.

The year 1967 seemed to be ripe for government intervention in both the cost and quality of medical practice. The Medicare Act had been passed in 1966, and once the government started paying for medical services it became a little more interested in what it was getting. Laboratory testing, a $3.5 billion-a-year industry, is often used as a money-maker by hospitals. It has since been found to contain huge financial discrepancies: as much as a 400 per cent difference in one locality between charges by a hospital laboratory and an independent laboratory for exactly the same test.

Quality became the more immediate concern, though. Medicare has a laboratory inspection program, separate from the CDC program. But it was left up to the CDC to fulfill the quality requirements of the Clinical Laboratory Improvement Act that was passed in 1967 as a result of Dr. Sencer's fuse-blower.

What happened after passage of the Act is that familiar process by which a sharp-toothed thrust often gets ground down by Congressional caution and government bureaucracy. A few of the flaws in the reformers' fabric:

Exclusion: Doctors' office laboratories, and laboratories that do only intrastate work—the vast majority of labs—were ignored by the legislation.

More Exclusion: The CDC decided to exempt labs that performed less than 100 interstate tests in a year. Now they think that those small labs may be the worst and are changing the requirements to "less than 10".

Grading: At first it was more lenient than the CDC now deems necessary. The CDC was afraid, in part, that if it set standards too high, too many labs would fail . . . and then what?

Discipline: If the CDC does take disciplinary action against a laboratory, as it did 14 times in 1973, it cannot force the lab to cease functioning intrastate. Nor can it take such action until the lab has failed to meet criteria over an entire year, though this regulation may change.

Excuses: "The incubator broke down" or "the specialist in that field is sick this week" have been accepted with only a reprimand. Until now, too, a laboratory could legally send out its test samples to another laboratory without losing its own license.

The CDC proficiency test samples are neither exotic nor more difficult than a lab's everyday workload. In fact, the results on test samples probably reflect the very best work a lab can do. Yet errors are abundant:

In April, 1972, a quarter of laboratories' identified gonorrhea when it wasn't there—which could have resulted in a lot of unnecessary penicillin shots, not to mention some mighty tall explaining.

In that same period, 35 per cent of the labs did not discover influenza.

In a 1973 test, grades were not recorded because almost a quarter of the participating laboratories couldn't stain the blood sample properly. They would have found that the "patient" might have had leukemia. Of those that could at least stain the slide, over half could not recognize certain types of important cells in the sample.

In another 1973 test (this one in parasitology), three-quarters of the labs identified a specimen stained by the CDC—but only a third identified the same sample sent unstained. The CDC called this event an "interesting fact." They proceeded to explain, in their booklet, how to stain a slide.

The only recent evaluation of laboratories by a group other than the CDC and the College of American Pathologists, the two major regulatory agencies, is a 1973 study prepared for HEW by the Technical Analysis Division of the National Bureau of Standards.

Dr. James D. MacLowry, chief of the microbiology division of NIH, was one of the consultants in administering the test, and he was shaken by the results. Although advocating tougher test samples at first, he soon understood his colleagues' worries.

In one sample, a common stool organism that can indicate anything from a urinary tract infection to an infection of the lining of the heart, was misidentified as everything from a normal culture to meningitis to gonorrhea.

"How a laboratory would make that mistake, I don't know," Dr. MacLowry said of the "normal" identification, "but the fertility of

man's imagination was displayed in this test. It can mean life and death."

Of the gonorrhea misidentification, he said: "It's like calling an elephant a 747."

The equipment could be dirty—some places may try to use a throw-away cup twice—or the environment could be wrong—a change in temperature or someone painting down the hall or the quality of the water could make a difference. Or they could have chosen an antiquated technique, the wrong choice of methodology, or the wrong choice of a reagent. Or the technologist may not be paying attention, may be making the dilution wrong."

Medical technologist Susie Weaver is explaining the things that could go wrong with a test, the factors that could lead to low performance on proficiency testing—and on everyday samples. She is in charge of quality control for Litton Bionetics, an independent laboratory that performs 2,500-3,000 tests every night for doctors in the Washington area. She worked her way up from the routine of slide-staining, pipetting, and microscope-hunching. cell-counting by volunteering for duty with the room-filling, computer-looking SMA 12/60 ("Twelve chemistries per patient, 60 patients per minute"), which she learned to "take apart and put together again." She has replaced literally miles of the delicate glass tubing that the patient samples flow through, bubbles pushing them along, reagents changing their colors for the dozen different tests. She increased the efficiency of the $85,000 machine by getting to know it intimately—and now she runs a tight ship in the whole factory-like assembly-line laboratory.

"It depends a lot on the technician's attitude. If the tech has an 'I don't care' attitude, then he or she can make a mistake. We've had a couple of those here, but they don't stay long," she said. She doesn't know what becomes of them, but presumably they find work elsewhere. She thinks that some of the training in the Washington area is not adequate—based on her own experience in taking courses—and always supervises a new "tech" just out of school very closely.

"You've got to have a conscience in this business. You've got to have a conscience," says Susie Weaver.

The projected cures for laboratory maladies are as diverse and wide-ranging as some of the proficiency testing results:

Disclosure laws, such as those advocated by Dr. Frances Norris and others would be one way for the consumer—the patient—to judge the quality of his own diagnoses—or get a second opinion from another doctor. This causes a giant problem for the medical field. Under the doctor's present code of ethics, he isn't supposed to criticize another doctor in a patient's presence.

Disclosure by the regulatory agencies of the results of their tests, inspections and surveys of particular laboratories by names is another method, advocated by, of course, some medical writers and by Dr. Sidney Wolfe of Ralph Nader's medical action group. Medicare inspection records starting in February, 1973, are now open to the public, due to the pressure of one reporter. The CDC has resisted such pressure, though it has not been taken to court on the matter.)

Both these methods will face opposition from pathologists, as voiced by Dr. Lawrence Skendzel of the College of American Pathologists: "We've got to improve, but we've got to do it in a quiet way, so that we don't lose the patient's confidence. There's a lot of good testing, a lot of people who have devoted their lives to doing good testing."

Tougher state standards, or any standards at all in states, would be another possible solution.

Tougher CDC standards: Criticism of present CDC procedures comes from both without and within the CDC. Dr. Louis LaMotte, chief of the Proficiency Testing and Licensure Division of the CDC, advocates many of the possible changes, like stricter grading and tighter discipline on excuses, though his suggestions grind slowly through the CDC bureaucratic mill.

He isn't as militant about closing down labs, though, as some outsiders are: "I look upon our having to go to court with a laboratory as evidence of our failure, not our success. That means I haven't successfully conveyed to the laboratory the problem or the dimension of the problem."

The CDC has not, in any final measure, failed. But if the proposed changes and tightening of regulations do not take place, or are not far-reaching enough and well-enforced enough, then the accuracy and level of quality of the laboratory test will remain a large, looming question for every doctor who must increasingly rely upon it to diagnose and treat his patient. And the laboratory will continue to be, for the patient, too, one of those mysteries of American medicine that he can't—and shouldn't—totally trust.

EXHIBIT 2

WHAT YOU BETTER KNOW ABOUT MEDICAL LAB TESTS

Many diagnostic procedures that help to prevent or cure disease begin with a laboratory test. The doctor takes a blood or urine sample, sends it to a laboratory and in a couple of days the results are in. You accept the verdict—and your bill—unquestioningly.

When done accurately, laboratory tests save lives. They can spot certain diseases in time to do something about them. However, tests that are ordered without good cause or that have to be done over because they were done wrong can only run up your bill. And tests that are done improperly can yield false clues or overlook disease.

Some examples: One government study recently showed that a screening procedure for a type of female cancer either overlooked suspicious cells or wrongly reported malignancy about 30% of the time. In another instance, a private laboratory failed to recognize in a pregnant woman an Rh blood factor that could react with the blood of the unborn child and result in its death. Luckily, the oversight was detected with a second test.

This year laboratories will perform more than three billion tests, ranging from single chemical procedures done by hand to batteries of 20 or more that zip out of automated equipment in minutes. The bill will probably total over five billion dollars. If the present trend continues, by 1980 medical laboratories could be a 15-billion-dollar industry.

Thus it is reasonable to ask how much faith we can place in this business dealing daily with life and death matters and whether the billions we spend really pay off in terms of reduced illness and death.

THE SEARCH FOR ACCURACY

There are 15,000 or so clinical laboratories in the U.S. About half of these are in hospitals. Several hundred more are run by states, counties and cities. That leaves about 6,500 independent labs, some of which are run by laymen. In addition to the 15,000 there are uncounted thousands of small labs run by private physicians out of their offices.

The laws and standards covering these labs overlap, sometimes conflict and occasionally are nonexistent. The result is a patchwork system of regulation that requires over-all excellence of some labs while covering others only on certain procedures and leaving some to set their own version of quality.

Only about 750 labs doing interstate business are licensed by the federal government, under the Clinical Laboratories Improvement Act of 1967. Another 170 (40 in New York State) conform to federal standards but are not formally licensed. The law does not cover most hospital labs doing business in a single state and those in doctors' offices.

The federal licenses are granted by the Center for Disease Control. CDC evaluates labs in several ways, including on-site inspection and scrutiny of employe qualifications. Also, as part of its performance evaluation, CDC has a "proficiency testing" procedure in which licensed labs periodically try to identify specimens provided by CDC and are graded on the basis of right and wrong identification of the specimens.

One recent study by the National Bureau of Standards found that federally licensed labs were incorrectly identifying common bacteria that cause such diseases as strep throat, pneumonia and food poisoning 7.6% of the time, a rate judged "unsatisfactory." For unlicensed labs the rate of error averaged over 20%, with medicare-approved hospital labs and those in physicians' offices the "least precise."

The NBS study is controversial, as CDC's Dr. Louis C. LaMotte Jr. is quick to point out. "In contrast to what the bureau found," he says, "CDC has unequivocable evidence of statistically significant improvement among licensed labs that have participated in the entire program for two years or more. Within a year quality-control deficiencies were reduced by over 50% and performance with proficiency testing samples was improved as well."

CDC itself rates 12% to 15% of licensed and unlicensed labs that participate in CDC programs as below acceptable proficiency in measuring glucose, or sugar, in the blood—a test for diabetes. Nor are all CDC-surveyed labs doing well enough in measuring serum cholesterol or identifying subgroups of blood, which is a crucial deficiency because mismatching in a transfusion could be fatal.

As of now, the results of CDC proficiency testing are not published and made available to doctors so they would know how labs rate. The main deterrent to shoddy work is the threat that a license might be revoked or suspended. So far 24 labs have had their interstate license revoked, suspended or limited, but an erring lab is free to continue operations within the state unless the state concerned has strict standards and enforces them.

There are about 3,000 independent labs that qualify for federal payments under medicare and medicaid through approval by state health departments.

Only a few months ago regulations were extended to apply to labs in the offices of individual doctors or group practitioners who treat medicare and medicaid patients and who have more than 100 specimens a year in a single category referred to them. There is no such regulation of labs that are operated by doctors who confine their testing to their own patients.

The professional associations concerned with testing reply on voluntary compliance with their own standards. The largest program is run by the College of American Pathologists, which has about 9,000 labs signed up in its proficiency testing program. Of these 1,100 submit to on-site inspection by CAP officials. CAP says that although the majority of labs do not qualify for accreditation at first, virtually all make it finally with the help of the pathologists' improvement program. Another group, the American Association of Bioanalysts, has about 1,000 physician-run labs enrolled in proficiency testing.

The majority of all tests performed, however, are done in hospital labs, which are exempt from federal licensing unless the hospital does interstate business. They are also exempt from medicare rules if they choose, instead, to participate in a voluntary program operated by the Joint Commission on Accreditation of Hospitals.

It must be said that many labs, whether in hospitals or privately operated, get better than passing grades most of the time. The best ones, Dr. LaMotte of CDC suggests, seem

to be those that invest a significant percentage of their operating budgets in quality-control programs that give daily and even hourly assurance that the tests on everyday patient specimens are right, not just the samples tested for proficiency.

TOO MANY TESTS?

Tests are used for diagnosis, monitoring treatment, and disease detection and prevention. Even if accuracy is 100%, though, are all those tests necessary?

Today a technician can slip a test tube containing a sample of your blood or urine into an automatic analyzer, flip a switch and in just a few minutes have the status of 20 or so chemical components. Such multiphasic testing is required at admission by many hospitals. Scores of private doctors and clinics make multiple tests a routine part of physical exams. Automated tests are more accurate and less expensive than those done by hand, but do they pay off in terms of costs and reduced incidence of disease?

At Strong Memorial Hospital, a leading teaching institution associated with the University of Rochester Medical School in New York, the average patient during a 14-day stay in 1970 received 69 tests at a cost of $469, about a quarter of his hospital bill. In that year the hospital did 95% more tests than it had five years before. The records of 855 discharged patients suggest that lab use was excessive. The professor of medicine who initiated the study, Dr. Paul Griner, concluded that some doctors tend to follow general routines, which they apply indiscriminately to each patient. This came to light when the results of white blood cell differential counts that doctors had ordered were held back for 37 patients chosen at random. Not one house medical officer in charge ever called the lab to ask about the unreported results.

After a nine-month program to instruct doctors on the cost and proper use of tests, Dr. Griner reports, the number of tests leveled off instead of continuing to increase at a high rate.

Another research team analyzed the worth of multiphasic tests that are given regularly in the hope of spotting and treating disease early, before symptoms appear. The study spanned seven years and covered about 8,000 persons, divided almost equally into two groups. In the first group only about 20% chose to take the annual checkups including multiphasic chemical and clinical tests available through the Kaiser-Permanente Medical Care Program in California. In the second group about 60% took these checkups yearly. During the study the second group did not have a significantly lower death date. But when the reasons for individual deaths were examined, it was found that in the group in which 60% took the checkups signficantly fewer died from "potentially postponable causes"—mostly because of differences in the number of deaths from colon and rectal cancer, breast cancer in women, and heart and blood vessel diseases related to high blood pressure. The apparent prevention benefits of testing showed up most strongly among men and women who joined up between the ages of 45 and 54.

GAUGING THE COST

Though certain laboratory tests have to be done exactingly by hand, the bulk of routine tests for hospital admissions and physical exams can be done by automated equipment at remarkably low cost. A battery of 12 chemical tests, for example, can be done on an analyzer for about $9 or $10. Add a reasonable professional fee for collecting and handling the sample and the total charge might be $20.

It doesn't always work out this way, though. There have been cases in which bills have gone as high as $60 because the hospital or doctor, after receiving the lab bill, has tacked several dollars or more onto each test before passing the buck to the patient.

To discourage this practice, New York State passed a law requiring labs to bill patients directly. This led some big labs to raise their prices substantially because of the increased cost of mailing and collecting bills. The American Medical Association says it is "preferable" that a lab do the billing directly except where it would mean increased cost to the patient; then the doctor should separate his professional services from the lab charges.

Some hospitals have been accused of ordering unnecessary lab tests or overcharging in order to offset red ink in other departments. It is true that hospital lab charges are generally higher than in independent commercial labs, but the hospitals say that's because they provide complete diagnostic and consulting services, not just chemical analyses. As for "laboratory overutilization," the AMA has asked hospitals to take the initiative in informing doctors of the actual costs of tests they order and the effect on the patient's bill, but there is no substantial evidence that much of this is going on.

Now, as national health insurance moves nearer to reality, the debate over the cost and utility of medical lab services may well take a new turn. If millions of tax dollars are to be spent on medical testing as part of federally financed preventive care, there should be many more voices demanding an accounting of what the citizenry gets for its money. At the very least, there should be a campaign to straighten out the hodgepodge of rules and standards that control—or, all too often, leave uncontrolled—these vital health services.

COSTS VARY FROM LAB TO LAB

What you pay for medical tests can vary as much as 300%. This sampling of price ranges of commonly performed tests is from nine commercial labs operating mainly in a mid-Atlantic state. Five of the labs were large corporate operations, while the remainder were small private laboratories. The costs in the table are the prices charged to the patient when billed directly by the lab, not through his physician.

Many jurisdictions forbid advertising lab prices or posting them. If you live in such a place, neither you nor your doctor will be able to compare prices easily. However, some corporate labs and consumer groups are campaigning for increased competition among non-hospital labs through fuller price disclosure.

	Low	*High*
Glucose	$2.75	$6.00
Cholesterol	3.00	8.00
BUN (urea nitrogen)	2.75	6.00
PBI (protein-bound iodine)	4.00	15.00
Blood count	3.75	9.00
Throat Culture (for Beta strep)	4.00	15.00
12-test chemistry profile	8.50	15.00
Uric acid	2.75	6.00
Urinalysis	2.00	5.05

WHAT THE COMMON LAB TESTS TELL

When you're ill, the doctor may need a laboratory analysis to clinch a diagnosis. About 30 common tests provide the clues to most illnesses. Rare or hard-to-diagnose ailments may require whole batteries of tests from the more than 100 generally available to doctors.

Lab tests are also used in regular physical checkups and in medical clinic prevention programs designed to monitor your general health or to spot any abnormality early.

The tests at the right are among those commonly given in a regular checkup. Your own doctor may want more or fewer, depending on your age, health and his view of the value of testing. One test not on the list is the Pap test, a biological test to detect cervical cancer in women. Most physicians recommend it.

POSSIBLE SIGNIFICANCE OF ABNORMAL READINGS

TYPES OF TEST	TOO LOW	TOO HIGH
Blood chemistry: sugar (glucose)	Overproduction of insulin; faulty absorption of carbohydrates; liver disease.	Diabetes; other disorders of secretion glands.
Cholesterol	Faulty intestinal absorption of fats; other intestinal diseases; hyperthyroidism.	Persistently high values for cholesterol and certain other lipids indicate overconsumption of saturated fats, hereditary disorder of fat metabolism and may foretell heart and artery disease.
Urea nitrogen (BUN)	Liver disease.	Defective kidney function.
Transaminase (SGOT)	No recognized significance.	High level of this enyzme indicates liver disease, coronary thrombosis, cell damage generally.
Uric acid	No recognized significance.	Gout; defective kidney function; possible indicator of kidney stones.
Bilirubin (van den Bergh test)	No recognized significance.	Jaundice due to liver disease or to abnormal blood destruction or to obstruction of bile ducts.
Calcium	Underfunction of parathyroid gland; defective absorption of calcium due to Vitamin D deficiency.	Persistently high levels signify overproduction by parathyroid gland, leading to possible digestive disturbances, demineralization of bones.
Protein, total	Chronic diseases of liver, kidneys, stomach or intestines.	Sarcoid; indication of already critically ill person.
Phosphatase alkaline	Unlikely to occur.	Indicator of liver or bone injury or fracture.
Lactic dehydrogenase (LDH)	No recognized significance.	Liver, muscle and heart disorders; leukemia.

Urinalysis:		
Protein		Kidney disease (some healthy people have a small amount at times).
Sugar (glucose)		Diabetes; renal glycosuria—a normal condition for some healthy people.
Bilirubin		Any amount means red blood cells are being destroyed or bile ducts are blocked.
Blood (microscopic test)		Disease or infection of kidneys or bladder.
Hematology:		
Hemoglobin	Anemia from excessive bleeding, faulty blood formation or undue blood destruction in the body shows up as low values for hemoglobin, hematocrit and red blood cells.	Values a bit above normal often occur in persons living at high altitudes, but higher abnormal values of hemoglobin, red blood cells and hematocrit may show up in chronic oxygen deficiency, secondary to lung diseases.
Hematocrit (% of red cells in blood column)		
Red blood cell count		
White blood cell count	Faulty blood cell production sometimes resulting from x-rays or drugs and certain forms of anemia.	The "white count" is important in testing for pneumonia, appendicitis and other fever-causing illnesses and leukemia; a differential count is done to determine proportion of each kind of cell and helps pinpoint nature and type of infection.

Mr. KENNEDY. Mr. President, I am pleased to cosponsor an amendment to the Clinical Laboratories Improvement Act of 1975 introduced today by my good friend and colleague Senator JAVITS, the ranking minority member of my committee, who in 1967 authored the original Clinical Improvement Act.

The clinical laboratory industry now costs the American people almost $9 billion a year. Without high quality laboratory services America's health care system is in jeopardy. Until now we have looked to State government, individual laboratories, and practitioners to assure the quality and reliability of their effort. However, I am convinced that this patchwork program does not adequately serve either the doctor or his patient. The time has come for the public and private sectors to develop a system which will meet public need. That is what my bill is all about.

During the past 5 years, Congress has repeatedly committed itself to developing mechanisms to insure quality health care and to stabilize health care costs. My bill helps to achieve both goals with respect to the provision of laboratory testing services.

Reports of clinical laboratory ineptitude appear frequently in our Nation's media. We have learned of a distressing litany. Many laboratories, for example, have never been inspected, dirty and broken laboratory equipment is being used by inexperienced technicians, reagents are unlabeled and outdated, and patient specimens are being tested with used and unwashed pipettes.

A recent study prepared by the National Bureau of Standards has found that although high volume laboratories may be more proficient than smaller laboratories—such as those found in doctor's offices and medicare certified laboratories—the level of quality was still undesirable. For example, 7.6 percent of the interstate laboratory determinations, 16.5 percent of laboratory tests prepared by other large laboratories, and 26 percent of the sample lab work done in medicare reimbursed labs were incorrect. Almost 1 out of 5 microbiological determinations, then, are inadequate. This is poor medical care and it is expensive medical care. It should no longer be tolerated.

This bill, then, now commands our attention because the American health care consumer often finds it impossible to evaluate and judge the quality of laboratory testing which he receives. He has no influence on his physician's choice of laboratory; nor has he any indication of relative costs. Tests which cost $10 in one lab cost $45 in another. True that lower charges may be attributed to automation, but even among the larger, automated labs there is incredible price variations. Why is this the case?

It is not only the price variation that concerns us; we are also troubled by the fact that physicians themselves recognize the low quality of laboratory results. They respond to this situation by reordering tests or by dividing specimens into two samples and sending them to different laboratories for concurrent analysis. The problem of cost is further exacerbated because subclinical illnesses remain undetected and, on the other hand, because false positives result in unnecessary medical treatment.

The bill I am submitting will correct many of these excesses. By establishing an Office of Clinical Laboratories in HEW, the bill addresses the issue of jurisdictional disputes within the Federal bureaucracy. It further broadens the jurisdictional perimeter to licensure and establishment of quality standards for all laboratories and not just those in interstate commerce. The bill permits the States to set their own standards once they meet or exceed those standards established by the Secretary. Moreover, the States will receive technical assistance and grants—up to 75 percent of costs—for the development and regulation of State regulatory programs. And, there is a model certification procedure established for technical laboratory personnel.

My committee will hold hearings on the bill on July 9 and 10. Those interested in presenting testimony to the subcommittee should contact Mr. Arthur Viseltear at 224–7675.

By Mr. BROOKE (for himself and Mr. METCALF):

S. 1742. A bill to amend the Federal Energy Administration Act of 1974 in order to provide for the prohibition of certain practices which encourage additional use of electricity and natural gas. Referred to the Committee on Commerce.

Mr. BROOKE. Mr. President, today I am introducing legislation, together with Senator METCALF, to amend the Federal Energy Act of 1974 in order to provide for the prohibition of certain private utility practices which encourage additional use of electricity and natural gas.

Part of the reason our utility costs have risen so dramatically in the past 2 years is that we are suffering from the consequences of rate structures which were designed to promote the use of our precious energy resources. In the fifties and sixties era of cheap power and abundant, price-controlled natural gas, it made economic sense for the utilities to push the use of their products; the expansion of demand meant decreasing marginal costs for them. As a result, our electric utility industry is now staggering under the financial weight of its construction plans which are a necessary response to the demand pressures the industry itself helped create. Capital costs for these building programs, which are charged to customers, are skyrocketing. Now the gas industry claims it can not satisfy the customer demand it helped create at the level of today's controlled prices.

Much of the energy now consumed is not being used in such a way as to promote conservation or optimize the use of capital facilities or fuel resources. In the case of electric power, the problem of costly waste is especially acute. Excessive peak-load demand has created a situation in which, on the average, only 49 percent of electric generating facilities are being utilized.

Although the root cause of this systematic energy waste lies in the structure of our rates, which encourages greater consumption, certain utility practices can be singled out as significant contributors to the problem. All consumers are familiar with the advertising of power and was companies which encourages one to switch to either power or natural gas for heating and cooking. All of us have seen utility companies advertising together with appliance manufacturers to promote the use of gas- or electric-powered machinery in homes and offices.

While many utilities did desist from their promotional advertising when the oil crisis of the early 1970's caught them short of plant and fuel, their past practices were so effective that we will long deal with the consequences. Moreover, now that there is a temporary abundance

of fuel supplies and now that new electricity generating plants are beginning to come on line, there is no guarantee but the goodwill of the industry that past practices will not be resumed.

Mr. President, the legislation I propose today would set a standard for all the rate structures under which electricity and gas utilities operate. It would prohibit these firms from charging, as part of the expenses allowed in the rate base which are used in computing customer charges, the expenses they might incur in promotional advertising campaigns. This would in fact be a limited prohibition. Firms are allowed to advertise, as they wish, but only those advertisements which promote ways to conserve our precious energy resources would, under this standard, be charged against the consumer. The stockholders would bear the burden of any advertising campaign which was not consonant with the goals our new national energy policies set of optimizing the use of our fuels and power.

Mr. President, I have sponsored other legislation which provides for a comprehensive standard for electric utility rate structures, with comparable provisions regarding electric utility advertising. While such reforms are being debated, I believe we can provide safeguards by modifying the powers of the FEA to include the establishment of standards for rate structures discouraging promotional advertising. Furthermore, this legislation covers natural gas suppliers as well. It is important to prevent demand for natural gas from being artificially inflated in order to influence the debate over deregulation. In an era in which fuel prices will almost certainly change, this is an important protection for customers of gas utilities as well as of electric power.

Mr. President, I hope the Congress will give prompt and favorable consideration to this measure.

By Mr. WILLIAMS (for himself and Mr. JAVITS):

S. 1743. A bill to provide improved safety and health standards for railroad employees, and for other purposes. Referred to the Committee on Labor and Public Welfare and the Committee on Commerce, jointly, by unanimous consent.

FEDERAL RAILROAD EMPLOYEES SAFETY AND HEALTH ACT

Mr. WILLIAMS. Mr. President, in 1970, safe working conditions for most employees in this country became a genuine possibility with the passage of the Occupational Safety and Health Act. That act gave the responsibility for insuring a safe and healthy work environment to the Department of Labor with the technical and scientific assistance of the Department of Health, Education, and Welfare.

But two important occupations, mining and railroad work, remain outside the protection of the Occupational Safety and Health Act and the Department of Labor. Time has proven that in both instances the better course would have been to accord these employees the same protection as nearly all others now receive.

We recently took the first step to correct this inequity in the mining industry with the introduction of the Federal Mine Safety and Health Amendments of 1975.

It is time now to bring the railroad industry under that same protective umbrella.

I, therefore, introduce for myself and Senator JAVITS a bill which would transfer nearly all railroad safety and health activities of the Federal Government from the Department of Transportation to the Department of Labor and the Occupational Safety and Health Review Commission. The Department of Transportation would retain only certain advisory and research functions so that we would receive the benefit of its expertise in this industry.

Responsibility for establishing and enforcing job and passenger safety and health standards would be invested in the Department of Labor. An expanded Occupational Safety and Health Review Commission would adjudicate, as it does now under OSHA, those Labor Department citations and proposed penalties which are contested by the affected party.

The Nation's railroads, particularly in the Northeast corridor, are deteriorating rapidly. Trackbed, terminals, stations, maintenance shops, and rolling stock all are suffering from an accumulated number of derailments and other accidents. Since 1967, when the first transfer of railroad safety functions to the Department of Transportation occurred, the number of railroad accidents has increased nearly 50 percent. During the calendar year 1974, there were more than 10,400 railroad accidents.

The condition of rail facilities is reflected in the railroad employee casualty figures. In 1974, 140 employees were killed and more than 15,000 employees were injured on the job. If any of the various proposals to embark on a comprehensive rail maintenance program by hiring substantial numbers of unemployed railroad and other employees become law, the need for improved safety and health rules on the job will be even greater.

Stronger railroad safety and health regulations are imperative to combat the obviously increased risk that railroad employees face on their jobs.

A stronger program could force the railroads to undertake urgently needed repairs and maintenance that they have deferred for years. Improved equipment and facilities would immeasurably enhance the safety and well-being not only of railroad workers, but of rail passengers and the general public as well.

The Department of Transportation has focused its efforts on protecting rail passengers and the public, but these efforts have been inadequate and have not reached through to provide enough protection for rail workers.

By placing greater emphasis on the safety and health of rail workers, they would be better protected, and these additional safeguards would provide better protection for rail passengers and the general public as well.

Since 1970, the Department has had comprehensive authority to regulate rail safety, but it has adopted no safety rules affecting maintenance shops, offices or stations.

Where it has adopted rules, it has not adequately stepped up its response either in terms of number of inspectors employed or number of inspections conducted. From 1970 through 1973, the number of inspectors remained nearly static. Only in 1974 did the Transportation Department hire any significant number of additional inspectors, and the total is still inadequate to meet the clear demand.

Although the Department hired additional inspectors last year, there was a sharp decline in the number of inspections of passenger cars, freight cars, and locomotives. The number of locomotives inspected declined from 73,000 in 1973 to 35,000 in 1974 and the number of freight and passenger cars inspected dropped from 400,000 to 275,000.

In the face of the rapid deterioration in roadbed maintenance and rolling stock and the predictably sharp rise in accidents, this response is intolerable. The Department of Transportation has had time to act. The need for an intensive effort in the area of rail safety demands a change.

Under this bill, the Secretary of Labor would exercise essentially the same responsibilities for standards promulgation and enforcement with respect to rail safety as he does in other industries. He would have the additional authority, now possessed by the Secretary of Transportation, to issue a cease-and-desist order where there is an emergency hazardous situation involving railway employees.

The Occupational Safety and Health Review Commission would hear contested citations and proposed penalties in rail safety situations in the same fashion as it currently does under OSHA. However, to accommodate the special needs and problems in the rail industry, this bill provides that two additional members, one from the industry and one representing railroad employees, would be appointed to the OSHRC, which now has three members. A panel of three, which includes the two rail industry experts could be designated to hear railroad cases.

As a further safeguard to insure the proper level of rail expertise, all Federal Railroad Administration staff currently performing functions which would be tansferred to Labor and OSHRC would also be transferred to these agencies. The bill also establishes under the Secretary of Labor, a Federal Railroad Safety and Health Administration to be headed by an Administrator appointed by the President and with the advice and consent of the Senate.

The Federal Railroad Administration, now existing within the Department of Transportation, would be abolished. Those functions remaining in the Department of Transportation, principally research, investigation and development, would be carried out within a division of the Transportation Department.

Mr. President, I ask unanimous consent that the bill S. 1743, to transfer authority

over railroad safety and health from the Department of Transportation to the Department of Labor, be jointly referred to the Committee on Labor and Public Welfare and Commerce.

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

By Mr. MOSS (for himself, Mr. PHILIP A. HART, Mr. MAGNUSON, and Mr. MANSFIELD):

S. 1744. A bill to regulate commerce by discouraging the needless depletion of natural resources through programs and incentives for recycling and conservation, and for other purposes. Referred to the Committee on Commerce.

Mr. MOSS. Mr. President, today I am introducing a bill entitled the "Resource Recycling and Conservation Act," to increase our opportunities for resource and materials savings through a variety of regulatory incentives for recycling. The bill is similar to a comprehensive resource conservation bill (S. 3954) which was reported by the Senate Commerce Committee in the 93d Congress after receiving testimony from 62 witnesses during 11 days of hearings.

That bill was rereferred to the Senate Public Works Committee, which is currently considering a staff working paper on solid waste. The Public Works working paper incorporates some of the suggestions from last year's Commerce Committee bill; consequently, the bill I introduce today is not intended to be a comprehensive answer to the Nation's solid waste or recycling needs but rather represents a continuation of our efforts in areas in which the Commerce Committee has jurisdiction and expertise. It is my hope that the bill I introduce today will be reported from the Commerce Committee in time to be considered on the floor in conjunction with any amendments the Public Works Committee may recommend to the Solid Waste Disposal Act.

The bill would provide a means for remedying certain policies of the Federal Government with respect to freight rates, procurement, labeling and the tax treatment of recycled oil—all of which appear to have discriminated against recycled materials and products in the past. Additionally, the bill includes a phasein approach to study and develop energy and materials savings opportunities through national product standards.

Solid waste management can no longer be just a local issue. It is a national, State, and local problem which demands a Federal response. Millions of tons of municipal solid waste are mounting daily in our dwindling landfills. The U.S. consumption of materials and resources is far above that of the rest of the world—we use nearly one-third of the world's energy supplies, 40 percent of the world's aluminum, 35 percent of the world's lead, and approximately one-third of the world's copper, tin, zinc, and nickel. Exacerbating the materials problems we face as a nation is the fact that we are dependent on imports for over half of the supply of six selected critical resources: bauxite, chromium, rubber, tin, nickel, and zinc.

Because of our high consumption rates and need for reliable supplies, it is essential that we use our resources and materials efficiently and reduce waste throughout all levels of the materials cycle. This bill is part of a national recycling program. The bill addresses the following: The discriminatory impact and reasonableness of freight rates for recycled materials; labeling policies of the FTC which discriminate against recycled oil; Government procurement policies for recycled materials; the establishment of a National Commission on Environmental Costs to study the feasibility of utilizing charges to internalize the costs of depleting natural resources; and a phase-in regulatory program for product standards after a study on the opportunities for reducing waste and using critical materials more efficiently. The reports and research endorsing the need for these recycling and conservation programs are too numerous to mention.

Additionally, support at the local level is growing rapidly for not only a national solid waste program but also for equitable freight rates and national standards for source reduction. For example, the National League of Cities and the United States Conference of Mayors, and the National Association of Counties have strongly endorsed the need for national product standards as well as the need to direct regulatory agencies to restructure freight rates to reflect a commitment to conservation.

Specifically, section 4 of this bill would expedite the identification and elimination of transportation rates regulated by the Interstate Commerce Commission—ICC—and the Federal Maritime Commission—FMC—which discriminate against the movement of recovered materials. Currently, it appears that possible discrimination in the rate structure is not subject to challenge because of regulatory decisions that recovered materials are not competitive with virgin materials. Under the proposed bill, both the ICC and the FMC would be required to change ratemaking procedures to insure fair treatment of recovered materials where discrimination cannot be justified on the basis of transportation factors.

The bill requires government agencies to set a good example with respect to resource recovery and conservation. Federal agencies and State and local agencies receiving Federal assistance would be required to purchase recycled materials, if they are available at a reasonable cost.

Under section 7 of the bill, the Environmental Protection Agency, in consultation with the National Bureau of Standards, would be required to study, analyze and report on the technical feasibility of reducing waste and conserving the use of energy and materials in short supply through product standards. Any standard for a product would have to meet a balancing test on its technical feasibility and economic ramifications prior to promulgation.

Additionally, a proposed standard would be subject to a final rejection by a simple majority vote of either House of Congress. A National Commission on Environmental Costs would also be established under this bill to gather information on the feasibility of utilizing charges to internalize the costs of environmental degradation and the depletion of natural resources. Internalizing costs in this manner is a potential alternative to standard setting, but needs further exploration and evaluation in terms of cost feasibility and effectiveness.

Mr. President, I ask unanimous consent that the entire 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. 1744

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into sections according to the following table of contents, may be cited as the "Resource Recycling and Conservation Act".

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DECLARATION OF POLICY

SEC. 2. (a) FINDINGS.—The Congress finds that the United States has recently experienced severe economic difficulties, including inflation, unemployment, and shortages of food, energy, and other products and materials. Such difficulties and shortages illustrated that Nation no longer possesses an overabundance of natural resources necessary for commerce, economic well-being, and the national security. In the future, greater emphasis must be placed on promoting the conservation of virgin natural resources, promoting resource recovery and recycling, and reducing waste through the efficient use of energy and resources in short supply.

(b) PURPOSES.—It is therefore declared to be the purpose of the Congress in this Act to—

(1) promote, through economic incentives and minimum standards, the use of materials and products that are not in short supply or that can be used again through recovery, reuse, and recycling, and subject to subsection (c) of this section, to discourage the unnecessary use and depletion of scarce virgin natural resource materials;

(2) prohibit transportation rates which discriminate against recycled materials in favor of virgin materials;

(3) change, with respect to the Federal Government, (A) its procurement practices to encourage the use of reclaimed materials and to minimize the unnecessary purchase of virgin materials and (B) its disposal practices to maximize the use of facilities for the recovery of energy and other resources from waste;

(4) require the development of national product standards to reduce the use of energy and critical materials in short supply;

(5) enable consumers to contribute to resource conversation by establishing a national commission to formulate a practical and convenient national disposal costs system which would internalize waste disposal costs and thus permit consumers to make rational value comparisons among competing products on the basis of total costs, including disposal costs.

(c) DISCLAIMER.—It is not the purpose of this Act directly to discourage the exploration, development, or extraction of virgin natural resources which is undertaken in accordance with valid environmental protection laws, regulations, and objectives.

DEFINITIONS

SEC. 3. As used in this Act, unless otherwise defined in this Act—

(1) "Administrator" means the Administrator of the Environmental Protection Agency;

(2) "commerce" means trade, traffic, transportation, or exchange (A) between a place in a State and any place outside such State; or (B) which affects trade, traffic, transportation, or exchange described in subparagraph (A);

(3) "disposal cost" means the economic cost (measured in dollars per standard unit of measure) of collecting, transporting to a treatment facility, storing, and processing solid, liquid, and semisolid waste in the waste disposal systems in the United States;

(4) "durability" refers to product lifetime or the length of time a durable good is useful for its intended purpose; it includes the concepts of product design and repairability.

(5) "Federal agency" means any department, agency, or other instrumentality within the executive branch of the Federal Government; any independent agency or establishment of the Federal Government including any Government corporation; and the Government Printing Office;

(6) "procurement item" means any device, good, substance, material, product, or other item which is the subject of any purchase, barter, or other exchange made to procure such item;

(7) "procuring agency" means any Federal agency or any State agency or agency of a political subdivision of a State which is using Federal funds; or any person contracting with any such agency with respect to work performed under such contract;

(8) "product" means any article, device, item, material, or other substance or any part thereof which is manufactured or produced for distribution or sale in commerce to any person for any personal household or business use other than use as material in the manufacture or production of, or as a component part of, another such substance; and any container or packaging material which is used in the distribution or sale in commerce of any such substance;

(9) "reclaimed material" means any material which has been collected or recovered from waste for a commercial or industrial use following end usage as a product;

(10) "recycled material" means any material which has been collected or recovered from waste for a commercial or industrial use whether or not such collection or recovery follows end usage as a product;

(11) "recyclable" and "recyclability" refers to the capability and likelihood of being recovered from waste for a commercial or industrial use;

(12) "reusable" or "reusability" refers to the capability of being and likely to be reintroduced into commerce for purposes of distribution, sale, or use without any substantial treatment, alteration, or change other than sanitary cleansing. The term may include, but is not limited to, any new product, material, or item meeting such requirements;

(13) "State" means any of the several States, the District of Columbia. the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa;

(14) "virgin natural resource material" or "virgin material" means a raw material, including, but not limited to, previously unused copper, aluminum, lead, zinc, iron, or other metal or metal ore; or any undeveloped resource that is, or with new technology will become, a source of raw materials; or any new or virgin textile material which has useful physical or chemical properties which exist, unused, in nature;

(15) "waste" means any discarded, disposed, unused, or otherwise unusable solid, liquid, or semisolid material or materials. The term shall not include any source material, special nuclear material, or byproduct material subject to regulation or control under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);

(16) "waste management" means the systematic control of the generation, collection, storage, transport, treatment, utilization, processing, recycling, recovery, or final disposal of waste.

INVESTIGATION OF DISCRIMINATORY FREIGHT RATES FOR THE TRANSPORTATION OF RECYCLED MATERIALS

SEC. 4. (a) INVESTIGATION.—The Commission shall within 12 months after the date of enactment of this Act and as appropriate, thereafter—

(1) conduct an investigation, based upon the identification and examination of such rates as are significant to such investigation, of the rate structure for the transportation of recycled materials by transportation carriers subject to its respective jurisdiction and shall, after a hearing has been afforded, determine whether such transportation rate structure is in whole or in part unjustly discriminatory, or, in the case of interstate commerce, unreasonable;

(2) in all cases where the rate structure applicable to the transportation of recycled materials is found to be unreasonable or unjustly discriminatory, issue orders requiring the removal from such rate structure of such unjust discrimination or, in the case of interstate commerce, unreasonableness; and

(3) file annual reports with the President and the Congress on or before the tenth day of December of each of the 3 years following enactment of this Act and such other reports as shall be appropriate to reflect all actions commenced or completed under this section to eliminate unreasonable and unjustly discriminatory rates for the transportation of recycled materials.

(b) COMPLAINTS.—Any interested person may file a complaint with the Commission alleging that rates, charges, or tariffs or proposed rate increases for the transportation of any recycled material subject to its regulatory jurisdiction are unjustly discriminatory or, in the case of movements in interstate commerce, unreasonable. Upon the filing of any such complaint, the Commission shall forward a copy thereof to any carrier whose rates or proposed rate increases are challenged. Such carriers shall be given a reasonable opportunity to answer such allegations in writing. The Commission shall thereupon investigate and after a public hearing make a determination. If such rates. charges, tariffs, or proposed rate increases are found to be unjustly discriminatory or in the case of movements in interstate commerce, unreasonable, the Commission shall issue appropriate orders requiring the removal, where applicable, of such unjust discrimination or unreasonableness.

(c) ADMINISTRATOR.—The Administrator shall take such steps as are necessary to insure that the directive contained in subsection (a) of this section will be carried out as expeditiously as possible. The Administrator shall have the right to intervene as a party in any proceeding commenced by or before the Commission under this section.

(d) PROCEEDINGS.—In any proceeding under this section—

(1) Upon a showing by any interested person of competition between a recycled material and a virgin natural resource material as provided in subsection (g) of this section and of a difference in transportation rates, charges, or tariffs charged by a carrier or a difference in the rate structures for such competing materials for substantially similar transportation, the burden shall then be upon the carrier whose rates, tariffs, charges, rules, or regulations are under investigation to show that the same are not unjustly discriminatory.

(2) The Commission shall make specific findings based upon the record. With respect to all determinations made by it in accordance with this section, any relevant facts or conclusions, including matters to be officially noticed, shall be introduced into the record, subject to cross examination, in accordance with the rules of evidence governing proceedings under the Interstate Commerce Act as amended (49 U.S.C. 1, et seq.) or the Shipping Act of 1916 as amended (46 U.S.C. 801, et seq.).

(3) The Commission shall give full preference to the hearing and decision in any proceeding under this section and shall conclude such proceedings as speedily as possible.

(4) This section shall be read in para materia, as appropriate, with the Interstate Commerce Act, as amended (49 U.S.C. 1, et seq.) or the Shipping Act of 1916, as amended (46 U.S.C. 801, et seq.).

(e) REVIEW.—Orders issued by the Commission pursuant to this section shall be subject to judicial review or enforcement in the same manner as orders issued by the Commission under the Interstate Commerce Act, as amended (49 U.S.C. 1, et seq.), or the Shipping Act of 1916, as amended (49 U.S.C. 801, et seq.).

(f) REGULATIONS.—The Commission is authorized to prescribe such regulations as are necessary to carry out the provisions and purposes of this section.

(g) PRESUMPTION.—For the purposes of this section, a recycled material shown to be practicably usable and intended to be used in a particular manufacturing, industrial, or energy production process, which use would reduce the use of a virgin natural resource material which could otherwise be used, shall be presumed to be competitive with such virgin natural resource material unless such showing is rebutted by a preponderance of the evidence.

(h) DEFINITIONS.—As used in this section, the "Commission" means to the extent of applicable jurisdiction, the Interstate Commerce Commission or the Federal Maritime Commission, or both.

(i) RESEARCH, DEVELOPMENT, AND DEMONSTRATION.—The Secretary of Transportation, in cooperation with the Interstate Commerce Commission and the Federal Maritime Commission shall establish a research, development, and demonstration program which shall develop and improve transport terminal operations, transport service characteristics, transport equipment, and collection and processing methods for the purpose of facilitating the competitive and efficient transportation of recycled materials.

RECLAIMED MATERIALS PREFERENCE

SEC. 5. (a) GENERAL.—A procuring agency shall comply with the requirements set forth in this section and any regulations issued under this section, with respect to any purchase or acquisition of any property having a fair market value of $5,000 or more and with respect to any purchase or acquisition on a recurring or continuing basis of the same or a functionally equivalent material, product, or item where the fair mraket value of the quantity thereof purchased or acquired in the course of the preceding fiscal year was $5,000 or more.

(b) REQUIREMENTS.—(1) With respect to procurement items purchased through advertisements for bids, no procurement shall be made of any such item unless it is, by comparison with competing items offered for sale by suppliers, composed of the greatest percentage of reclaimed materials and is, to the greatest extent, recyclable or reusable following the use for which it is designed or used, whenever a significant difference exists between such item and competing items with respect to such characteristics.

(2) The requirements of paragraph (1) of this section shall not apply to any procurement by a procuring agency if the procurement item which meets such requirements and regulations (A) is not reasonably available within a reasonable period of time; (B) does not meet reasonable performance standards set by such agency; or (C) is only available at a price which substantially exceeds the current market price for competing items.

(3) Each procuring agency shall make its own determinations and findings with respect to the characteristics of procurement items and competing items and the question of compliance with the requirements of this section. The Secretary of Commerce, through the National Bureau of Standards, and the Administrator shall assist any procuring agency in making any such determinations or findings upon request in writing from such agency. In case of any dispute between a procuring agency and a prospective supplier with respect to any such determination or findings, such supplier may obtain review of such determination or findings in an appropriate district court of the United States.

(4) To the extent that a prospective supplier fails to disclose any information with respect to the percentage of reclaimed materials in a procurement item or the recyclability or reusability of such item, such failure, for purposes of this section, shall be treated as an admission that such item contains no such materials and is neither recyclable nor reusable.

(c) GUIDELINES.—The Administrator, after consultation with the Administrator of General Services and the Public Printer, shall prepare, and from time to time revise, guidelines for the use of procuring agencies in the implementation of the requirements of this section. Such guidelines shall set forth recommended practices with respect to the procurement of reclaimed, recyclable, and reusable materials and items containing such materials and shall provide information as to the availability, sources of supply, and potential uses of such materials and items.

(d) OTHER STANDARDS.—In addition to the foregoing, each procuring agency shall be subject to all applicable standards promulgated under section 7 of this Act with respect to all procurement items purchased or acquired by it.

RECOVERY FACILITIES PREFERENCE

SEC. 6. A procuring agency shall, to the maximum extent practicable, manage or arrange for the management of waste generated by it in a waste-management facility which maximum energy and resource recovery.

WASTE REDUCTION

SEC. 7. (a) PRODUCT REPORT.—The Administrator, in consultation with the National Bureau of Standards, appropriate Federal, State, and municipal agencies and other interested persons, within 1 year after the date of enactment of this Act, shall publish (and from time to time thereafter revise) a report (1) identifying products (or classes of products), the manufacturing, distribution, or disposal practices of which may—use an unreasonable amount of energy or virgin materials identified by the President to be (A) critical for the national welfare, and (B) in actual or potential short supply; and

(2) giving information on existing technology and practices for reducing the amount of energy or virgin materials used in the manufacturing, distribution, or disposal of such products, including available data on technology and costs, alternative methods of manufacturing, distribution, or disposal, and to the extent possible any recommendations for disposal cost charges or charges to internalize costs made by the National Commission on Environmental Costs established under section 9 of this Act. Such identification and information shall be announced in the Federal Register and copies shall be made available to the general public.

(b) PROPOSED PRODUCT REGULATIONS.—Within 180 days after publication of the report required under subsection (a) of this section, the Administrator, after consultation with the National Bureau of Standards, other appropriate Federal agencies, and representatives of affected industries, shall publish in accordance with section 553 of title 5 of the United States Code proposed regulations establishing standards for the control of any such identified product. Such regulations may include, but need not be limited to, standards which through the administration of fees, product mix standards, or other means found suitable by the Administrator, encourage the durability, recyclability, or reusability of any such product.

(c) LIMITATION.—No regulation shall be promulgated under this section which requires a change in a manufacturing, distribution, or disposal practice for any product unless the Administrator finds such regulation is—

(A) technically feasible, and

(B) economically reasonable over the lifecycle of the product after a finding by the Administrator that the environmental, economic, and social benefits likely to be derived from the application of such regulation exceed the environmental, economic, and social costs likely to result therefrom.

No regulation shall be promulgated under this section unless the Administrator finds that regulations issued under the Clean Air Act, as amended (42 U.S.C. 1857) or the Federal Water Pollution Control Act, as amended (33 U.S.C. 466) cannot accomplish the purposes of such standards as effectively.

(d) FINAL REGULATIONS.—The Administrator shall publish a notice for a public hearing on such proposed regulation to be held within 60 days of publication of such proposed regulations. No later than 180 days after publication of the proposed regulations, such regulations shall be deemed final unless the Administrator finds, on the record, that a modification of such proposed regulations is justified based upon a preponderance of evidence adduced at such hearing or unless either House of Congress opposes such proposed regulations by a majority vote. If after any such public hearing, the Administrator finds that a modification of any such proposed regulation is justified, revised regulations shall be promulgated immediately subject to rejection by a majority vote of either House of Congress. All such regulations promulgated under this section shall be reviewed and, if appropriate, revised at least every three years.

(e) NATIONAL BUREAU OF STANDARDS.—

(1) GENERAL.—The Secretary of Commerce through the National Bureau of Standards, shall develop the resources, facilities, and expertise necessary to assist and advise the Administrator in the exercise of such Administrator's responsibilities under this section, at the request and direction of such Administrator. The Administrator shall utilize such resources, facilities and expertise to assist in the development of product reports and product regulations pursuant to this section.

(2) CONFORMING AMENDMENT.—Section 1 of the Act of July 22, 1950 (15 U.S.C. 272), is amended by inserting after subsection (f) a new subsection as follows:

"(g) The development of product reports and product regulations pursuant to section 7 of the 'Resource Recycling and Conservation Act.'".

(f) SEIZURE.—(1) The Administrator, or upon such Administrator's request the Attorney General, may initiate an action in an appropriate district court of the United States against any product which is manufactured, distributed, sold, or disposed in violation of a regulation promulgated under this section or a finding made under subsection (g) of this section for seizure and condemnation of such product.

(2) In any such action, such product may be proceeded against by process of libel for its seizure and condemnation within any judicial district in which it is found. Proceedings and cases shall conform as nearly as possible to proceedings in rem in admiralty.

(3) Upon the entry of an order of seizure and condemnation under this subsection, the products against which such order is entered shall be disposed of by destruction or sale under the supervision of an officer of the court, or it shall be released to its owner, or a designated responsible person who intervened in the proceeding as a claimant, to be destroyed or brought into compliance with applicable requirements under the supervision of a duly authorized agent of the Administrator. Any such sale shall be conducted in accordance with the provisions of this section and the laws of the jurisdiction in which the sale is conducted. The proceeds of such sale, minus expenses of sale and costs, shall be paid to the United States for deposit in the Treasury as "miscellaneous receipts". No such product shall be released until the owner or designated responsible person has paid to the court all costs incurred and has executed a good and sufficient bond payable to the United States conditioned upon a commitment that (A) the product will be destroyed or brought into compliance with applicable requirements pursuant to the terms of such order and the provisions of this paragraph; (B) the product will not be sold or disposed of contrary to the provisions of the order, this Act and regulations thereunder, and the laws of the involved State; and (C) payment will be made promptly to the Administrator of reasonable and appropriate supervision fees, according to a schedule of such fees to be established by the Administrator. As used in this paragraph, "costs" means, where applicable, court costs and fees, moving and storage expenses, testing and examination costs, and any other expenses incurred in seizing and safeguarding such property.

(g) EXPORTS.—A product intended solely for export is exempt from regulations and standards issued under this section, except that no product may be exported if the Administrator finds that such product will, upon final disposal following export and use, directly or indirectly result in an unreasonable reduction of domestic energy or virgin materials identified by the President to be critical for the national welfare and in actual or potential short supply.

(h) STATE AUTHORITY.—(1) If the Administrator has promulgated a regulation under this section or made a finding under subsection (g) of this section with respect to a product, no State or local government may impose requirements which are different therefrom.

(2) The Administrator may by regulation, upon the petition of any State or local government or at such Administrator's own initiative, exempt State and local governments from the prohibitions of paragraph (1) of this subsection with respect to any State or local requirement which is more stringent than the corresponding Federal requirement, if such exemption will not,

through difficulties in marketing, distribution, or other factors, result in placing an unreasonable burden upon commerce.

TECHNOLOGY TRANSFER

SEC. 8. The Administrator shall establish and maintain a central reference library for actual performance and cost effectiveness records and other data and information with respect to the various methods of energy and resource recovery from waste and the various systems and technologies for collection, transport, storage, treatment, and final disposal of waste, and other aspects of waste management. Such information shall be made available to State and local governments and other persons. The Administrator shall also implement a program for the rapid dissemination of information relating to all such aspects of waste management, including the results of any research, developments, demonstrations, investigations, experiments surveys, studies, or other information which may be necessary or useful to State and local officials and such other person.

NATIONAL COMMISSION ON ENVIRONMENTAL COSTS

SEC. 9. (a) ESTABLISHMENT.—There shall be established, 120 days after the date of enactment of this Act, a National Commission on Environmental Cost (hereinafter referred to as the "Commission").

(b) STRUCTURE.—(1) The Commission shall consist of 12 members, as follows:

(A) three who shall be appointed by the majority leader of the Senate from Members of the Senate, of whom not more than two shall be members of the same political party;

(B) three who shall be appointed by the Speaker of the House of Representatives from Members of the House of Representatives, of whom not more than two shall be members of the same political party;

(C) three who shall be appointed by the President from the personnel of Federal agencies: *Provided*, That the primary employment activity of each such person at the time of appointment is the protection of environmental quality; and

(D) three who shall be appointed by the President from lists of qualified individuals not employed by the Federal Government on the basis of their special training, experience, or qualifications, of whom not more than two shall be members of the same political party.

(2) The members of the Commission shall be appointed for a term of 3 years, except that any individual appointed to fill a vacancy occurring prior to the expiration of the term for which such individual's predecessor was appointed shall be appointed for the remainder of such term and in the same manner in which such predecessor was appointed.

(3) The members of the Commission shall elect one of their numbers to serve as Chairman thereof.

(4) Four members of the Commission shall constitute a quorum at any meeting for the transaction of any function of the Association: Provided, That notice in writing of the date, time, and location of such meeting was given or sent by certified mail to each of the members of the Commission 30 days prior to the date thereof.

(c) DUTIES.—It shall be the duty of the Commission to—

(1) conduct a comprehensive study, including field testing and controlled experimentation to the extent practicable, of the feasibility and effectiveness of establishing a system of national product disposal cost charges. The study shall include an evaluation of the accuracy with which actual disposal cost, by product or class of products, can be measured;

(2) study and make recommendations as to the best way to administer such a system of national disposal costs charges, including the level and agency or agencies of Government which should have major responsibility therefor and the extent to which refunds or credits should be authorized or mandated of sums paid or amount otherwise due for such disposal charges, including, but not limited to, refunds or credits based on the amount, if any, of recovered material included in a product or with respect to products which when unwanted or discarded are normally submitted to and accepted by a resource recovery facility or with respect to consumers whose waste is submitted to and accepted by a resource recovery facility;

(3) study and make estimates and projections of anticipated revenue during the first 5 years of operation, taking into account any recommended refunds or credits, with respect to each such system studied and tested together with the anticipated costs of administering and enforcing each such system;

(4) study and make recommendations as to the distribution and use of such revenues;

(5) conduct a comprehensive study of the extent to which the costs of environmental degradation can be quantified and the feasibility of establishing a system of charges to internalize the costs and mitigate the adverse effects of such environmental degradation. The Commission shall examine the extent to which the costs of such environmental degradation would be internalized through the application of alternative means of control; and

(6) study all feasible means of disclosing the extent of environmental degradation to consumers, by those responsible for such degradation. The means studied shall include, but not be limited to, disclosures in advertising and labeling of products. The Commission shall examine all reasonable means of effectively informing consumers of the sources of environmental degradation including, but not limited to, environmental costs associated with such products and alternative products which are likely to cause less environmental degradation.

(d) REPORTS.—The Commission shall submit progress reports simultaneously to the Congress and the President at such times as the Commission deems appropriate. An interim report shall be submitted not later than 2 years after the date of enactment of this Act. The final report of the Commission shall be submitted simultaneously to the Congress and the President within 3 years after the date of enactment of this Act. Such final report and, where feasible, such progress reports and interim report shall include any changes in the law recommended by the Commission to implement the findings and conclusions of its studies. The Commission shall cease to exist 60 days after the date of submission of its final report.

(e) POWERS.—(1) The Commission or any member thereof may, for the purpose of carrying out the provisions of this section, hold such hearings; sit and act at such times and places, administer such oaths, and require by subpoena or other order the attendance and testimony of such witnesses and the production of such evidence as the Commission or member deems advisable. Subpoenas may be issued under the signature of the Chairman or any duly designated member of the Commission, and may be served by any person designated for such purpose by the Chairman. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Such attendance of witnesses and production may be required from any place in the United States to any place designated for such hearing.

(2) In case of refusal to obey a subpoena or other order issued under paragraph (1) of this subsection, by any person who resides, is found, or transacts business within any judicial district of the United States, the district court of the United States for any such district shall have jurisdiction and shall upon the request of the Chairman of the Commission issue to such person an order to appear and produce evidence. Any failure to obey such an order shall be punishable by such court as a contempt of court.

(3) The Administrator of General Services shall furnish the Commission with such offices, equipment, supplies, and services as such Administrator is authorized to furnish to any other agency or instrumentality of the United States.

(4) Each Federal agency is authorized and directed to furnish to the Commission, upon written request by the Chairman thereof, on a reimbursable basis or otherwise, such assistance as the Commission deems necessary to carry out its duties.

(5) The Commission may enter into such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its duties, with any person.

(f) COMPENSATION AND PERSONNEL.—(1) A member of the Commission shall receive compensation only if not otherwise employed in any capacity by the Federal Government. Such a member shall receive $300 per diem when engaged in the actual performance of duties vested in the Commission. All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

(2) Subject to such rules and regulations as the Commission may adopt, the Chairman of the Commission shall have the power to (A) appoint, fix the compensation, and assign the duties of an Executive Director and such additional staff personnel as are deemed necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, classification, and General Schedule pay rates, except that no individual shall be paid at rates in excess of the maximum rate for GS–18 of the General Schedule as set forth under section 5332 of such title; and (B) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $150 a day for persons performing such services. In making appointments and procuring services, the Chairman of the Commission shall hire sufficient full- and part-time employees who are competent environmentalists, lawyers, economists, scientists, and engineers.

RECYCLED OIL

SEC. 10. (a) LABELING.—(1) The Director of the National Bureau of Standards shall issue regulations with respect to recycled oil, in accordance with paragraph (2) (A) of this subsection. As of the effective date of such regulations, any decision or regulation of the Federal Trade Commission, or of any State or local government, requiring that recycled oil which is sold for a purpose designated in such regulations of the Director of the National Bureau of Standards be labeled as "previously used" or "reprocessed" oil shall cease to have effect and shall be repealed by operation of law.

(2) As used in this subsection—

(A) "recycled oil" means used oil which has been re-refined or otherwise processed to remove the physical and chemical impurities acquired through use and which is equivalent or better in quality and performance to new oil of reasonable quality for designated purposes, as determined by regulations issued by the Director of the National Bureau of Standards;

(B) "new oil" means oil which has been refined from oil which has never previously been used by a consumer; and

(C) "used oil" means oil which has through use been contaminated by physical or chemical impurities which have not been removed

by subsequent refining, treatment, or other processing.

(b) EXCISE TAXES.—(1) Section 4221(a) of the Internal Revenue Code of 1954 (relating to certain tax free sales) is amended by striking the second "or" in clause (4), striking the period following clause (5) and inserting in lieu thereof ", or", and by adding the following new clause:

"(6) for use as lubricating oil blended or mixed by any person with used or waste lubricating oil which has been cleaned, renovated, or refined if the resultant mixture is used otherwise than in a highway motor vehicle."

(2) The amendment made by this subsection shall be effective with respect to lubricating oil sold after the last day of the month in which this Act is enacted.

RECORDS AND EXAMINATIONS

SEC. 11. (a) PRODUCT.—Each manufacturer or producer of any product which is governed by any standard under a regulation issued under this Act shall—

(1) establish and maintain such records, make such reports, provide such information, and make such tests as the Administrator may reasonably require to determine compliance with such standard or standards and the requirements of this Act;

(2) permit a duly designated officer or employee, upon request, to have access to the records, reports, information, and test results required pursuant to paragraph (1) of this subsection for the purpose of examination and copying; and

(3) make products coming off the assembly line or otherwise in the hands of the manufacturer available for inspection and testing by the Administrator to the extent required by applicable regulations of the Administrator: *Provided*, That the Administrator shall require no more inspection and testing than is reasonably necessary to discharge such Administrator's responsibilities under this Act.

(b) WASTE.—(1) Any person who stores, treats, transports, disposes of, or otherwise handles waste, upon request, shall admit any duly designated officer or employee of the Environmental Protection Agency, an involved regional authority, or a State or local agency having jurisdiction to any site or facility subject to such officer's or employee's control and shall furnish or permit such officer or employee access, at all reasonable times, to all records relating to such waste for purpose of examination and copying.

(2) Any such duly designated officer or employee is authorized to (A) enter at reasonable times any establishment, or other place maintained by any person, in which waste is stored, treated, transported, or disposed of; and (B) inspect and obtain samples from any person of any such waste and samples of any containers or labeling for such waste. Each such inspection shall be commenced and completed with reasonable promptness. If such officer or employee obtains any samples, such officer or employee shall give the owner, operator, or agent in charge of the premises from which they are obtained a receipt describing each such sample. If an analysis is made of such sample or samples, a copy of the results shall be furnished promptly to such owner, operator, or agent.

PROHIBITED ACTS

SEC. 12. It is unlawful for any person subject to the jurisdiction of the United States to—

(a) introduce or deliver for introduction in commerce any product which does not conform to an applicable standard set forth in a regulation duly issued by the Administrator under any provision of this Act; or

(b) fail to furnish records or fail to permit access, for examination and copying, to records, information, samples, and test results required pursuant to this Act.

REMEDIES

SEC. 13. (a) CIVIL PENALTIES.—(1) Any person who is found by the Administrator after notice and an opportunity for an adjudicative hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 12 of this Act, shall be liable to the United States for a civil penalty of not more than $5,000 for each day of violation. The amount of such civil penalty shall be assessed by the Administrator, or such Administrator's delegate, by written notice. In determining the amount of such penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the prohibited act or acts committed and, with respect to the person found to have committed such act or acts, the degree of culpability, any history of prior offenses, ability to pay, and effect on ability to continue to do business, and such other matters as justice may require.

(2) Any person against whom a violation is found and a civil penalty assessed under paragraph (1) of this subsection may obtain review in the appropriate court of appeals of the United States by filing a notice of appeal in such court 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly certify and file in such court the record upon which such penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the Administrator shall be set aside if found to be unsupported by substantial evidence, as provided by section 706(2)(e) of title 5, United States Code.

(3) If any person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the Administrator, the Administrator shall refer the matter to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(b) CRIMINAL PENALTIES.—Any person who knowingly commits an act prohibited by section 12 of this Act shall, upon conviction, be fined not more than $25,000 or imprisoned for not more than 1 year, or both.

(c) SPECIFIC RELIEF.—The Administrator, or at such Administrator's request the Attorney General, may bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of an Act prohibited by section 10 or 12 of this Act. In any action requesting equitable relief, under any Act administered by the Administrator, or instituted at the request of such Administator, where a risk to public health is alleged and established, the failure by the party requesting such relief to prove that demonstrable harm to health now exists or will result, shall not, in and of itself, constitute a permissible basis to deny such relief. When such risk is established, the court shall consider the probability that demonstrable harm exists or will result and the human health consequences from such harm. The preceding two sentences shall govern all proceedings in actions brought after the date of enactment of this Act and all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action then pending would not be feasible or would work injustice.

(d) CITIZENS CIVIL ACTION.—(1) Except as provided in paragraph (2) of this subsection, any person, including the Administrator and at such Administrator's request, the Attorney General may commence a civil action for injunctive relief on such person's own behalf or on behalf of the United States, as the case may be, whenever such action constitutes a case of controversy against (A) any person, including a government entity (to the extent permitted by the eleventh amendment to the Constitution), alleged to be in violation of any regulation or order issued in accordance with this Act; or (B) the Administrator, where there is alleged a failure by such Administrator to perform any act or duty required of such Administrator under this Act. The district courts of the United States shall have jurisdiction over actions brought under this subsection without regard to the amount in controversy or the citizenship of the parties. An action under subparagraph (A) may be brought in the district court for any judicial district in which venue is proper under section 1391 of title 28, United States Code. An action under subparagraph (B) may be brought only in the district court for the District of Columbia.

(2) No civil action may be commenced—

(A) under paragraph (1)(A) of this subsection prior to 60 days after notice of the alleged violation is given to the Administrator and to any alleged violator by the person commencing the action;

(B) under paragraph (1)(A) of this subsection if the Administrator or the Attorney General has commenced and is diligently prosecuting an action in a court of the United States to require abatement of the alleged violation;

(C) under paragraph (1)(B) of this subsection prior to 60 days after notice of intent to commence such action has been given to the Administrator, in such manner as the Administrator may prescribe by regulation.

(3) In any action under this subsection, the Administrator or the Attorney General, if not a party, may intervene as a matter of right. In any case in which an action is barred under paragraph (2)(B) of this subsection, any person may intervene as a matter of right in the pending action commenced by the Administrator or the Attorney General.

(4) The court, in issuing any final order in any action under this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever it determines that such an award is appropriate.

(5) Nothing in this subsection shall be construed to restrict any right which any person or class of persons may have under any statute or at common law to seek enforcement of any applicable regulation or order or any other relief.

(6) When any civil actions brought under this subsection involve the same defendant and the same issues or alleged violations but are pending in different courts, such pending proceedings may be ordered consolidated for trial in accordance with this paragraph. Upon application of such defendant to one such court, such court shall, unless good cause is shown, order all such actions under this subsection involving the same defendants and the same issues or alleged violations to be consolidated for trials in (A) the court agreed upon by stipulation among all the parties; or (B) the court selected by the defendant or the court in a judicial district convenient to such defendant's principal place of business. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of any case covered by such order, and upon request by any such court may reconsider and amend, modify, or withdraw such order.

GENERAL PROVISIONS

SEC. 14. (a) REGULATIONS.—In addition to any specific grant of authority in this Act, the Administrator is authorized to prescribe such regulations as are necessary and appropriate to carry out such Administrator's function under this Act.

(b) JUDICIAL REVIEW OF REGULATION.—(1) Any judicial review of any final regulation issued under this Act shall be conducted in accordance with the provisions of sections 701 through 706 of title 5, United States Code, except that with respect to relief pending review, no stay may be granted of any agency action unless the reviewing court determines that the party seeking such stay is likely to prevail on the merits in the review proceeding and that such party is likely to suffer irreparable harm pending the determination of such proceeding unless such stay is granted.

(2) Any party to a judicial review proceeding under this subsection may request permission from the court to present additional evidence. If such party establishes, to the satisfaction of the court, that such evidence was not available when the Administrator issued the final regulation or regulations under review and is material, or that the failure of the Administrator to include such evidence in the agency proceeding was arbitrary or capricious, the court may, upon such terms and conditions as it deems proper, order such evidence (and any material tending to controvert it) to be taken before the Administrator and presented to the court in the review proceeding. Upon the basis of such additional evidence, the Administrator may modify the findings as to the facts or make new findings. The Administrator shall present any such additional evidence taken to the court, together with any such modifications in the findings and any recommendation for the modification or setting aside of his or her original order.

(c) INTEGRATION WITH OTHER ACTS.—The Administrator shall integrate all provisions of this Act for purposes of administration and enforcement and shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of the Clean Air Act, the Federal Water Pollution Control Act, the Federal Environmental Pesticide Control Act (7 U.S.C. 135), and such other Acts of Congress as grant regulatory authority to the Administrator. Such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in this Act.

(d) AVAILABILITY OF INFORMATION.—The Administrator shall make available to the public, upon request and at cost of reproduction and mailing, any and all information obtained or developed under this Act except to the extent that such information constitutes a trade secret, except that such information may be disclosed by the Administrator—

(1) to other Federal Government departments, agencies, and officials with reasonable need for such information for official use, upon request;

(2) to committees of Congress having jurisdiction over the subject matter to which the information relates;

(3) in any judicial proceeding relating to the provisions of this section under a court order formulated to preserve the confidentiality of such information without impairing the proceeding; and

(4) if relevant in any proceeding under this section, except that disclosure shall preserve the confidentiality to the extent possible without impairing the proceeding.

PACKAGING AND LABELING

SEC. 15. Section 12 of the Fair Packaging and Labeling Act of 1966 (15 U.S.C. 1461) is amended by replacing the period at the end thereof with a colon and adding the following: *"Provided,* That notwithstanding any provision of this Act or any law of any State or political subdivision thereof, any recyclable or recycled solid waste material, which is not a consumer commodity, and which historically has been labeled and sold on the basis of gross weight with a stated maximum percentage of such weight for tare or packaging, may continue to be labeled and sold in that manner and without any other weight designation."

FEDERAL POWER COMMISSION REVIEW

SEC. 16. The Federal Power Commission is authorized and directed to review, and modify where necessary, its existing policies, rules, and regulations as they affect the operation of public utilities and natural gas companies to bring such policies, rules, and regulations into conformance with the purpose of this Act. The Federal Power Commission is further directed to adopt policies, rules, and regulations which provide incentives for public utilities and natural gas companies to (a) participate in pilot plant projects and demonstrations of systems for recovering energy from waste; (b) convert existing facilities and construct new facilities to provide for recovery of energy from waste; and (c) purchase fuel which is produced in an energy recovery facility.

NATIONAL SECURITY WAIVER

SEC. 17. The Administrator may waive compliance with the provisions of this Act, in whole or in part, upon receiving information from the Secretary of Defense that such waiver is in the interest of national security. Upon the issuance of such a waiver, the Administrator shall publish in the Federal Register a notice that the waiver was granted for good cause shown by the Secretary of Defense in the interest of national security, unless the Administrator has been requested by the Secretary of Defense to omit such publication because such publication would be contrary to the interests of national security.

DISCLAIMER

SEC. 18. Nothing in this Act shall authorize the Administrator to directly regulate the exploration, development, or extraction of any virgin natural resource or the initial sale thereof.

EMPLOYEE PROTECTION

SEC. 19. (a) GENERAL.—No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act;

(2) testified or is about to testify in any such proceeding; or

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this Act.

(b) REMEDY.—(1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section may, within 30 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(2) (A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this paragraph. Within 90 days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If in response to a complaint filed under paragraph (1) the Secretary determines that a violation of subsection (a) of this section has occurred, the Secretary shall order (i) the person who committed such violation to take affirmative action to abate the violation, (ii) such person to reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, (iii) compensatory damages, and (iv) where appropriate, exemplary damages. If such an order is issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complainant upon which the order was issued.

(c) REVIEW.—(1) Any person adversely affected or aggrieved by an order issued under subsection (b) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within 60 days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5 of the United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary, with respect to which review could have been obtained under pargaraph (1), shall not be subject to judicial review in any criminal or other civil proceeding.

(d) ENFORCEMENT.—(1) Whenever a person has failed to comply with an order issued under subsection (b) (2), the Secretary shall file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages. Civil actions filed under this subsection shall be heard and decided expeditiously.

(2) Any nondiscretionary duty imposed by this section is enforceable in mandamus proceedings brought under section 1361 of title 28, the United Sttaes Code.

(e) EXCLUSION.—Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this Act.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 20. (a) GENERAL.—Except with respect to the specific authorizations for appropriations contained in subsection (b) of this section, there are authorized to be appropriated for carrying out the provisions of this Act such sums as are necessary not to exceed $500,000 for the fiscal year ending June 30, 1975, $2,000,000 for the fiscal year ending June 30, 1976, $500,000 for the transitional fiscal quarter ending September 30, 1976, and $2,000,000 for the fiscal year ending September 30, 1977.

(b) NATIONAL COMMISSION ON ENVIRONMENTAL COSTS.—There are hereby authorized to be appropriated for the purpose of financing the activities of the National Commission on Environmental Costs under section 9 of this Act such sums as are necessary not to exceed $2,000,000, to remain available until expended.

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

S. 1745. A bill to facilitate the economic adjustment of communities, industries, and workers who may be substantially and seriously affected by reductions in Defense contracts and facilities which are undertaken to realine Defense expenditures with changed national security requirements and to prevent the ensuing dislocations from contributing to or exacerbating recessionary effects on the aforementioned groups. Referred, by unanimous consent, jointly, to the Committee on Armed Services, the Committee on Banking, Housing and Urban Affairs, the Committee on Government Operations, the Committee on Finance, and the Committee on Labor and Public Welfare.

DEFENSE ECONOMIC ADJUSTMENT ACT

Mr. McGOVERN. Mr. President, I introduce for myself and Senator MATHIAS a bill entitled the Defense Economic Adjustment Act.

This same bill is being introduced today in the House by Representatives BINGHAM of New York and WHALEN of Ohio with a number of cosponsors. So this represents a bipartisan, bicameral initiative to help speed our transition to a peacetime economy.

Economic conversion has been an issue of deep concern to me from the time I first came to the Senate in 1963. For that long I have been searching for workable ways to help transfer excess military resources to peacetime pursuits. Other sponsors of this measure have also pursued this question for many years.

Though no significant action has been taken, the issue has been considered in some depth in years past. In 1963 the Arms Control and Disarmament Agency undertook a series of detailed studies on the economic impact of reductions in arms spending. In 1965, in response to legislation I had proposed and Senate hearings, President Johnson appointed a commission to examine ways of dealing with the dislocations suffered by workers, companies, and communities when arms spending is cut back.

The report of that commission was eclipsed by our escalation in Vietnam, and then buried by the mammoth arms budgets which were used to underwrite that tragic venture. Although we still argued that the machinery should be in place, few Americans saw any need for conversion planning during that period.

Now, at long last, we can be grateful that the war is over and the issue is timely again.

We have been and we will continue to suffer dislocations as a result of shifts in military spending. Indeed, even at current spending rates, the Pentagon projects a loss of 63,000 jobs in DOD and among contractors by June of next year. And while we cannot project the final figure, it is virtually certain that Congress will make significant cuts in the fiscal 1976 arms budget. The Armed Services Committees of both the House and the Senate have already reduced some of the more outlandish procurement programs, and their bills await further challenge on the floor. The success we presumably seek in arms control negotiations and other forums should permit further reductions.

The thesis of this legislation is that the Government which has created a dependency on high military budgets has an obligation to help plan and carry out a smooth transition to work on civilian needs. The bill would give contractors and subcontractors an incentive to prepare for the transition, with the goal of avoiding any abrupt loss of jobs. If they fail, the funds set aside would be available to pay extended unemployment benefits to displaced workers.

But beyond that, this legislation should help us focus on the unemployment prison we create for the American economy by excessive spending on arms.

Especially now, with unemployment at disastrously high levels, we are told that we cannot reduce the military budget—indeed, that we must increase it by some 18 percent, counting AEC arms spending—in part because any cut would add still more to the jobless rolls.

But the truth is that regardless of what we do with the savings, reductions in arms spending will mean more jobs, not less, for the American people. Stated another way, the economic drag of arms spending, far from helping to sustain the economy, has been a major contributing factor in our economic collapse.

In February, the President of the United Auto Workers, Leonard Woodcock, told the Senate Budget Committee that—

> One billion dollars of military expenditures creates an average 20,000 to 30,000 fewer jobs than alternative forms of expenditures. Thus a program to divert $15 to $20 billion from military spending to certain programs in energy transportation, housing, etc., could create 300,000 to 600,000 jobs.

The Public Interest Research Group in Lansing, Mich., has put together a very careful analysis of the employment effects of various kinds of spending. It concludes that for an $80 billion rate of spending on the military, we lose a net of 840,000 jobs nationwide.

One specific example is of special interest to me, because I plan to introduce in a few days a comprehensive national transportation bill. The condition of our railroads, in particular, is a national disgrace. According to the report of the Michigan group, each $1 billion spent on the military creates about 55,000 jobs. We have calculated that investing that same amount in rebuilding decrepit railbeds would create some 70,000 jobs. And it would be work on something we need desperately in this country, instead of on more military overkill which can serve no useful purpose at all.

So this is one way to put the American people back to work: Combine prudent cuts in arms outlays with new investments in the civilian priorities which have already been neglected for too long.

The legislation we propose today would help avoid dislocations in between. It is not a complete answer. Indeed, the best conversion bill of all would be a 5-year projection of all national spending, showing that we will hold the line on arms outlays and specifying what civilian areas will be increased. Certainly the industries involved would be wise enough to follow guidance of that kind.

But until we are willing to plan to that extent, legislation along the lines we propose today will be an absolute need. It is a means to avoid the inevitable disruptions for workers and communities. Beyond that, it is a means to help rebuild a crippled national economy, and to put thousands more Americans back on the job.

Mr. President, I ask unanimous consent that there be printed in the RECORD at this point a brief summary of the provisions of the bill we have introduced today.

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

SUMMARY OF MAIN PROVISIONS OF ECONOMIC ADJUSTMENT BILL

1. PURPOSE

To provide economic adjustment assistance to workers, communities, and contractors which may be substantially and seriously affected by reductions in defense expenditures.

2. DEFINITIONS

Defines terms used in bill. Defines "substantially and seriously affected" for communities and contractors, so that bill will cover those who would be hardest hit by reductions in defense expenditures and would have the most difficulty in adjusting.

3. TITLE I, ESTABLISHMENT OF COUNCIL

SEC. 101: Establishes a Defense Economic Adjustment Council with cabinet-level membership. Secretary of Commerce is Chairman. (Note: This council currently exists within the Office of the President, but by executive rather than legislative direction.) Section provides staff for Council.

SEC. 102: Defines duties of Council as follows: developing and coordinating policies and programs, collecting and disseminating information, encouraging State studies and action, providing seed money for planning immediately to communities which have been substantially and seriously affected by reductions, defining in coordination with the Congress priority sectors and projects in the civilian economy and channeling economic adjustment plans into these areas, reviewing adjustment plans, and reporting to the public.

4. TITLE II, COMMUNITY ECONOMIC ADJUSTMENT

SEC. 201: Provides for economic adjustment planning assistance to communities which would be substantially and seriously affected by base or industry closures or reductions. Establishes a mechanism for identifying communities and earmarks a portion of existing funds for economic development for providing these communities with seed money for planning economic adjustment.

SEC. 204: Requires each defense agency facility to file a detailed listing of all equipment, including its condition, the cost of conversion to civilian uses, and the most likely civilian uses. Requires 180 days advance notification to community of any facility closure or substantial reduction. Provides immediate adjustment assistance to communities. Provides for sale of all excess facilities to community at a public

benefit discount—currently this discount only applies to property which is to be developed as a park or airport. Guarantees retraining and employment benefits to affected government workers.

5. TITLE III, INDUSTRIAL ECONOMIC CONVERSION

SEC. 301: Requires defense contractors to develop conversion plans, the costs of which can be included in the defense contract.

SEC. 302: Provides technical and managerial assistance to contractors in planning for and conducting economic conversion. Assistance is to be provided by federal agencies.

SEC. 303: Amend Defense Authorization Act of 1970 to expand kinds of independent research and development which can be funded in a defense contract to include projects which the Council believes have a potential relationship to an urgent national requirement in a designated non-defense sector. Council and Congress permitted to designate non-defense R&D which can be funded. (Note: Provision will expand government support for IR&D.)

SEC. 304: Provides immediate assistance to contractor whose contracts cancelled within one year of passage of act and who have not received other contracts to take their place. (Such contractors cannot benefit from Section 301–303 because these sections are tied to contracts let after the act becomes law.) Designates project areas and funding and other assistance for such contractors.

6. TITLE IV, ECONOMIC ADJUSTMENT FUND

Establishes a fund, paid for out of contractor's payments from contract, to be used for worker benefits. Contractor to place ½% of funds he receives under the contract in fund, to receive back with interest all funds not expended for worker benefits under certain conditions. Authorizes federal expenditures for Fund if necessary. Also establishes Non-Profit Fund from U.S. Treasury funds to cover workers in nonprofit organizations which have defense contracts.

7. TITLE V, ECONOMIC ADJUSTMENT FOR WORKERS

Provides adjustment assistance in cases in which 5% or more of local work force is affected by reduction in the volume of defense work at a contractor's facility. Assistance includes guarantee of compensation which, when added to other benefits, equals 80% of prior weekly wages, vested pension credit, hospital and life insurance, retraining, and/or moving expenses. Assistance available for up to 2 years, or until worker placed in new job, whichever occurs first. Assistance paid for by Funds of Title VI.

Mr. MATHIAS. I join today my distinguished colleague from South Dakota (Mr. MCGOVERN) and with my colleagues, JONATHAN BINGHAM and CHARLES WHALEN, from the House of Representatives, in introducing the Defense Economic Adjustment Act. Concern for the dilemmas faced by communities left jobless and economically straitjacketed by cuts in defense spending and the closing of military bases has brought Senator MCGOVERN, myself and many others to introduce similar legislation in the past. Anticipation of the effects of America's changing defense requirements following Vietnam caused us to look for a mechanism to assure at least immediate partial economic adjustment to these changes.

This act would establish the Defense Economic Adjustment Council in the Executive Office of the President which would provide assistance to workers in the form of wage compensation, retraining and continued health benefits throughout the adjustment period. It would provide defense contractors and communities affected by base closings and/or reduction in force because of defense cuts immediate assistance in the form of seed moneys to plan conversion to civilian production.

Defense owned or contracted facilities would be required to file with the Council up-to-date reports of inventory of equipment, its present condition, replacement cost and all possible civilian uses of such facilities. In addition, the closing or serious reduction in force of any base or installation would require advance notice to the community of at least 180 days so that an effective short-term plan for economic recovery is possible.

Private defense contractors would be required to plan as part of the contract the conversion of their defense-related activities and to file these plans periodically with the Council throughout the life of the contract. The cost of such a plan would be part of the contract. A fund would also be set aside, consisting of half of 1 percent of total contract amount, to aid workers in their economic adjustment period should they be laid off, downgraded, or in need of retraining. In the case of actual conversion, businesses would be eligible for low cost, long-term loans to help bring about this conversion.

Many defense contractors, like many counties and States, suffer eventually from a lack of diversity. Contractors too long accustomed to an ever flowing tap are sometimes lulled into a false economic security which naturally affects the community in which it exists. It is the purpose of this bill to help these contractors plan sensibly for their own economic survival as well as the community's. Moreover, it makes sense to me to ask those with the management and technical skills already harnessed to devise these conversion plans. Far too often communities themselves must spend precious time on the preliminary steps of making inquiries about inventories, skills of workers and conditions of plants or bases. Through this bill, such facts will be readily available to the community—and the decision of what and how much to do will be the immediate tasks ahead.

My own State of Maryland is certainly dependent on the economies of bases and installations and private defense contractors. In the year ending June 30, 1974, civilian and military pay for workers in defense owned or contracted facilities totalled almost $1 billion. Montgomery and Prince George's County's share of that payroll alone was $416,072,000. Baltimore's was $56,000,000 and Anne Arundel's almost $200 million. These payrolls and workers support local businesses, educational institutions, improved water and sewer facilities, recreation facilities and the housing industry. So it is certainly crucial to us to encourage as much activity as we can in the area of conversion.

As you know, we have a fine example in Frederick County of the conversion philosophy. Frederick County was able to preserve a $20 million payroll and, at the same time, utilize the biological warfare facilities for the purpose of cancer research. And I hope that when we find a cure for cancer, we can find another use for Fort Detrick. There is in the works now a detailed plan for the use of Fort Holabird in Baltimore. We need more plans even if the possibility of closures is not imminent in some places.

The main thrusts of the bill, as I see them, are fourfold: First, the lessening of fear and confusion in affected communities through immediate availability of information and moneys to plan conversions for plants and workers; second, the establishment of a responsible conversion principle in the private defense sector as well as defense installations, and third, more relevant, the conservation of physical plant and equipment, human resources and the healthy economic communities bound together by valuable networks of jobs, friendships, educational and business ties.

And most importantly, this bill will hasten a return to a "peace time" mentality which will provide this country with a strong basic commitment to the goals of better housing, expanded mass transit systems, and the establishment of a progressive planning program based on a hope for something better—not on the debilitating preoccupation by the entire citizenry on war and security. There is an urgent need to return to more human, rational efforts toward domestic economic health.

Mr. RIBICOFF subsequently said: Mr. President, on behalf of the distinguished Senator from South Dakota (Mr. MCGOVERN), I ask unanimous consent that the bill entitled "The Defense Economic Adjustment Act" introduced earlier today be referred jointly to the Committees on Armed Services, Banking, Housing and Urban Affairs, Government Operations, Finance, and Labor and Public Welfare.

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

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 11

At the request of Mr. BROCK, the Senator from Oklahoma (Mr. BARTLETT) was added as a cosponsor of S. 11, a bill to amend the State and Local Fiscal Assistance Act of 1972 to make Federal revenue sharing a permanent program to provide for periodic increases in the dollar amounts of revenue returned to the States under that act to offset the effects of inflation, and to eliminate certain restrictions on the purposes for which local governments may use funds obtained under this act.

S. 153

At the request of Mr. HANSEN, the Senator from Maryland (Mr. BEALL) was added as a cosponsor of the bill (S. 153) to amend part B of title XI of the Social Security Act, Professional Standards Review, to provide for the review of dental services by dentists.

S. 394

At the request of Mr. BENTSEN, the Senator from Indiana (Mr. BAYH) was added as a cosponsor of the bill (S. 394) to amend the Trade Act of 1974 to clarify the application of the Generalized System of Preferences to certain countries.

S. 560

At his own request, the Senator from Kentucky (Mr. HUDDLESTON) was added as a cosponsor of S. 560, to amend title II of the Social Security Act to increase the amount of outside earnings permitted each year without deductions from benefits.

S. 595

At the request of Mr. BARTLETT, the Senator from Florida (Mr. STONE) was added as a cosponsor of the bill (S. 595) to amend the Meat Import Act of 1964.

S. 772

At the request of Mr. TALMADGE, the Senator from Arkansas (Mr. MCCLELLAN) was added as a cosponsor of S. 772, a bill to enable cattle producers to establish, finance, and carry out a program of research, producer and consumer education, and promotion to improve, maintain, and develop markets for cattle, beef, and beef products.

S. 811

At the request of Mr. TUNNEY, the Senator from Wyoming (Mr. MCGEE) was added as a cosponsor of S. 811, a bill to amend the Horse Protection Act of 1970 to better effectuate its purposes.

S. 1447

At the request of Mr. STEVENSON, the Senator from California (Mr. TUNNEY) was added as a cosponsor of S. 1447, the Federal Handgun Control Act of 1975.

S. RES. 60—WITHDRAWAL

Mr. METCALF. Mr. President, I am erroneously listed as a cosponsor of Senate Resolution 60, a resolution authorizing each Member of the Senate to employ additional assistants to work on matters pertaining to committees on which Senators serve.

I ask unanimous consent that my name be removed from the list of cosponsors.

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

S. RES. 104

At the request of Mr. BROCK, the Senator from New York (Mr. JAVITS) and the Senator from Kansas (Mr. DOLE) were added as cosponsors of the resolution (S. Res. 104) providing limited legislative authority to the Select Committee on Small Business.

S. RES. 126

At the request of Mr. BROCK, the Senator from Maryland (Mr. BEALL) and the Senator from California (Mr. CRANSTON) were added as cosponsors of S. Res. 126, a resolution endorsing the continued presence of the United Nations peacekeeping forces in the Middle East.

SENATE RESOLUTION 155—SUBMISSION OF A RESOLUTION RELATING TO WHITE CORN STATISTICAL INFORMATION

(Referred to the Committee on Agriculture and Forestry.)

Mr. HUDDLESTON submitted the following resolution:

S. RES. 155

Whereas white corn is grown for human consumption and not for animal feed; and

Whereas the production of white corn has been steadily increasing in the United States in recent years to help meet the world food crisis; and

Whereas the annual white corn production forecasts by the Department of Agriculture have provided valuable assistance to producers, handlers, and processors of that commodity; and

Whereas statistical information on white corn published by the Department of Agriculture has helped provide substantial stability to the marketplace: Now, therefore, be it

Resolved, That it is the sense of the Senate that the Department of Agriculture should continue to publish the annual white corn production estimates and other statistical information relating to the production of that commodity.

Mr. HUDDLESTON. Mr. President, since 1971 the Statistical Reporting Service of the U.S. Department of Agriculture has estimated white corn acreage and production for the leading 10 producing States. The Statistical Reporting Service intends to eliminate surveying white corn beginning with the current growing season.

The elimination of this report leaves the white corn interests without reliable information on which to base their production and marketing. The white corn estimates increase the stability of the marketplace and help growers, handlers, and processors alike.

Mr. President, white corn is a food, not a feed. This crop is grown in 18 States and is an important economic enterprise to these States. The lack of adequate data will deprive the industry of information needed for intelligent production and marketing decisions.

In light of the importance of white corn estimates I submit this resolution in a sincere attempt to have the Statistical Reporting Service continue to publish annual white corn production estimates and other statistical information relating to the production of this commodity.

SENATE CONCURRENT RESOLUTION 38—SUBMISSION OF A CONCURRENT RESOLUTION TO REQUEST THE CHIEF JUSTICE OF THE UNITED STATES TO APPEAR BEFORE A JOINT SESSION OF THE CONGRESS

(Referred to the Committee on the Judiciary.)

Mr. BAYH (for himself and Mr. KENNEDY) submitted the following concurrent resolution:

S. CON. RES. 38

Whereas, the Congress is aware of the increasing concern over the needs of the judiciary; and

Whereas, the Congress is aware of the increasing workload at all levels in the court systems of the Nation; and

Whereas, the increasing problems of the judiciary demonstrate the need for greater public concern and for more adequate planning and coordination by the legislative, executive, and judicial branches of the Federal Government; and

Whereas, the Congress can meet its obligation to the judiciary more effectively including the development of appropriate legislation, by hearing the report of the Chief Justice of the United States as the head of the judicial branch of the Federal Government; Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled:

That the Congress respectfully requests the Chief Justice of the United States to appear before a joint session of the Congress at an appropriate early opportunity to report on the state of the judiciary.

Mr. BAYH. Mr. President, on February 23, 1975, the Chief Justice of the United States delivered his annual report on the state of the Judiciary in an address to the Mid-Winter Meeting of the American Bar Association. His remarks criticized the legislative branch for action taken during the last session of Congress and for inaction on a number of proposals of the U.S. Judicial Conference. The Chief Justice also called attention to the serious dimensions of caseload problems of the Federal courts, the difficulties encountered in keeping the best legal minds on the Federal bench, and the increasing use of the Federal courts as a "bush league" facility to train would-be private practitioners. Several weeks earlier the Chief Justice had issued a year-end review of the American court system and asked for congressional action on a number of proposals to relieve the burden of the severely overloaded Federal court docket.

If, in fact, there may be a judicial "crisis" because of congressional action, as the Chief Justice warned, I believe the legislative branch, under our tripartite system of government, has the responsibility to avoid such consequences. For nearly 200 years, Congress has consistently acted to assist the Federal Judiciary in their extraordinary effort to protect the rights and the fabric of American society as a whole. We must strive to continue to improve the judicial machinery of the United States, but cannot do so unless we have the best possible information and hear the best evidence regarding what needs to be done.

For this reason, I submit today, along with the senior Senator from Massachusetts, Mr. KENNEDY, a resolution to respectfully request the Chief Justice of the United States to appear before a joint session of Congress to report on the state of the Federal Judiciary.

Such a state of the Judiciary message would enable Congress to hear first hand the needs of the Judicial Branch. Such an address would materially contribute to public awareness of the problem of our Federal judiciary and provide the appropriate forum for the Chief Justice to focus national attention on our Nation's judicial system.

I do not believe this resolution poses any violation of the separation of powers doctrine. Article III of the Constitution grants Congress the power "to ordain and establish" inferior courts of special and limited jurisdiction. As a coordinate branch of government, we are called upon through the appropriations process to fund annually all Federal courts. More particularly, the Senate has the duty to advise and consent to the appointment of all Federal judges. Congress has always had the responsibility to see justice dispensed at more than just a minimal or mediocre standard. Traditionally, our system of government has demanded

excellence of those entrusted with the responsibility to bring impartial and swift justice throughout the Federal judiciary. We must vigilantly strive to continue to maintain the historic function of our courts.

Nor am I concerned that an address to Congress would swirl the Chief Justice into the whirlwind of public debate regarding the function of the judicial apparatus. A "state of the judiciary" message would initiate a constructive dialog between two coequal branches of government. Criticism would no longer be voiced sterilely outside the Halls of Congress. Recommendations could be made for improvement and priorities established for future action.

There is a reason for the public and legal profession to express alarm over the annual report of the Chief Justice. The courts have encountered an unprecedented rise in their caseload during the past 10 years which has clogged the Federal docket.

The Federal district courts have experienced a combined civil and criminal case increase of 45 percent since 1964. During that same period the actual number of criminal trials rose by more than 60 percent. Last year alone the total number of cases filed was 143,284; the courts disposed of 139,159 of those cases. Four years ago these same 400 district courts disposed of 120,000 cases.

The courts of appeals have experienced similar increases in their docket. In 1964, for example, 33 percent of all district court decisions were placed on appeal. Last year over 75 percent of all such decisions found their way into the courts of appeal. Since 1968 the authorized level of appeals courts judgeships has remained constant resulting in an 80-percent increase in cases per judgeship.

By comparison, the Justice Department has taken affirmative steps to meet the new demands of the increased caseload during this same period. From 1964 to 1974, the 94 U.S. attorneys offices increased their prosecutor strength from nearly 700 to 1,200 staff attorneys, a rise of almost 70 percent.

The Supreme Court has not escaped the impact of the increased caseloads of the lower courts. For the October term 1973, the more than 5,000 cases on appeal was higher than at any time in the entire history of the Court. The Chief Justice has pointed out that the Supreme Court today is handling four to five times the cases as did courts including such men as Taft, Holmes, Brandeis, and Hughes.

Adding to the difficulty of the Federal courts is our Nation's staggering rate of inflation. Salaries of Federal judges have been fixed for the last 6 years and we have already seen that during the past 13 months this circumstance has caused more Federal judges to return to private practice than in the previous 34 years. The simple fact is that the family obligations of many of these men have forced their resignation because they cannot afford Government service.

We, in Congress, have imposed a similar freeze on ourselves and the upper level salaries of the executive branch. The time has come to review the decision that requires America's most responsible civil servants to meet 1975's cost of living on salaries fixed by statute in 1969. The diminution in purchasing power during the intervening years has worked an unfair hardship unparalleled in the private sector. It would indeed be sad if history were to record that our system of justice failed because we could not pay the best minds of the legal profession to be our judges, or our Government decayed because it could not attract our brightest citizens to move America ahead.

An address by the Chief Justice would certainly give the Congress and the public a realistic look at the problems posed by the increased caseloads in the Federal courts and the need to examine judicial pay scales. His message, however, could range over as broad a field as the courts encompass. There has been much discussion about the Speedy Trial Act, the need for limitations on diversity jurisdiction, the abolition of three-judge courts, the responsibilities of U.S. magistrates and the professional standard of the attorneys who practice before the Federal courts. All these subjects would be appropriate for comment and direction by the Chief Justice. But he would not be limited to them: there are many other serious and wide-ranging problems too voluminous to mention.

The present system of presenting such matters to Congress is arduous and time consuming. Suggestions for changes in the judicial system follow an arduous path from the U.S. Judicial Conference through the congressional leadership to the appropriate House and Senate committees and finally to the floor of both Houses. Throughout all of these proceedings the chief judicial officer of the United States has no forum to make his voice heard. He can resort to the appropriate body of the legal profession, but should have access to Congress if he is to seek direct redress.

A forceful public presentation to the Congress by the Chief Justice would draw attention not only to the pressing needs of the immediate future, but provide projections for the years ahead. Such an address would be a proper approach from the head of one coordinate branch of Government to the branch responsible for both legislation and appropriation. It would provide an opportunity to demonstrate the extraordinary vigor and strength of our Federal courts, of the absolute necessity for an independent judiciary, and of the all important role of the judicial branch in protecting society and individual rights.

Mr. KENNEDY. Mr. President, I am pleased to join with Senator BIRCH BAYH today in submitting a concurrent resolution requesting the Chief Justice of the United States to address a joint session of the Congress on the state of the judiciary. I am hopeful that Congress will act on the resolution at the earliest opportunity.

As Members of the Congress are well aware, these are critical times for our judicial system, especially in this period of the rising incidence of crime and the soaring workload of the courts. In the Federal system, the problem affects the courts at all levels—the congested district courts, the Courts of Appeals, and the Supreme Court. But the problem is larger than the Federal courts. It affects not only State and local courts, but also our entire system of law enforcement and criminal justice, including police, prosecutors and defense counsel, grand juries, the corrections system, and the access of ordinary citizens to needed legal services.

In the Crime Control and Safe Streets Act of 1968, Congress announced its commitment to upgrade the quality of law enforcement and criminal justice in the Nation. But after 7 years and over $3 billion in grants by the Law Enforcement Assistance Administration of the Department of Justice, the feeling is pervasive that the program is failing and that massive funds have been wasted. Crime is going up, and the system seems powerless to stop it.

Too often, by default, justice is denied and basic rights are lost, as the legal system creaks under growing burdens it is not equipped to face. The very strength and independence of the judiciary is threatened.

To some extent, we in Congress are to blame for our lack of oversight and outright neglect. In the case of the Federal courts, members of the House and Senate are well aware of the widespread view that the freeze on judicial salaries for the past 6 years is driving able Federal judges off the bench and back into private legal practice, and is a powerful deterrent to able lawyers who would make fine judges. They ask, with reason, why their salaries, like those of the top positions in the executive branch, must be hostages to Congress' shameful inability to deal with its own salary structure.

We are also aware of the widespread complaint that, although Congress has been quick to impose new burdens on the Federal courts in recent years, by enactment of measures such as the Speedy Trial Act, we have been much less responsive to the need for additional tools and resources to carry out the job.

Congress is beginning to be aware of these and other problems. But we do not yet understand them adequately or see them in adequate perspective.

Now, however, the air has cleared after our long and distressing preoccupation with Vietnam and Watergate. Congress is beginning to awaken to the many other urgent priorities we have failed so long to face.

In this period of new awareness and new initiatives, I believe that one of our top priorities must be to deal with the emerging crisis of the judiciary.

We cannot accept a situation in which the judicial branch is the poor third cousin in our system of government. A fundamental respect for the judiciary as a co-equal branch of the Federal Government requires that Congress give its needs the attention they deserve.

The relatively minuscule proportion of the Federal budget that goes to the judiciary—less than one-tenth of 1 percent—belies the basic importance of the judiciary to our free society. As Justice Oliver Wendell Holmes stated of the Supreme Court half a century ago:

We are very quiet here, but it is the quiet of a storm center.

We cannot allow the problems of the judiciary to go unnoticed as they continue to grow and fester. Inertia is not a proper response by either Congress or the executive branch when its sister judicial branch is threatened.

The best way to begin our effort to restore the proper role of our courts is by making a comprehensive attempt to understand the problems they face. And there is no person better qualified by his position to launch the debate and establish an appropriate perspective than the Chief Justice of the United States. It is for this reason that Senator BAYH and I are submitting the present concurrent resolution, inviting the Chief Justice to address the Congress on the state of the judiciary.

The idea for such an address is neither partisan nor new. To my knowledge, it was originally proposed in 1953 by William P. Rogers, who later served with distinction as Attorney General under President Eisenhower. In 1970, the suggestion was urged by E. Barrett Prettyman, Jr., a distinguished private attorney in Washington. At that time, the proposal was first introduced in Congress by Senator BAYH and myself. But Congress failed to act. Now, in light of the growing need, we feel it is worthwhile—even essential—to renew the proposal, and we hope that Congress will adopt it.

An address by the Chief Justice to Congress on the state of the Judiciary would be a fitting complement to the President's state of the Union address to Congress. Just as the President surveys the broad problems facing the Nation on domestic and foreign policy and proposes new approaches to meet them, so the Chief Justice would survey the problems of the Judiciary and offer his guidance to Congress on their possible solution.

Too often in recent years, Congress has sought legislative solutions to judicial problems without adequate understanding of the complexity of the judicial branch or the intricate relationships between its various parts. Too often, sensible and workable solutions to the problems of the courts have been proposed and then neglected, because of the failure of the commissions that proposed them to survive and pursue the recommendations, or because of the lack of perseverance in seeking their effective implementation.

The time is overdue for Congress to become better informed of the problems and aspirations of the judiciary. We know the general areas where many of the problems are found, but we are only dimly aware of their nature and extent. One thing is clear, however. The problems are serious and getting worse, and we must find better ways to handle them.

By bringing the prestige of the high office of the Chief Justice to the task, I believe that Congress can make a better start toward finding satisfactory answers to the difficult problems of judicial administration and court reform. The problems of the courts could be brought into better focus and clarity in a formal presentation by the Chief Justice to Congress on the State of the Judiciary. He can turn the spotlight of public opinion on the problems.

By contrast, essentially the only effective avenue for redress that exists today for attacking these problems is through the arduous route of recommendations by the Judicial Conference and the Administrative Office of the U.S. Courts. Often, however, in pursuing this avenue, urgent and imaginative proposals are delayed for long periods under the complex machinery by which the proposals must be approved.

We should have no fear that an address by the Chief Justice to Congress will breach the separation of powers between the legislative and judicial branches of our Government. Article III of the Constitution confers on Congress the power to "ordain and establish" the lower Federal courts. Each year, the appropriations committees of the Senate and House consider and recommend legislation to fund all the Federal courts. Frequently, Federal judges—and even Justices of the Supreme Court—testify before congressional committees on appropriations bills or on substantive legislative proposals.

Nor would the appearance of the Chief Justice before a joint session of Congress set a novel precedent. In general, such an appearance is reserved for the President's annual State of the Union Address to Congress. But there are many other examples of such sessions. The forum of a joint session of Congress is also made available for other major addresses by the President. And on many other occasions as well, especially in recent years, as the attached table indicates, other distinguished Americans and foreign visitors have made similar appearances. I believe that an appearance by the Chief Justice would be an appropriate addition to this tradition and would be in the highest interest of the Nation.

Every year, Congress makes its own determination of the priorities and problems of the judicial process, often without as much effective guidance as we should have. I believe that we will be aided by the thoughtful and constructive suggestions of the Chief Justice in a formal address to Congress. I am hopeful, therefore, that Congress will approve the resolution that Senator BAYH and I are submitting.

Mr. President, I ask unanimous consent that a listing of persons other than Presidents of the United States who have addressed joint sessions of Congress in the past be printed in the RECORD.

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

PERSONS OTHER THAN PRESIDENTS OF THE UNITED STATES WHO HAVE ADDRESSED JOINT SESSIONS OR MEETINGS OF CONGRESS (1789–1975)

Dec. 10, 1824—Marquis de Lafayette of France.
Jan. 5, 1852—Governor Louis Kossuth of Hungary.
Feb. 12, 1866—George Bancroft, historian.
Dec. 18, 1874—King David Kalakaua of Hawaii.
Sept. 18, 1919—Gen. John J. Pershing.
May 20, 1934—Andre de Laboulaye, Ambassador, French Republic.
Dec. 26, 1941—Hon. Winston S. Churchill, Prime Minister of Great Britain.
May 19, 1943—Hon. Winston S. Churchill, Prime Minister of Great Britain.
Feb. 18, 1943—Hon. Cordell Hull, Secretary of State.
May 21, 1945—Gen. George C. Marshall, Chief of Staff.
June 18, 1945—Gen. Dwight D. Eisenhower, Supreme Commander, AEF.
Oct. 5, 1945—Adm. Chester W. Nimitz, Comdr. in Chief, Pacific Fleet.
Nov. 13, 1945—Hon. Clement Atlee, Prime Minister of Great Britain.
July 1, 1946—Hon. John Gilbert Winant, former U.S. Ambassador to Great Britain.
May 1, 1947—Hon. Miguel Aleman, President of Mexico.
April 19, 1948—Hon. Guillermo Belt, Ambassador, Cuba.
May 19, 1949—Hon. Eurico Gaspar Dutra, President of Brazil.
May 31, 1950—Hon. Dean Acheson, Secretary of State.
Feb. 1, 1951—Gen. Dwight D. Eisenhower.
April 2, 1951—Hon. Vincent Auriol, President of France.
April 19, 1951—Gen. Douglas MacArthur.
June 21, 1951—Hon. Galo Plaza, President of Ecuador.
Sept. 24, 1951—Hon. Alcide de Gasperi, Prime Minister of Italy.
Jan. 17, 1952—Hon. Winston S. Churchill, Prime Minister of Great Britain.
April 3, 1952—Queen Juliana of The Netherlands.
May 22, 1952—Gen. Matthew B. Ridgeway.
Jan. 29, 1954—Hon. Celal Bayar, President of Turkey.
May 4, 1954—Hon. Vincent Massey, Governor General of Canada.
May 28, 1954—Hon. Haile Selassie I, Emperor of Ethiopia.
July 28, 1954—Hon. Syngman Rhee, President of Korea.
Feb. 29, 1956—Hon. Giovanni Gronchi, President of Italy.
May 17, 1956—Dr. Sukarno, President of Indonesia.
May 9, 1957—Hon. Ngo Dinh Diem, President of South Vietnam.
June 5, 1958—Hon. Theodore Heuss, President of West Germany.
June 18, 1958—Hon. Charles F. Garcia, President of the Philippines.
Jan. 21, 1959—Hon. Arturo Frondizi, President of Argentina.
Feb. 12, 1959—Mr. Fredric March.
Feb. 12, 1959—Mr. Carl Sandburg.
March 11, 1959—Hon. Jose Maria Lemus, President of El Salvador.
March 18, 1959—Hon. Sean T. O'Kelly, President of the Republic of Ireland.
May 12, 1959—King Baudouin of Belgium.
April 6, 1960—Hon. Alberto Lleras-Camargo, President of Colombia.
April 25, 1960—Hon. Charles de Gaulle, President of France.
April 28, 1960—King Mahendra Bir Bikram, Shah Deva of Nepal.
June 29, 1960—King Bhumibol Adulyadej of Thailand.
May 4, 1961—Hon. Habib Bourguiba, President of Tunisia.
July 12, 1961—Hon. Mohammad Ayub Kahn, President of Pakistan.
Sept. 21, 1961—Hon. Manuel Prado, President of Peru.
Feb. 26, 1962— Lt. Col. John Glenn, U.S. Marines.
April 4, 1962—Hon. Joaoo Gulart, President of Brazil.
April 12, 1962—Hon. Mohammad Reza Pahlavi Ariyamehr, Shahanshah of Iran.
May 21, 1963—Maj. Gordon L. Cooper, Jr.
Jan. 15, 1964—Hon. Antonio Segni, President of Italy.

May 28, 1964—Eamon de Valera, President of the Republic of Ireland.
Sept. 14, 1965—Lt. Col. Gordon L. Cooper, Jr., and Comdr. Charles Conrad, Jr.
Sept. 15, 1966—Hon. Ferdinand E. Marcos, President of the Philippines.
April 28, 1967—Gen. William C. Westmoreland.
Oct. 27, 1967—Hon. Gustavo Diaz Ordaz, President of Mexico.
Jan. 9, 1969—Col. Frank Borman, Capt. James A. Lowell, and Lt. Col. William Anders.
Feb. 25, 1970—Hon. George Pompidou, President of France.
June 3, 1970—Hon. Rafael Caldera, President of Venezuela.
June 15, 1972—Hon. Luis Echeverria Alvarez, President of Mexico.

AMENDMENTS SUBMITTED FOR PRINTING

ASSISTANCE TO CERTAIN MIGRANTS AND REFUGEES—S. 1661

AMENDMENT NO. 477

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

Mr. HUDDLESTON submitted an amendment intended to be proposed by him to the bill (S. 1661) to enable the United States to render assistance to or in behalf of certain migrants and refugees.

Mr. HUDDLESTON. Mr. President, the amendment I am offering is a simple one. It is not designed to alter the purpose of the bill or to restrict flexibility. It is designed only to help us bring order and direction to the existing refugee situation.

I realize that it is far from easy to evacuate more than 115,000 persons, to register them, provide for their temporary housing, feeding and health, conduct the necessary checks, resettle them in our Nation, and provide them with the assistance which would reasonably enable them to make a new life for themselves.

At the same time, it is imperative—both for the good of the refugees and for the good of our own citizens—that our resettlement efforts be undertaken in a comprehensive and orderly fashion.

The amendment would, therefore, require a report to the Congress within 30 days after passage of the legislation. The report would include information regarding the numbers and various categories of refugees, their current status, their employment situation and the demands which they could be expected to make on State and local governments. Furthermore, the amendment requires that the report contain a plan formulated pursuant to specified guidelines for the resettlement of those yet to be settled.

Various committees of the House and Senate have been conducting hearings in the past days on the refugee problem. As a result of these hearings, several points are obvious: Additional funds are needed at once; the existing refugee centers are overcrowded; resettlement is not going as rapidly as we would wish; there is still substantial confusion and uncertainty over final resettlement arrangements.

In such a situation, it is clear that we must act promptly. In doing so, however, we must also act wisely.

I believe that few Members of this body or in this country are satisfied that we have thought through the resettlement process and derived a responsible plan. I submit that the time to do that is now—now before we make major mistakes with the lives of more than 100,000 persons and arouse new problems with which our own States, localities and citizens will have to cope.

This is what this amendment seeks to do—it seeks to require that we focus on the numbers, the various situations involved and that we develop a systematic means of dealing with them.

I believe that a consensus is developing in this Nation—a consensus that acknowledges the responsibility we have to many of these refugees who were forced from their homeland because they associated themselves with us, the responsibility we have accepted so many times in the past of offering those from abroad an alternative way of life, the responsibility of a humane and caring people.

At the same time, I think we have to acknowledge that the assimiliation of those from abroad into our Nation has not always been easy, the move beyond the melting pot has not always been accomplished without strain—both for those who arrived and those in the communities into which they went.

For the refugees from Vietnam and Cambodia, there are special problems which we should admit. These include concerns about new arrivals at a time when our economic and unemployment problems are great. And subconsciously, there is undoubtedly the problem that these persons remind us of the major foreign misadventure of the decade—a misadventure which divided our Nation and its people as never before in this century.

Nevertheless, we may hope that, despite our problems at home and the difficult task of resolving them, the better rather than the darker side of our nature will persevere on the refugee issue, and that we may provide assistance in line with the bright side of our Nation's tradition and ideals.

That course need not, however, mean simply the provision of funds in the fond hope that with the money all will work out well.

Indeed, it can and should mean much, much more. It should mean that we have identified the problems which we face, evaluated them and developed a meaningful, comprehensive and workable plan to overcome them.

If we proceed in that way, we can, I hope, eliminate some of the misunderstandings and the misinformation which seem to abound over the current situation. With more information, we should know where we are and where we have to go. With a plan, we should know what steps to take and what not to. This should enable our own people to understand what we are doing, and it should, hopefully, help us avoid some of the many, many difficulties which can arise from a haphazard resettlement of thousands of people.

NOTICE OF CHANGE IN PLACE AND TIME FOR HEARINGS BEFORE THE JOINT COMMITTEE ON DEFENSE PRODUCTION

Mr. PROXMIRE. Mr. President, as I have previously announced to Senators and other interested parties, the Joint Committee on Defense Production will be holding hearings on May 22 and May 23 on the defense priorities system.

Because of a conflict with other hearings, it has become necessary to change the place and time for the hearing scheduled on May 22. This hearing will now take place at 2:30 p.m. in room S-407 in the Capitol. That is the hearing room of the Joint Committee on Atomic Energy.

The hearings will continue on Friday, May 23, in room 5302 of the Dirksen Senate Office Building, beginning at 10 a.m.

NOTICE OF ROOM CHANGE IN REORGANIZATION OF THE FIFTH AND NINTH CIRCUITS

Mr. BURDICK. Mr. President, as chairman of the Judiciary Subcommittee on Improvements in Judicial Machinery, I wish to announce that the hearing for the consideration of S. 729, to reorganize the fifth and ninth circuits, scheduled for May 20, 1975, in room 2228, Dirksen Senate Office Building, has been moved to room 457, Russell Senate Office Building, beginning at 10 a.m.

NOTICE OF HEARING

Mr. McCLURE. Mr. President, on May 19, the Public Works Committee will hold one day of hearings on S. 364, a bill which would change certain provisions in timber sale contracts administered by the U.S. Forest Service. The bill would permit a timber purchaser to transfer earned but unused road construction credits to stumpage charges on another sale within the same national forest.

The subcommittee will examine the problems encountered by timber purchasers under the current system, and the impact any change would have on Federal revenues, counties receiving a portion of stumpage fees, and the timber purchasers.

The hearings will begin at 10 a.m. on May 19 in room 1114 of the Dirksen Senate Office Building.

Witnesses scheduled to testify include representatives from the U.S. Forest Service, the forest products industry, and the National Association of Counties. The House has scheduled hearings on a companion bill for later the same week.

ADDITIONAL STATEMENTS

NEWS DISTORTIONS BY NATIONAL MEDIA

Mr. ALLEN. Mr. President, the Nation's broadcast networks, the wire services, large metropolitan newspapers, and some of the Nation's news periodicals frequently are accused of possessing built-in bias in their reporting and editing. Generally such statements have been shunted aside by the editors and publish-

ers because they apparently consider themselves experts in almost all fields and, thus, above reproach from the "non-expert" complainants.

Mr. N. J. Finlay of Brewton, Ala., has brought to my attention a "Letter to the Editor" in the Mobile Press, one of the two fine daily newspapers published in Alabama's second largest city. This letter was written by Mr. W. H. "Pete" Kelley, an experienced newsman who until recently served as managing editor of the Florence, Ala., Times Tri Cities Daily, one of Alabama's excellent daily newspapers.

Mr. Kelley was in the Nation's Capital 2 weeks ago when Alabama's Gov. George Wallace testified before a House committee in support of appropriations for the Tennessee-Tombigbee Waterway. Mr. Kelley, by virtue of his journalistic background, is a trained observer, and his letter relates differences between what he observed during that day and the fiction which was reported by some of the national press.

Mr. President, I ask unanimous consent that the letter be printed in the RECORD.

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

MEDIA MISTREATS GCW

As a former newspaper editor, I often wondered whether Gov. George Wallace was exaggerating stories of how the national news media twisted facts to make him look badly.

Recently, I had an opportunity to observe first hand.

Governor Wallace understated the case.

Wallace went to Washington to testify before the House Appropriations Public Works Subcommittee for the Tennessee-Tombigbee Waterway. He made an excellent presentation, and members of the subcommitte, to a man, said they were impressed.

At a luncheon given in his honor, and attended by approximately 300, Wallace was beseiged by congressmen, residents of other states and other well-wishers who wanted to shake his hand and have their picture made with the Alabama governor. For over an hour, he sat patiently while the audience clamored to see him and granted numerous interviews with every newsman who asked.

I stood nearby and was able to see and hear almost everything that transpired. Wallace did not have time to eat the first bite during the luncheon.

That afternoon, ABC news reported Wallace's appearance as "lacklustre." The brief report also said Wallace was "not healthy enough to win" and "probably not healthy enough to run" for president.

Surely, ABC's Sam Donaldson did not see the same Wallace I saw or attend the same luncheon I did. Yet, I saw him conducting the interview with Wallace.

The Washington Star was even more disgusting. The paper's Mary McCrory reported on Wallace's requested appearance before the Freshman Caucus, Almost every word was critical and negative. She ended her story by saying the mostly-liberal freshmen congressmen could "only hope Wallace is as sick as he looks."

The Alabama governor was cast in a completely unfavorable light and hardly an accurate word was reported. Even what the governor said was twisted to make it appear he was saying something entirely different.

Perhaps I went to the wrong school, because I was taught that newspapermen were to report facts, quote context and present both sides of an issue. The treatment of Governor Wallace appalled and embarrassed me.

Two days earlier, the same newspaper called President Ford a "dummy" and did it in a news story, not an editorial page column.

The newspaper I worked for had a quotation from Winston Churchill under its masthead that read: "Where men have the habit of liberty, the press will continue to be the Fourth Estate, the vigilant guardian of the rights of the ordinary citizen."

Perhaps that is why I only worked for a small daily in Alabama.

Isn't it strange that Governor Wallace now represents the ordinary citizen much better than the nation's big city newspapers and television networks.

W. H. "PETE" KELLEY.

STUART SYMINGTON

Mr. EAGLETON. Mr. President, it was with great sadness that the people of Missouri and indeed, the people of the Nation, learned that my distinguished colleague, Senator SYMINGTON, would not run for relection in 1976. After 23 years of service in the Senate, he has decided to step down.

I have been fortunate to enjoy a close personal relationship with Senator SYMINGTON. When I first came to the Senate in 1968, Senator SYMINGTON acquainted me with the complexities of the legislative process and was kind enough to share his masterful knowledge of the workings of the Senate. His advice was then, and continues to be, among the soundest I have ever received.

Although like his close friend Harry Truman, Senator SYMINGTON would reject the honor of being called "statesman," his record as a public servant is most worthy of that high praise. STUART SYMINGTON's statesmanship is best demonstrated by his contribution to the foreign and defense policies of our Nation.

As we all know, Senator SYMINGTON has been closely associated with national defense matters for most of his career. He served as the first Secretary of the Air Force under President Truman and has been a member of both the Foreign Relations and Armed Services Committees. Certainly, he is one of the most concerned and knowledgeable Americans in this most vital area.

Senator SYMINGTON's unique committee assignments have afforded him the opportunity to take an overall view of all aspects of our national well-being. He has used this knowledge to raise penetrating questions about whether we can risk jeopardizing our Nation's economic strength and the confidence of our people in the relentless quest for perceived military strength. And he has caused many in government to realize that national security encompasses many dimensions which go far beyond simple military superiority.

Over the years, he has challenged the Pentagon on policy questions as well as weapons decisions. And because of his reputation and his integrity, the Senate and the Pentagon listen attentively to his recommendations.

When Senator SYMINGTON retires the people of the United States will lose a great statesman. The State of Missouri will lose a forceful and eloquent spokesman. And, while I will hopefully retain his friendship and advice, I will lose a senior colleague whose partnership I have valued.

I know I speak for all the people of Missouri in thanking Senator SYMINGTON for his distinguished service to our State and in wishing him every success in the future. Senator SYMINGTON's seat in the Senate will, of course, be filled. But a special place in American history is surely reserved only for him.

Mr. President, I ask unanimous consent that a number of editorials from Missouri newspapers paying tribute to Senator SYMINGTON be printed in the RECORD.

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

[From the St. Louis Globe-Democrat, Apr. 23, 1975]

SYMINGTON: THROUGH THE YEARS

One of the most phenomenal vote-getters in Missouri history bowed out of the political wars Tuesday.

Sen. Stuart Symington, an Easterner who adopted Missouri and then captured it politically, said he will not be a candidate for election to a fifth term.

From the time in 1952 when he overcame the endorsement of President Harry S. Truman of his opponent to win the Democratic senatorial nomination, Symington was elected four times to represent Missouri in the Senate.

His last race, against Republican Attorney General John C. Danforth in 1970, was his closest. But he still beat his opponent by 36,000 votes.

During his time in the Senate, he had been a contender for the Democratic nomination for president in 1960 and was twice a contender for his party's vice presidential nomination.

Symington is probably best known as the watchdog of America's armed forces for nearly 30 years of public service, not only in the Senate but before that as Secretary of the Air Force.

Known as "Mr. Air Force," or "the Big Bomber Man" of the 1950s and "the Missile Man" of the 1960s, Symington has been viewed as one of the chief architects of the country's postwar defense systems.

As a senator, he preached with prophetic fervor against complacency and unrealistic optimism in the arms race with Russia and other powers.

And his voice became even stronger in 1973 when he was acting chairman of the powerful Armed Services Committee after the chairman, Sen. John Stennis, Mississippi Democrat, was wounded by robbers outside his suburban Washington home.

But although his major interest was defense and military matters, Symington's career in the Senate was attentive to bread and butter issues in his home state.

He had in recent years, for example, been a strong opponent of plans for a proposed airport on the East Side for the metropolitan St. Louis area.

He had thumped continuously for approval of a long-range master plan for Lambert St. Louis International Airport and against the Columbia-Waterloo, Ill., project.

Earlier in his career, he worked successfully to obtain federal funds for such projects as the Jefferson National Expansion memorial on the St. Louis waterfront.

He also had helped keep the Army Aviation Systems Command (AVSCOM) in St. Louis.

It was Symington who reportedly persuaded the Air Force to consider the Phantom jet made for the Navy by McDonnell Douglas in St. Louis when the Air Force was looking for a new combat aircraft.

The retiring senior senator from Missouri was reared in Maryland and educated at Yale and in 1924, married Evelyn Wadsworth, daughter of U.S. Sen. James W. Wadsworth of New York in a glittering ceremony attended by the late President Calvin Coolidge.

But before he entered public life, he worked in various industries, some owned by relatives. He started as a moulder and rose to become a business executive.

By the time he was 36, his talents as an organizer and executive allowed him to go into brief semi-retirement and a short time later he came to St. Louis.

An assignment in 1945 from President Truman as chairman of the surplus property disposal program after World War II was the first of a half-dozen high government posts he was to occupy during the next 6½ years.

An assistant secretary of war for air in 1946, he sounded his first warning that the country must have such a smashing retaliatory punch that it would be a deterrent to any potential aggressor.

In 1947, when the Air Force had won its fight for equality as a separate service, Symington became the first secretary of the Air Force under the reorganized Defense Department.

He was subsequently to serve as chairman of the National Security and Resources Board, the nation's mobilization body, and as head of the Reconstruction Finance Corp. before resigning to return to his home on Ladue road in Creve Coeur.

But the lure of political life led him to accept the urging of St. Louis area friends to file for the Democratic nomination for U.S. Senate in 1952.

He administered a sound 2-to-1 drubbing to his major opponent, then state attorney General J. E. (Buck) Taylor, who had the endorsement of Truman.

He defeated the Republican incumbent, Sen. James P. Kem, by 150,000 votes in the same election in which President Dwight D. Eisenhower carried Missouri by 30,000 votes.

Early in his Senate career, Symington clashed with Sen. Joseph R. McCarthy, who convulsed the government with repeated allegations in the early 1950s that American government was riddled with Communist influence.

Symington once told McCarthy in an angry exchange that he had "better go see a psychiatrist."

The launching by Russian in 1957 of the Sputnik satellite led the Missouri senator to warn that Russia had badly outdistanced the United States in missile technology.

Congress eventually ordered a speedup in the nation's missile program in a period which launched a major revolution in even American educational methods.

But his popularity in Missouri was principally supported by his fights for local issues such as federal dams and projects like the Jefferson National Expansion Memorial.

A 12-month personal effort by Symington finally persuaded the late Sen. Theodore Green (Dem.), Rhode Island, then head of the Senate Rules committee, to clear the way for the Jefferson memorial project.

Congress ultimately approved expenditure of $17.25 million for the project and ground was broken in June, 1959.

After his relatively narrow victory over Danforth in 1970, Symington's wife died on Dec. 24, 1972, but despite his grief he nevertheless plunged again into national and state affairs.

He had announced months ago that he would run for another term in the Senate, but others in the state Democratic party had their doubts about whether he really would make the race.

Even as late as the Jackson Day Democratic powwos in Springfield earlier this month, Symington was telling political associates "there's been no change" in his plans.

But his announcement Tuesday changed all that and opened the way for a major Democratic battle for the Democratic nomination to the U.S. Senate.

[From the St. Louis Post-Dispatch, Apr. 23, 1975]

SYMINGTON A SHAPER OF POLICY

(By Lawrence E. Taylor)

WASHINGTON.—Stuart Symington's absence from the United States Senate in 1977 will mean that the nation has lost a principal advocate for a major overhaul of its foreign and military policies.

Just what effect Symington's decision not to seek a fifth Senate term will have on this critical debate is uncertain, because his influence has seldom been exercised in public.

Instead, he has chosen in 30 years of governmental service to work within the system, even when he strongly disagreed with it.

His voice has often been heard calling for an end to the U.S. military involvement in Indochina, for a reduction of American military expenditures and commitments abroad and for a system to reduce the proliferation of nuclear weapons.

Yet he has almost always spoken as a man who preferred persuasion within the councils of government to the drumbeat of leadership without.

In a way, this was illustrated by Symington's decision to leave the Senate after 24 years. Typically, the Senator kept his own counsel until the last minute. His son and potential successor, Representative James W. Symington (Dem.), Ladue, was not even told until just before his father made the announcement at a St. Louis press conference.

Yet the political future of his son almost certainly figured in Symington's decision. James needs time to mount a Senate campaign, and his father's early withdrawal gives it to him.

The Senator had been hearing from his close advisers and friends that he might have difficulty being re-elected.

Represenative Jerry Litton (Dem.), Chillicothe, Mo., has been gearing up for a possible nomination challenge for months—some say years. State Attorney General John C. Danforth, the Republican who almost unseated Symington in 1970, is waiting in the starting blocks for another chance.

Most everyone knew that the Senator was reassessing his earlier announced decision to run again in 1976, but not a word leaked out in advance to indicate he had changed his mind.

Although these political factors probably were in Symington's thoughts, there were others he must have weighed against stepping down.

As a senior member of the Senate Committees on Armed Services and Foreign Relations, and the Joint Congressional Committee on Atomic Energy, he has been in a unique position of influence.

He has chosen to wield it largely by digging out the hidden information about Government actions and by asking the tough questions that led ultimately to policy changes. Seldom has he emerged publicly as a leader of the fight to make these changes.

Symington, an advocate of superior American military air power in the 1940s and 1950s, came to question its use in Vietnam and, finally, to turn against the war entirely in 1967.

Symington has the reputation of being a tough man in a fight. Past adversaries have described him as a "slasher" when cornered or angered.

William Stuart Symington, 73 years old, was a self-made millionaire by the time he was 40, part of it earned as president of the Emerson Electric Co., in St. Louis.

In 1945, he was nominated by President Harry S Truman, and confirmed by the Senate, to be chairman of the Surplus Property Board. In the next seven years, he served as assistant secretary of war for air, the first Secretary of the Air Force, chairman of the National Security Resources Board and the "cleanup" administrator of the Reconstruction Finance Corporation.

In 1952, after leaving Government service briefly, he ran for the Senate and defeated incumbent Republican Senator James P. Kem. In three more elections he usually led the Democratic ticket in the state, rolling up heavy margins in all but his last campaign.

With him in all those ventures was his wife, the former Evelyn Wadsworth, a talented singer and actress who gave up her career to bear her husband two sons and serve as his closest and most loyal supporter.

Her death in December 1972 left Symington grief-stricken and, as he said yesterday contributed to his decision to retire from public life.

His change in position and the reasons for it won him respect in the Senate, even from those who disagreed with him.

As the war continued, Symington spoke out in opposition frequently, but he avoided antiwar demonstrations and marches, preferring to confine his efforts within the system.

Because of his committee positions, he was instrumental in disclosing the secret war in Laos operated by the Central Intelligence Agency. He played a major role in exposing and ending the secret bombing of Cambodia conducted by the Nixon Administration from 1969 to 1971.

As chairman of the Senate subcommittee on arms control, international organizations and security agreements, he turned up facts that showed many U.S. military bases around the world were useless, wasteful and even contrary to the nation's interests.

But having accumulated a mountain of material on the subject—and having concluded that half of the U.S. foreign bases could be closed—Symington left it to others to lead the public fight on the issue.

His instinctive caution and his seeming unwillingness to grasp the legislative process have earned him some criticism over the years. One long-time associate said, "If you measure influence by a man's willingness to go out and fight and bleed and die for what he believes in, I don't think you can say Symington has it."

But the same associate was quick to add that Symington's influence worked in other ways, difficult to measure.

For all his reluctance to get too far in front on some issues, Symington has occasionally been unable to restrain himself. In 1973, after closed hearings on the CIA's role in the Watergate cover-up, Symington emerged to tell reporters that President Richard M. Nixon "must have known" his assistants were attempting to misuse the agency.

The comment brought angry denuniciation from the White House, but in the end Symington was proved correct.

[From the Kansas City Star, Apr. 27, 1975]

NATIONAL SECURITY NEEDS GUIDE SYMINGTON IN SENATE

(By Joseph A. Lastelic)

WASHINGTON.—Sen. Stuart Symington has built his reputation in the U.S. Senate by attending to the problems of his constituents in Missouri and by narrowing his focus on national matters to what he considers the most important issues.

So no change of style is expected as the senator moves toward the completion of more than three decades in government. He announced Tuesday he would not seek reelection when he completes 24 years in the Senate early in 1977.

At 73 Symington remains a tall, handsome, urban and hard-working senator. His theme remains consistent: National security means not only the military strength to destroy an

aggressor, but a healthy economy and citizens with faith in their government.

"The greatest service I could do is to see that true national security is preserved," Symington said at lunch one day as he talked of his concept of service, about government spending and the huge deficit and the need to re-establish priorities.

"I want to give the military whatever is needed to defend this country," he said. "I'm no pacifist: I'm not for unilateral disarmament."

He talked of the need to recognize the quality of America's arsenal and not just concentrate on quantity. The amount spent should not be the criteria to judge military preparedness, he said. He went on to discuss the economy, to tell of an executive of one of the nation's biggest industrial corporations who told him he feared for the future of his company.

"I'm no alarmist, but I went through the Depression." Symington said. "If you had a $100 bill you were a rich man. In the 30s it made no difference how well or how cheaply you made a product, nobody bought it."

Symington said the administration continues to go to Congress with requests for millions of dollars in foreign economic and military aid and for increases in the defense budget, and that it finds many allies among his colleagues in the Senate. He wants a cutback in government programs. The gold outflow, weakened dollar, the deficit, inflation scares him, he says. There is a lack of coordination and priorities are all mixed up in his view.

"They asked for $1.5 billion for Vietnam last year," he complained," and we couldn't get $75,000 for a dam down around Joplin."

Years ago when everyone else seemed bored with the problem, Symington hammered at the effects of the loss of gold—the balance of payments—an issue still with us. He investigated the stockpiles owned by the federal government, the agricultural program of storing grain at great cost to the taxpayer, the security agreements and commitments by the United States throughout the world. Each investigation was designed to inform the American citizen what his government was doing and to apply pressure for corrective actions.

Now his concern is the spread of nuclear weapons throughout the world. He continues to point up the dangers and to call for safeguards.

His work and concerns have angered a variety of persons throughout the years. In 1963 he began calling for major reductions in military forces in Europe. The Pentagon was baffled and peeved that the first secretary of the Air Force would take such a stand. Even now he remains embroiled in military spending controversies because of his criticisms of the B1 bomber, the Trident submarine and a new aircraft carrier.

Symington gave up on foreign aid in 1965 because he said he had seen too much waste. He supported U.S. efforts in Vietnam, but began to change as he returned to the battle scene. He concluded the United States either had to get into the conflict with all of its might and bring it to a conclusion or get out.

In January, 1966, he had this to say:

"If South Vietnam is not the right place to defend the Free World against totalitarian aggression, we should retire from that country on the best terms possible. This probably would result in a Communist takeover of additional countries and would damage seriously the world position and status of the United States. That would be the price, but it would not be catastrophic.

"If South Vietnam is the right place to defend the Free World against totalitarian aggression, then that fact should be recognized in more practical fashion. We cannot continue indefinitely the plans and programs incident to the current holding operation.

"The time is approaching when we must decide while the decision is still ours to make whether we will move forward or move out. Whichever course we choose, we must take it with courage, with skill and with realism."

The worst years of the war followed.

In August, 1973, Symington said the situation in Cambodia was "beyond repair" and that the United States should withdraw Americans from Phnom Penh and avoid running the risk of new involvement in pursuit of a lost cause.

The problems of the Middle East, of Greece and Turkey over Cyprus, of the North Atlantic Treaty Organization, and the threats from the Soviet Union are caused by the United States being overcommitted militarily and economically in Symington's view.

The senator falls back on his experience, calls on his wide range of friends for answers to whatever is bothering him.

As a businessman who built up his company, Emerson Electric in St. Louis, and became wealthy he came to know the business community. At the Pentagon he became acquainted with industrialists, admirals and generals; when he ran for the presidency he became friends with politicians across the land. His responsibilities on the Armed Services Committee and the Foreign Relations Committee have brought him into contact with the world's leaders. Through Bob Hope, a golfing partner, he was able to meet many in the world of entertainment; through his interest in professional baseball and football he got to know the owners, coaches and players.

Watching Symington at work in his office is something to behold. Ask him a question and if he does not have the answer, up goes the telephone receiver and within minutes the senator will be talking with some important person. He can find out things. He might ask a favor. His friends have been good to him and he does not forget them.

All has not been roses. Symington wanted to be President, but didn't make it. It was widely thought John F. Kennedy would have him as his running mate, but Lyndon B. Johnson got the nod.

Symington wanted to be chairman of the military preparedness subcommittee, but Sen. John Stennis held on to the last. Symington had a chance to be space committee chairman, but realizing he would have to give up other assignments, he turned down that opportunity to stay on the armed services and foreign relations committee. He is the only senator serving on both of those prestigious committees.

So the issues that will be coming before his committees will be the ones on which he will spend most of his time. However, he intends to keep his eye on Missouri, its rural areas and the cities. Job opportunities are a constant concern and he supports projects that develop the state's resources. He takes a liberal position on housing, health care, aid to the elderly, education and civil rights. He knows there is plenty of work and he intends to do his share. Free from having to campaign again he could slow down, but Stuart Symington intends to run, not walk to the finish line.

[From the Springfield Leader-Press, Apr. 23, 1975]

STU IS SALUTED BY OZARKS ADMIRERS

U. S. Sen. Stuart Symington, who has told his Missouri constituents he won't seek a fifth term (see Page One), is fondly regarded by many Ozarks backers and campaign workers.

For instance . . .

"A person capable of being President" is the assessment of the state's senior senator by Springfield attorney Flavius Freeman, former Greene County Democratic chairman. "I think Stuart Symington is one of the really fine men that we have had in government," Freeman added.

Freeman, who was county chairman from 1958 to 1960, described the 73-year-old senator as "a person of strong moral fiber. In government, if you have that kind of person you really don't have to worry . . . you are going to have good government."

Denton Smith, a longtime Democrat, who has known the senator for 22 years, said, "I just thought he was one of the truly great Americans with no exception. He was not for the right or the left. He was for the people."

"All who know of his great contributions," said Sam Hamra, Symington's Southwest Missouri campaign manager in 1970, "will be touched by his choice of ending his senatorial career. All Americans should hope and pray that (he) will continue serving our country in some governmental capacity after his distinguished senatorial career comes to an end."

Tom Sipe, who has known the senator for eight years, expressed concern that Symington may drop out of public view.

"I hope he will be available to this administration and future administrations. He has the type of statesmanship you don't find too often in Washington."

Future officeholders would do well to pattern themselves after Symington, Sipe noted.

"We heard from those during the Watergate hearings who told the young people to stay out of politics. The young people should take a look at Stuart Symington and pursue a career in public office."

Green County's current Democratic chairman, Melvin Payne, declared, "We have lost one of the most outstanding senators the state of Missouri has ever had."

He wonders what the senator's withdrawal from the race will mean in next year's elections.

"I'm just looking for a real race for that seat, probably in the primary as far as the Democratic Party is concerned."

[From the Columbia Missourian, Apr. 4, 1975]

SYMINGTON SERVED STATE WELL

U.S. Sen. Stuart Symington, Missouri's strong Democratic voice in Congress for more than 20 years, will leave the political arena at the end of his term expiring in 1976.

Sen. Symington, 73, decided not to run for re-election but to remain active in the nuclear field, in which he has been involved for more than 30 years. His decision was based on the death of his wife, his health and his belief that the state Democratic party needs a strong leader.

Always an advocate for realizing the problems on the home front first and a strong supporter of U.S. withdrawal from Southeast Asia, Mr. Symington became a powerful figure on military matters. He was active in both the Senate Armed Services and Foreign Relations committees throughout the 1960s and remains involved with military endeavors since his beginning in the Senate in 1952.

Closer to home, Sen. Symington became a favorite of the laborers and farmers in Missouri seeking legislation to promote industry and production in the state. One of the biggest vote-getters in state history, Mr. Symington's popularity with Missourians carried him through four six-year terms in the Senate.

The senator has represented Missouri well and his country and his voice will be missed in Washington. He is a man of candor, conscience and honesty, qualities that are too rare among today's politicians.

Mr. Symington's service to the country, in general, and to Missouri, in particular, will not be forgotten. We wish him well in his future endeavors.

[From the Stanberry Headlight, May 1, 1975]

SENATOR SYMINGTON STEPS DOWN

Even though there are those smart ones who knew all along that Senator Stuart Symington was not going to make the race again next year, his announcement on Tuesday night of last week was considered in some circles as a "bomb shell."

We never quite had that feeling, for we did believe Missouri's senior senator would try once more for the office. We are sorry that he has seen fit to step down.

Stuart Symington has made a place for himself in the history of the nation and of Missouri. He served in many top-level posts before he became Missouri's Senator, then he went on to hold the office and if he lives until the last of next year, he will have served 24 years in the United States Senate.

They have been years well spent in serving his country. We always viewed Senator Symington as doing what he thought best for his state and his nation. We never believed that he was trying to capitalize on anything he did to gain popular favor as some politicians do.

His judgment was rare. He was honest in the nth degree and he will be missed in the United States Senate. We watched with interest his change in the Vietnam war. At one time he was all for that conflict but as time went on Senator Symington had a change of heart and he became highly critical of the entire plan.

As long as Senator Symington served in the United States Senate; in fact, as long as he held office of any kind, we never ever heard the least bit of suspicion about anything he did. There are few politicians in Washington who can say that.

The news that he would not seek the office again apparently did not come as too great a surprise to many persons. But to us it was a surprise. We were extremely interested in the press conference Senator Symington had in St. Louis, because his right-hand man, Stanely Fike, had called back to Stanberry to let us know of the conference. There was no indication of what the Senator would say, but the fact that he was holding a press conference seemed to be ample proof that he was announcing his retirement.

Stuart Symington made Missouri a great Senator. He is highly intelligent; he knows what it is all about; and he will be missed in the halls of Congress.

Our own personal wish is that this distinguished man will find peace and comfort as he retires from the post he has held so well. Stuart Symington deserves a long, long rest. He has earned it.

[From the Nevada Daily Mail, Apr. 25, 1975]

DISTINGUISHED CAREER

Few Missourians have remained so long and so successfully on the public scene as U.S. Sen. Stuart Symington, who announced this week that he will not seek a fifth six-year term in 1976.

For 30 years, he has held significant posts in the federal government—Surplus Property Board, the first Secretary of the Air Force, chairman of the National Resources Board, administrator of the Reconstruction Finance Corporation and, for the last 24 years, U.S. senator—and distinguished himself in all of them.

In addition, he looked like what he was: A statesman, leader, gentleman and patrician. His tall, erect body, handsome face with keen, penetrating eyes, all topped with a mane of thick silvery hair set him apart from the potbellies, sloping shoulders and puffy faces that generally populated the U.S. Senate. Hollywood at its best couldn't have found an actor who could represent a U.S. Senator.

The inner Symington was all and more than the exterior Symington advertised. Patrician that he is, he has never failed to be sensitive to the pulse of his constituency. In this, he has been ably assisted by an exceptionally talented and loyal staff, chief among them his No. 1 aide Stan Fike. Although many members of Congress go through the motion of listening to the folks at home, Symington has always done it seriously and thoroughly. When one contacted him, one knew that the request would go to the top and be acted on—or, if not, why. We will miss that intimate sort of relationship when he leaves the Senate.

But we're glad, in a way, that Sen. Symington has decided to step down. We'd hate to see him have to go through another probably hard-fought primary campaign and possibly an equally difficult general election. At his age, 74 in June, he deserves to rest on his laurels.

Further, campaigning itself was never easy for Sen. Symington. Indeed, it was the hardest sort of work. We recall his first run for the U.S. Senate in 1952 when he came to Nevada seeking support and votes. He went through The Daily Mail office, met every member of the staff, told them who he was and asked them to vote for him.

Then he "circled the square" doing the same thing: Shaking hands with everyone he met, exchanging names and asking for votes. At the end, he was limp with exhaustion. "You know," he said, "this is one of the hardest things I've ever done in my life."

As the years and terms went by, the handshaking and asking for votes came more naturally to Sen. Symington, but it was still something of an ordeal. Even recognizing the important levelling effect of such campaigning, we daresay he often wondered if there weren't a more dignified way for a man to be elected to public office.

Missouri can well be proud of Sen. Symington. In an era when scandal of some sort attached itself to almost every other prominent man in the federal government, Stuart Symington is unblemished. Would that there were—and may there be—more like him.

The announcement of his retirement this week has already unleashed a wild scramble for his Senate seat. In fact the scramble actually had begun—covertly and not so covertly—in anticipation of his retirement.

Warren Hearnes has announced his candidacy for the Democratic nomination despite whatever soot may have fallen on him as a result of a grand jury investigation of his administration as governor of Missouri. Two lesser known Democrats also have filed formally.

The senator's son, U.S. Rep. James W. Symington, is known to be interested but probably wonders about the depth of his Missouri roots and the willingness of the state's voters to confer a father's mantle on a son.

U.S. Rep. Jerry Litton has long been conducting publicity forays outside his northwest Missouri bailiwick and is suspected of having his eye on the Democratic nomination for Senator Symington's seat. Some Republicans are hoping that Attorney General John Danforth will seek their nomination.

May the best man win. And may the winner serve Missouri as well as Stuart Symington.

[From the St. Joseph News-Press, Apr. 24, 1975]

A GREAT SENATOR STEPS ASIDE

Since its admission into the Union 155 years ago, the state of Missouri has furnished this nation numerous great United States senators.

The list includes such men who have served as Thomas Hart Benton, David Barton, David Rice Atchison, George Graham Vest, Carl Schurz, William Joel Stone, James A. Reed, Harry S. Truman and Forrest C. Donnell.

And to that list in the hallowed echoes of time now must be added the name of Stuart Symington.

In a manner as gracious as has typified his entire career of public service, Senator Symington on Tuesday announced with finality he would not be a candidate for reelection in 1976, reversing his previous decision.

For nearly 23 years now, Senator Symington has represented Missouri as a bulkwark in the United States Senate. His record is one to acclaim, one of thoroughness of public service, of devoted service to the people of his state and the entire nation. His unselfish contributions have been great and all in this land have profited by the wide-ranging scope of his duty.

On the Foreign Relations and Armed Services committees of the Senate, the voice of Senator Symington has carried dynamic power and far-reaching effect. But never while attending those high rank duties did the senator forgot the people back home, the little people. He was their friend and he constantly proved it.

It was another Missourian, former President Harry S. Truman, who first realized the potential of Stuart Symington for national good. President Truman called him from the presidency of Emerson Electric Manufacturing Co. at St. Louis to come into government. And Stuart Symington responded magnificently.

Under President Truman he served as chairman of the Surplus Property Board, as Assistant Secretary of War for Air, chairman of the National Security Resources Board, administrator of the Reconstruction Finance Corporation, and then became the nation's first Secretary of the Air Force.

Now Senator Symington nears his 74th birthday. He looks to the nation of the future. He does not live in the past. He realizes that if re-elected he would be past the three-quarters century mark if he should win a fifth consecutive term.

And so, in keeping with the spirit that has characterized his entire public career, he has stepped aside. He will not run for reelection next year.

Missouri, the entire nation, owes this grand American a great debt.

[From the Springfield Daily News, Apr. 23, 1975]

SENATOR IS "TRULY GREAT"

(By Tom D. Ellis)

Sen. Stuart Symington's announcement Tuesday that he will not seek re-election has brought sorrow to the hearts of close friends in Springfield and renewed respect for his accomplishments in office.

Denton Smith, a longtime Democrat who has known Missouri's senior U.S. Senator for 22 years, said he has supported Symington staunchly to the point where "to me its almost an emotional thing."

"I just thought he was one of the truly great Americans with no exception," said Smith. "He was not for the right or the left. He was for the people."

Smith said Symington's announcement is a "blow" to him but that he realizes the senator is an outstanding example for anyone seeking public office.

"I think the country has lost a great servant of the people. He is one of the greatest men our nation has developed and I hope that we can find a replacement that can bring as much honor and distinction to our state as men like Harry Truman and Stuart Symington."

Tom Sipe, who has known Symington for about eight years and organized his appearance at a Democratic chili supper here in October, expressed concern that the senator may drop out of public view. But he said he doubts that will happen.

"I hope he wil be available to this administration and future administrations," Sipe

said. "He has the type of statesmanship you don't find too often in Washington."

Sipe also said Symington will serve as a good pattern for future officeholders:

"We heard from those during the Watergate hearings who told the young people to stay out of politics. The young people should take a look at Stuart Symington and pursue a career in public office."

Melvin Payne, chairman of the Greene County Democratic Party, also praised Symington.

"We have lost one of the most outstanding senators the state of Missouri has ever had," he said. "I'm surprised and then I'm not surprised."

Symington's southwest Missouri campaign manager in 1970, Sam Hamra, said he was saddened by the senator's announcement Tuesday even though he had "advance knowledge of his decision."

"All who know of his great contributions during many years of service to our country will be touched by his choice of ending his senatorial career," Hamra said. "All Americans should hope and pray that Sen. Symington will continue serving our country in some governmental capacity after his distinguished senatorial career comes to an end."

Payne wondered what Symington's withdrawal from a senatorial race will mean in next year's elections.

"I'm just looking for a real race for that seat, probably in the primary as far as the Democratic Party is concerned."

Former Missouri Gov. Warren Hearnes has filed for the seat and political observers have wondered if Symington's son, Missouri Congressman Jim Symington, D-2nd District, and another U.S. Representative, Jerry Litton, D–6th District, will run.

Smith and Litton have hesitated to seek the seat while Symington was still in office. He said it will remain to be seen who files next.

Sipe said Litton would have run whether or not Symington sought re-election. He said Litton was laying the groundwork for his campaign before Symington's announcement.

[From the Chronicle-Herald, Apr. 24, 1975]

IT SEEMS TO B.

Personally, I am very sorry to see Senator Stuart Symington quit the United States Senate. He is a good Senator, a good Missourian, a patriotic citizen and an authority on world armaments and military affairs.

I have known the Senator for more than 30 years. When IU held the place that he is quitting, he proved to be a friend in need when he furnish me his private airplane to fly to Kansas City to keep an engagement after Senate duties demanded I stay in Washington "past train time."

And he was ever on the giving end of our friendship. He came to me and sat by my side when I was before the Senate commerce Committee when they questioned me about my appointment as Assistant Secretary. He was ever ready to lend a hand in the Senate on anything I needed there and again he did me honor when he left a busy Washington schedule and came to Macon to appear at my recognition dinner. I appreciate him for this personally but I appreciate the service he has given his state and his nation much, much more.

When Governor Phil Donnelly died, I flew with the Senator to Lebanon to pay my homage and respect to our departed friend. I was a guest in the Symington home on the way out.

In everything where I have had cause to observe Senator Symington, he has been a pleasant, dignified gentleman, a man with high ideals and deep sincerity, just the sort of man Missouri needs to fill the important task he is relinquishing. I know his decision is a "tough" one but I felicitate him on it, even though it is a deep debit to our state and national politician leadership.

[From the KMOX Radio, Apr. 25, 1975]

We don't know who will be elected President of the United States in 1976. But we are sure that the next President, whether Republican or Democrat, will turn to a distinguished Missourian for special assignments on behalf of our nation.

That Missourian is Senator Stuart Symington, who announced this week that he will not be a candidate for a fifth term in the Senate next year. Typically, Stuart Symington placed the nation and state before himself.

He has achieved one of the most distinguished public service careers in American history. For 30 years, Stuart Symington has served American Presidents, the people of Missouri and the nation in appointive and elective posts. He was Assistant Secretary of War under President Truman and the nation's first Secretary of the Air Force. One of the world's top experts on defense, he was Chairman of the Senate Foreign Relations and Armed Services Committees.

The senator is a military expert and is the architect of our nation's post-war defense. Yet he spoke out against continuing military involvement in Southeast Asia and was a vigorous critic of wasteful spending by the military.

Although he is concerned with global strategy, Senator Symington has never forgotten the bread-and-butter issues back home. He was the prime mover in the Jefferson National Expansion Memorial on the riverfront and an outspoken backer of expanding Lambert Field and, of course, a tireless worker for the welfare of Missouri industry.

Although Stuart Symington will soon leave the Senate, we are confident that the next President will seek his counsel as other Presidents have for 30 years. America still needs him.

[From the Columbia Missourian, Apr. 24, 1975]

SYMINGTON SERVED STATE WELL

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Always an advocate for realizing the problems on the home front first and a strong supporter of U.S. withdrawal from Southeast Asia, Mr. Symington became a powerful figure on military matters. He was active in both the Senate Armed Services and Foreign Relations committees throughout the 1960s and remains involved with military endeavors since his beginning in the Senate in 1952.

Closer to home, Sen. Symington became a favorite of the laborers and farmers in Missouri seeking legislation to promote industry and production in the state. One of the biggest vote-getters in state history, Mr. Symington's popularity with Missourians carried him through four six-year terms in the Senate.

The senator has represented Missouri well and his country and his voice will be missed in Washington. He is a man of candor, conscience and honesty, qualities that are too rare among today's politicians.

Mr. Symington's service to the country, in general, and to Missouri, in particular, will future endeavors.

not be forgotten. We wish him well in his

[From the Aurora Advertiser, Apr. 24, 1975]

A WELL MERITED "WELL DONE"

An outstanding United States Senator from Missouri, Stuart Symington, has decided to end his congressional career when his term expires in 1976.

We think he merits deep gratitude from the citizens of Missouri and the nation for his long, devoted and sincere service which we regard as second to none of the U.S. senators from this state in the past four decades—not even excluding that rendered by Harry S. Truman when he was in the senate. History may well, we think, rank him alongside Senator Thomas Hart Benton (1820–50) at the top level of Missouri's great senators.

We here in Aurora and the area south of it have a special reason to remember Senator Symington with affection and gratitude. For it was Senator Symington, wielding his then great influence with the armed forces, who led the Corps of Engineers to reverse their decision and build the Central Crossing bridge over Table Rock lake now such a valuable feature of local and economic geography.

Most Aurorans will recall, too, that terribly hot day when Senator Symington stood in the blazing sun on the city hall lawn serving as Grand Marshal of Aurora's Centennial parade, his clothes drenched through with perspiration.

Senator Symington was, and is, a democrat. He was, and is, something of a liberal. We often disagreed on the issues, but never on his integrity and his purposes. Not once over his long tenure as senator has Aurora sought his help in such matters as the sewer plant grant, the nursing home grant, the hospital project, and received less than his best efforts. Individuals who asked for his assistance in matters before federal government agencies got his assistance, and, if what was asked was possible and proper, usually ended up with it.

We think the democrat party to which he was so loyal missed a bet in 1960 when it was bemused by the Kennedy charisma and beguiled by the expensive press-agentry used to promote the race of the Massachusetts senator and did not nominate Stuart Symington for president.

We know, for we conducted the poll ourselves and checked every ballot, that the Missourian was the overwhelming choice of democrat party chairmen in most of the states of the Union in the spring of 1960. When all the glamour of the potential "Camelot" had blanketed the land, however, the sober considerations of March, April and May had been forgotten, and JKF was nominated.

We think Stuart Symington would have been a great president and left more behind him than the memory of euphoria over beautiful people in the White House. Certainly we think that if he had been the choice there either would have been no Vietnam, or Vietnam would have long since been resolved with a defeated communist north and a strong and viable democratic south, and far fewer American and Vietnamese dead.

So, as he steps down from national leadership, for Senator Symington was more than a senator from Missouri, we think the people of Missouri, in particular, owe him the obligation of expressing a merited "Well done."

[From the St. Louis Sentinel, May 1, 1975]

A GIANT RETIRES

News of the decision of Senator Stuart Symington not to seek reelection in 1976 removes from the political area a giant of a legislator. At 73, the senior senator from Missouri has given his health and the recent loss of his wife as overriding factors in his decision. As a member of the Foreign Relations Committee, Senator Symington served not only his state, but his country well. He

had also been Secretary of the Air Force and in that capacity familiarized himself with the entire Defense establishment.

We here in Missouri will remember Stuart Symington's public career as being one of integrity, courage and forthrightness. His position on the issues of human rights for all Americans was consistent and unwavering. We endorsed Senator Symington when he ran against the present Attorney-General John Danforth in the last election. And while Mr. Danforth was an outstanding candidate, we pointed out that for the voters of Missouri to turn their backs on Stuart Symington after a quarter of a century in public service would be an indefensible act. The voters agreed, although the Attorney-General ran a superb race. As the Senator moves off the public scene, it will also mean, apparently, the retirement of his faithful administrative assistant, Stanley Fike, who was almost his alter ego. Stan Fike, a former Missouri newspaperman, has been an effective member of the senators' team, although he shunned the public eye. At the close of this term, Capital Hill will miss this team. Missouri will miss them most.

[From the Daily Dunklin Democrat, Apr. 25, 1975]

A SENSE OF LOSS

We can only express disappointment and sorrow in the announcement this week that Missouri will lose its senior U.S. Senator and the nation will lose one of its most distinguished statesmen at the end of next year. Stuart Symington is retiring from the U.S. Senate and active politics, a move which this newspaper expected but which nevertheless saddened us when it came. Although we believed the announcement would be forthcoming, when it came this week we found ourselves totally unprepared for its impact.

Losing Stuart Symington from the U.S. Senate will be, for this state, a monumental loss that will not be overcome for many years. Perhaps no Missourian save the late Harry S. Truman, ever established himself so firmly as a leader in the U.S. Senate as has Stuart Symington. His membership on both the Senate Foreign Relations Committee and the Senate Armed Services Committee—a dual assignment that is unique in the Congress—established his presence and his influence on the major decisions of the nation for more than two decades.

It is difficult not reminisce, at least briefly, about Symington and his place in Missouri. In 1952 he came to Missouri as something akin to a suspicious guest by a majority of the state's citizens; his earlier citizenship in Missouri had been brought about by his presidency of Emerson Electric, but then he had left St. Louis for Washington where he started in a series of top federal jobs that eventually led to his serving as the nation's first Secretary of the Air Force. In 1952 he was returning to Missouri, after a somewhat temporary citizenship, to seek the Democratic nomination for the Senate. As a way of explaining something of his personality, it should be noted that Symington, during that sultry primary campaign, overcame not only his better-known Democratic opponent but overcame much of the apathy that originally greeted his candidacy. From then on, the relationship between Stu Symington and the state of Missourn was solid bedrock.

The Symington transformation from politician to statesman occurred in a remarkably short period of time, considering the vagaries of making such a change. Arriving in Washington as one of the nation's foremost cold-war warriors, he seemed at first to be trying for the title of the Senator from McDonnell Aircraft. He was an exponent of a strong military, particularly a strong Air Force. Free from the myopia that has rendered many a congressman immune to change, Symington began to recognize that the nation's military strength was not the only one that needed preserving during the turmoil of the 1960s and the 1970s. He eventually began worrying about fiscal responsibility, balance of payments and overcommitments around the world. He joined efforts to correct all of these problems, while making significant contributions to minimize nuclear proliferation and military overkill.

It was the politician in every ambitious public servant that made Stu Symington seek the presidental nomination in 1960; failing that, it was his concern for his state and his nation that brought about his transformation from politician to statesman in the years that followed.

Interestingly, despite his great concern and interest in matters affecting the nation, Symington has never lost sight of his responsibilities to his home state. His staff, headed by his administrative assistant, Stanley Fike, is one of the best if not the best in Washington; constituents' problems are handled efficiently—and, as we might add, with amazing effectiveness. The Symington office has always concerned itself with problems, whether they were collective ones concerning the Middle East or individual ones concerning the Bootheel. Most senatorial offices don't even make an effort to deal with both kinds of problems; the Symington office not only deals with both but handles each extremely well.

It would almost be blasphemy to speculate at this point on who will succeed him in the Senate. The truth is, his elected successor will find campaigning the easier part of the bargain. Replacing Symington in the circles of the Senate will be an impossibility for years to come.

Symington has reached the semi-retirement years, although many of his colleagues choose to stay much longer. This was a factor in his decision. Still another was the tragic loss in 1972 of his beloved wife, Eve, a fact which still saddens those who admired and loved her. Both undoubtedly were overriding factors in his decision to retire at the end of his term in 1976. Understanding the decision, however, is different for us than learning to accept it and live with it.

Missouri and Missourians will miss Stuart Symington far more than either realizes at the moment. The man's personality, his influence and his statesmanship are intangible, but nevertheless real and present in both the state and the nation. No man is indispensable—but Stu Symington will be irreplaceable for many years to come.

[From the Hannibal Courier-Post, Apr. 24, 1975]

HE WILL BE MISSED

His shoes will be hard to fill.

For 23 years Stuart Symington has served Missouri in the U.S. Senate with dignity and distinction, and his is a record seldom equaled in that sometimes errant assemblage.

He was not native of our state, having been born in Maryland, but Sen. Symington in his long career of public service has always had the interests of Missourians at heart.

He has been a gentleman in every sense of the word, and his knowledge of domestic and international affairs has made his voice a potent force to be reckoned with.

Whatever he did, he did it with dignity. When he first came to national prominence in the early 1950s, Sen. Symington was a supporter of a strong military posture, and his support of air power in those days gave him the title of "Mr. Air Force."

But over the years, particulary after the Vietnam War began to polarize the nation, Symington became disillusioned with our use of military power, and since 1967 he has been an outspoken critic of the Pentagon.

But his criticism of the military establishment has been done in a responsible manner. Unlike other national figures, Symington has avoided participation in anti-war demonstrations, nor has he reduced himself to loud and obnoxious denunciations of the Defense Department in order to gain followers in the anti-war movement.

On the contrary, Symington has preferred to work within the governmental process, voicing his views quietly and firmly, not necessarily for public consumption, but in order to impress upon those in power the need for a different kind of military policy.

Being an elder statesman, his voice has a greater ring of authority and believability to it, far different from some of his younger compatriots in the Congress.

Hannibal residents, it seems, might find Symington's decision to step down a little surprising. After all, the senator, when he was here a couple of months ago for Democrat Days, indicated very strongly that he would seek a fifth term.

But apparently when he attended a similar function in Springfield, Mo., two weeks ago, the speculation of whether he would run again or not had grown to a fever pitch, and Symington evidently felt the effort was, this time at least, a little less than wise.

Symington's departure, of course, will result in a wild scramble in Missouri for his seat. It's very difficult to say who will come out on top, but Symington's son, U.S. Rep. James Symington, D–Ladue, appears to be the front runner at the moment.

Also said to be interested in the job is U.S. Rep. Jerry Litton, D–Chillicothe, and, as Missourians well know, former Gov. Warren Hearnes is actively compaigning, a bid that almost seems futile now in light of recent allegations concerning his conduct as governor.

And it is possible another name might be added to the list, that being Rep. William Hungate of Troy. Mr. Hungate has not as yet made known his intentions, and any such decision will have to be made in light of his successful career in the House and his key spot on the House Judiciary Committee.

Whoever gets the Democratic nomination will in all likelihood oppose Republican John Danforth, the present attorney general and Symington's opponent in his last election. Danforth was narrowly defeated in that election, and if he runs again, he will be a tough candidate to beat.

At any rate, Missourians can be proud of the long and successful record of Sen. Symington, and of the notoriety he has brought to out state. We would hope his successor will continue that tradition.

For the last two decades, Mr. Symington has been "the" Senator from Missouri. He will be missed, not only by Missourians, but by the nation as well.

[From the Daily Statesman-Messenger, Apr. 24, 1975]

SEN. STUART SYMINGTON

He came from out of the field of big business, and didn't enter politics until he had compiled an outstanding record as an industrialist.

But Missourians will miss Senator Stuart Symington, who this week announced that he would not seek another term.

He has been one of the most valuable and most successful political leaders in Missouri's history. He has compiled a record of statesmanship and service that few have equaled—none have excelled.

He is one of the few men in history from any state to serve at the same time on both the Armed Services and Foreign Relations committees, making him one of the most international and world political problems. recognized, not only in America but throughout the free world, for his keen insight into international and world political problems.

When he steps down at the end of his current term he will be missed by all Missourians.

Immediately, the scramble for the Senate post begins, long before Sen. Symington's term ends.

There will likely be a hard fight among Democrats for the nomination. But the Democratic winner is likely to face Attorney General John Danforth in the general election. And for the Democratic nominee—that won't be an easy task.

But, regardless of the outcome, Missourians have enjoyed 24 years of outstanding service from Sen. Stuart Symington—a record of service to state and nation that can be a source of pride for all Missourians.

[From the Springfield Leader-Press, Apr. 24, 1975]

APPLAUSE FOR "STU"

Missouri will lose an outstanding senator and a rightly respected voice in the nation's capital as a result of Stuart Symington's announcement that he will not seek re-election in 1976.

We hope, however, that the nation will not lose a capable public servant because of the senator's decision. He has served in a number of administrative capacities, in and out of government, before and there is no reason, to our way of thinking, why he couldn't do so again. It would be a sorry thing to lose the talents of a man so knowledgeable in the fields of foreign affairs and military matters.

Sen. Symington is 73 years old and he has almost 23 years of service as a senator behind him. But he is still active and mentally alert. His decision to retire, as he said, came because "during previous campaigns my wife was my political partner. When I lost her, frankly, it cooled down my ambitions." Mrs. Symington, the former Evelyn Wadsworth, died in 1972.

There are some who were surprised at the senator's announcement, especially at this comparatively early date, but his explanation for that was that, when he attended the Jackson Day gathering here this year, he noticed that a number of Missouri Democrats appeared anxious to know his plans.

Sen. Symington first was elected to the Senate in 1952, when he defeated Republican Incumbent James P. Kem, of Kansas City, by a majority of 150,351 votes. Before that, however, he had served seven years as president of the Emerson Electric Manufacturing Company in St. Louis and in six high executive positions to which he had been appointed by President Harry Truman, and for which he was confirmed by the Senate without a dissenting vote.

These included Secretary of the Air Force (he was the first to hold that job), chairman of the Surplus Property Board and of the national Security Resources Board, as well as administrator of the Reconstruction Finance Corporation.

The senator's announcement of his retirement opens the way for what may well be a good-sized field of Democratic aspirants to succeed him, including his son, Rep. James Symington of Missouri's 2nd District.

If the younger Symington decides to seek his father's seat, it would be quite natural for the retiring senator to support him. He could in fact, hardly be expected to do otherwise. But when he was asked who he would support as his successor, he said "I make it a point to stay out of primaries."

That, for a good party man like the senator, is a good policy, though it may be difficult for him to follow in this case. Several Democrats have expressed interest in making the primary race if the senator is not in it. Former Gov. Warren Hearnes already has announced. Rep. Jerry Litton, fast-rising young House member from Chillicothe, has let it be known that he is interested and, of course, so has the senator's son. Formal announcements also have been made by Joseph Teasdale, former Jackson County prosecutor and an unsuccessful aspirant for governor in 1972, and Michael J. Kennedy, also of Kansas City.

On the Republican side, Attorney General John Danforth, as things look now, is the probable candidate. Danforth gave Sen. Symington his closest race in 1970, when the senator won by only 37,000 votes.

During his early years in the Senate, Symington was regarded as a "superhawk" on military matters. Lately, however, he had become more moderate in his views—so much so that some of his colleagues put him in the "dove" category.

The Missouri senator was a truly powerful man in the upper house of Congress. He was a member of both the Foreign Relations Committee and the Armed Services Committee—the only senator serving on both potent panels. As such, he made it a point to gain a thorough knowledge of the fields in which they dealt.

[From the Drexel Star, May 1, 1975]

The announcement by Sen. Symington last week that he was not going to seek reelection kinda left a funny feeling. We worked on the Senator's first campaign back in 1952 and our association has been close all these years. He has been a good Senator and never at any time did he turn down any request we made of him.

[From the Kansas City Times, Apr. 24, 1975]

SYMINGTON'S YEARS IN THE SENATE

Stuart Symington's decision not to be a candidate for the United States Senate in 1976 comes as no surprise to those who knew how devastated he was by the death of his wife in 1972. Even after that sorrow, the senator continued in distinguished service to Missouri and the nation. But now he has decided that the four terms that began after his election in 1952 are enough.

Symington's public service career covers a momentous period of American history, and he was one of the actors on a variety of stages. He came into the Truman administration in June, 1945, with the Surplus Property Board. He was assistant secretary of war for air which led to his appointment as the first secretary of the Air Force when the armed services were unified. Later he was chairman of the National Security Resources Board and administrator of the Reconstruction Finance Corporation.

As senator he served on the prestigious Armed Services and Foreign Relations committees and came to national prominence when he challenged Sen. Joseph McCarthy in the Army-McCarthy hearings in 1954. In the midst of one hot exchange Symington suggested that the Wisconsin senator would benefit from seeing a psychiatrist.

Through the 1950s Symington often was mentioned as presidential material. His principal run at the White House came at the 1960 Democratic National Convention won by John F. Kennedy.

As a senator, Symington is an acknowledged authority in defense matters, particularly as they relate to air power, the principal strategic deterrent and weapon in a nuclear age of H-bombs, long-range aircraft and missiles.

In recent years he has been a vocal critic of American foreign policy and what he considered overextension abroad in both Asia and Europe. Balances of payment and trade have been of particular concern to him; he has worried about the stability of the dollar and the vulnerability of nuclear installations overseas.

With all his involvement in world and national affairs, Symington has kept fences mended at home. Kansas Citians probably will remember him best as the man who put the pressure on organized baseball and assured Kansas City of a major league franchise for 1969 after Charlie Finley got permission to depart for Oakland in 1967. The result was the Royals. There can be no question that Symington's blunt references to anti-trust legislation turned the trick.

It has often been said that Stuart Symington looks like the actor central casting would choose to play the part of a dignified, modern, U.S. senator—tall, handsome, silver-haired and gracious. He has played that part naturally, for he is a true gentleman, a man of honor and integrity and inborn courtesy. Now over the next year and one-half the scramble will be on in Missouri to take his place. Someone will occupy the Symington seat in the Senate. It may be a while before his stature is matched.

[From the St. Louis Globe-Democrat, Apr. 24, 1975]

SENATOR SYMINGTON'S STATURE

Stuart Symington had sufficient stature before being elected United States Senator to be remembered by Missourians with respect and appreciation. Those who know him personally would add affection to the list of emotions he aroused in people.

Stu Symington is a tremendously impressive man of vast ability. A sound businessman and troubleshooter for industry and government before the days of American involvement in World War II, Symington could have capped a career by returning to private life and fortunes after serving as the nation's first Secretary of the Air Force. Instead he turned to politics with the urging of this newspaper, and was elected to the Senate in 1952.

The Globe-Democrat is proud to have supported Symington from the start of his distinguished career until the end. While differing sharply with him on occasion, and while not concealing disappointment with his reverses of position in critical areas, most notably in his assessment of national defense needs, this newspaper scores the Symington years as a definite plus for the people of Missouri.

Sen. Symington, a native Easterner, took to Missouri and Missourians took to him with easy comfort. A man of aristocratic bearing, he found himself welcomed wherever he went. The vote margins he rolled up in winning four terms to the Senate rank him as one of the state's most popular political figures in history.

Symington's appeal to a broad section of voters was immeasurably enhanced by the respect he enjoyed with international and national leaders in government, in the military, in business, finance and labor.

The advantages he enjoyed because of his seniority have added to his ability to serve Missourians well and effectively. Stu Symington is a man who put his heart into everything. He was an achiever who had a head start on others from the day he entered the Senate as a freshman.

Symington's wisdom in international affairs is evidenced by his early sightings on the troubles in the Middle East. Compared to lesser lights he appears omniscient.

Long concerned over the tremendous financial burdens the nation was assuming in overseas obligations, Symington retreated from being one of the strongest advocates of military strength because he said the nation simply could not afford the costs.

While it can be argued that he is mistaken in his latter-day appraisal, there can be no quarrel with his efforts to halt the proliferation of nuclear weapons throughout the world.

Symington has worked conscientiously for effective arms control. Now as an elder statesman, he is entitled to his view that he has

"grown tired of old men in government passing laws forcing young men to die in battle in causes not essential to the United States." Symington earnestly believes he is contributing to efforts to stop the killing. History may prove him wrong, but his integrity is not open to debate.

It takes a man of considerable stature to retire to make way for a younger man. While it appears that Sen. Symington hopes to pass his Senate seat on to his son, he is a realist who knows that the people of Missouri will make that decision.

In his last hurrah, Stuart Symington rates a resounding vote of approval from the people of Missouri for a job well done.

[From the Clinton Daily Democrat, May 2, 1975]

A NEEDED MAN

Missouri and the United States are fortunate that Senator Stuart Symington (D-Mo.) still has 18 months to serve before he retires from the office he has filled with excellence since 1952.

Symington's experience is unmatched in the Senate of the United States.

—He became manager during the great depression of a struggling industry, Emerson Electric at St. Louis, and made it a success.

—He took his expertise to Washington, D.C., at the request of fellow Missourian, President Harry S. Truman, and served in many tough assignments, climaxing his Executive Branch career as the first man appointed to head the then new Department of the Air Force.

—He took this valuable experience from private business and the federal Executive Branch to the Senate when Missourians elected him to that office in 1952.

Government leaders listened to Senator Symington from his first days in that exclusive body, since he already was a man of towering stature on the national scene.

That stature has increased yearly since then—and with good reason which is baldly apparent today.

—He was one of the first leaders to warn the nation that it faced grave economic danger because of its unfavorable trade balance. Simply, that meant more dollars were going overseas than were coming back to the U.S.

—While his record, both as a man and government leader, proved beyond doubt his commitment to a militarily strong United States, he was one of the first to investigate and warn of the danger of certain secret commitments made to foreign governments, and to question maintaining certain foreign military bases which were no longer needed. His basic argument was to the point: The excess military bases detracted from this country's military strength and the money and manpower should be channeled to make muscle instead of fat; that the secret commitments overextended what this country could reasonably accomplish—plus the danger of plunging us into an unwanted conflict which could cost lives and treasure.

—He warned early in the U.S. Vietnam involvement that this country should either throw a Sunday punch at North Vietnam or immediately seek a political solution to the conflict.

Citizens of this area know of his help to individuals, to farmers and his vision as to how the Harry S. Truman Dam & Reservoir could enrich the Golden Valley. Evidence that he was correct is already showing in recent population figures which report that the seven Truman Dam counties have had a population growth of seven percent since 1970. That growth reversed steady population loss since 1890. And the basic tourist industry the project will create when completed is still ahead.

People of Missouri understand why the loss of his wife, Evelyn, strongly influenced Symington's decision not to run for the Senate for a fifth term. Their's was a love and closeness which is realized all too seldom in real life.

Even so, we submit that on the record, personal and public, we hate to see Senator Stuart Symington bow out of public life. Men of his experience, foresight, stature and character are too few. And if this nation ever needed such men it needs them now and for the foreseeable future.

If it is possible to draft him for another term we so move.

If not, we join a host of Missourians in thanking him for his years of tremendous service to this area, the state, nation and world.

And we wish him the best of everything he so richly merits during his retirement years.

[From the Rolla Daily News, Apr. 27, 1975]

Senator Stuart Symington announces the end of his distinguished career covering 24 years in the U.S. Senate. This leads me to thumb through a thick folder of correspondence with "Stu" Symington, including many letters answered by his long-time administrative standby, Stan Fike. I always addressed Symington as "Senator," never "Stu." Stan always referred to him as "The Boss." I supported Symington throughout his career, most enthusiastically during his earlier years when he was a "Hawk" on defense matters. He wanted the war in Vietnam won early with all-out effort. When he became "dovish" my enthusiasm waned but never my over-all appraisal of his dedication to this nation. Stu has earned a rest but his great knowledge of security and defense should still be utilized to help keep this country strong.

[From the Daily News-Democrat, Apr. 24, 1975]

SYMINGTON STEPS DOWN

It is with regret we note the decision of Senator Stuart Symington to not seek re-election next year. While the decision was not totally unexpected it is still somewhat of a shock, if for no other reason than Senator Symington and Missouri have been synonymous for so many years.

As do all public servants, Senator Symington has his admirers and his detractors. In our opinion his stewardship on balance was a major plus for our state and our nation.

Never flamboyant or a headline hunter Symington was a man who preferred a businesslike, systems approach to government. He was more concerned with results than with style.

When we think of Senator Symington the phrase that most often comes to mind is that he is a reasoning man.

We mean in this in the best sense.

Cool, objective reasoning always seemed to be the senator's basis for decision and action.

His stepping down will be a loss for Missouri and the country. That we can replace him with as able and dedicated a man remains to be seen.

We can hope.

[From the Columbia Daily Tribune, Apr. 25, 1975]

SYMINGTON WILL RETIRE: BIG FOOTPRINTS TO FILL

The biggest political news in these parts is the announcement by Sen. Stuart Symington that he will not seek re-election in 1976.

The senior Missouri senator said he does not have as much enthusiasm for the job since the death of his wife in 1972, and he noted that other Missouri Democrats were wondering what he might do. Symington is 73 and would be 80 before finishing another term if elected.

Symington will leave big footprints for his successor. Through the years he had developed a specialty in foreign affairs with emphasis on things military and economic. He had become perhaps the most credible senator on the arms race. He served on both the Armed Services and Foreign Affairs committees. His long experience in military affairs, first as a hawk and then as one who saw earlier than most of his colleagues the impossible position the United States was getting into with its military commitments around the world, made him a unique spokesman for curtailing activities in Vietnam and de-escalating the arms race. When the Pentagon or the Joint Chiefs of Staff came up against Symington they had a match.

So a great vacuum will be left, and who will try to fill it? Possible candidates include Republican Attorney General John Danforth, Symington's son Jim who is serving in the U.S. House of Representatives and former Gov. Warren Hearnes, among others. Of them all, Danforth is the front runner at the moment having already run a close race with Symington in 1970 which helped his political stature even in defeat.

The Democrats are in not such a solid position. Joseph Teasdale, the former Jackson County prosecutor who lost out in the 1972 gubernatorial primary, and Jerry Litton, the popular congressman, are interested Democrats along with Hearnes and the younger Symington. But there is no clear cut favorite like Danforth is for the Republicans.

In any event, Symington did the right thing in announcing as early as he could. As long as he was a possible candidate the other Democrats had to stand aloof. Now they can mix it up with more hope of developing a strong aspirant or two by election time.

But for now the primary event is Symington's retirement. He will be missed in the United States government.

[From the Sunday News & Leader, Apr. 27, 1975]

MEMORIES: THE TIME STU BLEW HIS STACK

(By Dale Freeman)

No attempt at objectivity today.

We write, with admitted bias, of one of our heroes, the senior senator from Missouri.

His beloved Evie no longer at his side, William Stuart Symington, Jr., announced with sadness last week that he will not be a candidate for re-election in 1976 to the U.S. Senate seat he will have held for two dozen years.

Stuart Symington will be leaving in the same way he arrived, the same way he conducted his private, public and professional life over the years. With style. With class. The French have a better word for it: elan.

Editorialists and columnists, friends and (some) foes have been singing his praise for the past few days, and rightly so—recalling with applause his outstanding contributions to Missouri and to the nation over a 30-year period.

In sort of a premature requiem to a heavyweight, they remember him as a self-made millionaire who gained business fame as a doctor of ailing industries; of his leadership to administering a half-dozen troubled federal agencies under President Truman; as the first Secretary of the Air Force; as one of the architects of our modern defense program; as Missouri's most popular vote-getter; as a one-time super-hawk who became convinced that the United States could not police the world; as a leading Senate authority on military and foreign affairs; as the fellow who told the late Sen. Joe McCarthy (who called him "Sanctimonious Stu") that he should see a psychiatrist; as a fierce competitor; as a man with a keen, near-photo-

graphic mind who always does his homework. And on and on . . .

What stands out most in our mind concerning Stuart Symington's illustrious career? It was the time he got hoppin' mad, hot as a hornet, over something that most Americans—and probably a good many of his constituents—would consider a picayunish thing. And after almost two decades, he still heats up when he thinks about it.

This Ozarker was there in person for most of it, but to refresh our memory, we went back to Paul Wellman's book about Symington the other night to let one of Symington's closest friends and confidants, Charlie Brown, tell the whole story (as related to Wellman).

It all revolves around what is now known as the Central Crossing, that $1.4 million bridge that spans Table Rock Lake between Viola and Shell Knob in Barry County.

"We had a bridge problem in southwest Missouri when I was running my first time in Congress (in 1956)," Wellman quotes Brown. "The Table Rock dam had been built to impound the waters of the White River, and the backwaters of the reservoir were inundating a steel bridge across that stream. The bridge had been built by the people of two small communities, Viola and Shell Knob, which were on opposite sides of the river, and they had bonded themselves to erect it so that they could all attend the same church and send their children to the same school.

"To those people in the little twin villages, the loss of 'their bridge' meant that the Viola church members would have to drop out of the church, because they couldn't drive 35 to 40 miles around to another bridge every Sunday, and they would lose their community center, the little school house.

"Some of them came to me," Brown recalls. "Well, I frankly didn't expect to get elected—no Democrat had in that district since the Year One, almost. So I asked the people to talk to Senator Symington who was touring Missouri at the time. They sent a delegation to wait on him at Cassville and tell him about losing 'their bridge.'

"Symington listened attentively and said, 'I'll look into it.' He asked for a report from the Corps of Engineers about the Shell Knob bridge.

"The Corps of Engineers passed the buck to the Missouri State Highway Commission. The highway commission said that all the bridge relocations in the Table Rock area had been approved, the contracts signed, and the matter was closed.

"That was when Symington got mad. He said, 'It ISN'T closed! You're inundating a bridge that these people paid for themselves! You're not paying them for it. You're not replacing it. You're pushing them around, because they're so few in number, and you're not going to get away with it.'

"By this time it was January 1957, and Congress had convened. I had been elected to Congress, and Symington and I went to the Corps of Engineers, then we went to the chairman of the Appropriations Committee, then back to the Corps, then to the governor of Missouri, and back to the Missouri State Highway Commission.

As we recall, the battle went on for months, from one agency to another.

"You would have thought that the Shell Knob bridge was America's answer to the Sputnik. Symington was so determined that the bureaucrats weren't going to mistreat those people like that," Brown recalled.

"Well," he concluded, "we got the bridge replaced. The people of the Viola Shell Knob community in Missouri still have their church and their joint community activities in the schoolhouse (in 1960, when Wellman's book was written), have their direct mail service and a shorter distance to market their milk."

For awhile, some of us used to call it the Stu-Charlie bridge. It somehow seemed more appropriate than Central Crossing.

We don't know how the folks around Viola and Shell Knob feel about Stuart Symington these days, but this Ozarker will sorely miss his presence in the Upper House.

And we don't even want a bridge. If we ever did, we know where we'd go first.

Peace.

STUDENT LOANS: SUCCESSES AND REMEDIES

Mr. JAVITS. Mr. President, the guaranteed student loan program has been the subject of attention because of its mounting costs in interest payments and defaults by students and because of administrative problems. A number of journalists have closely followed these developments, and have raised public awareness of these real and mounting problems. Last fall, the Washington Post ran a very informative and balanced series of articles by Mr. Eric Wentworth, a leading reporter covering education. This series, entitled "The Knowledge Hustlers," was based on sound journalistic research, cited a number of real abuses, and fairly portrayed the current efforts to solve the problems. This was a good example of the press informing the public of a major problem which affects millions of current and potential students who need a Federal loan program to help them pay for their own education. Yet, the same newspaper had, on April 27, devoted a full page to an article on student loans which said virtually nothing about the positive accomplishments of the program and efforts currently underway to address the important problems facing the guaranteed student loan program. Hence the record needs to be made complete which I do herewith.

Since enactment in 1965, the program has assisted more than 4½ million students to borrow from private, nongovernment sources approximately $8 billion to pay the costs of postsecondary education. The vast majority of these students could never have obtained financial credit without the Government guarantee on the loan. The program is also an example of Federal-State cooperation, as States like New York operate their own programs with the assistance of reinsurance and interest subsidy by the Federal Government.

Both HEW and the Congress have been addressing the growing problems of defaults and alleged frauds in the program. I have cosponsored, with Senators BEALL, SCHWEIKER, and STAFFORD, a bill, S. 1229, prepared by HEW to remedy some of these problems. The Education Subcommittee of the Labor and Public Welfare Committee is now carefully reviewing this program, as the authorization expires in slightly more than a year. U.S. Commissioner of Education Terrel H. Bell, the official responsible for the program, has testified before the Education Subcommittee and has been striving to overcome these problems. He has given them highest priority, and should be given the opportunity to resolve these difficulties without being subjected to only half the story being in the press. Dr. Bell has written to the Washington Post to present in detail the more balanced factors of program accomplishments and administrative remedies already underway. He was also candid in presenting the problems of the loan program. The Post has published this letter on May 10, showing their willingness to show both views. I think Commissioner Bell is correct to point out that there are two sides of the story on student loans. I ask unanimous consent that the full text of Commissioner Bell's letter be printed in the RECORD.

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

WASHINGTON, D.C., *April 30, 1975.*

MR. KEN BOYD,
In care of Letters to the Editor, Washington Post, Washington, D.C.

TO THE EDITOR: I am concerned about the publication recently of a number of articles that concentrate on certain negative aspects of the Office of Education's Guaranteed Student Loan Program (GSL) which is, I believe, a good and essentially sound program of student assistance. Because they are lacking in balance, articles such as "Uncle Sam's Squeeze on Students" (Washington Post, April 27) do serious injustice to the program and, by implication, to students.

Certainly I am willing to concede imperfections in the program but I think the record must be set straight by pointing out how well it has been serving millions of students throughout the Nation.

The very size of GSL is indicative of the good the program has done—relieving much of the financial pressure educational costs put on students and their parents. In less than 10 years, more than 4½ million students have received 7.7 million individual loans totaling more than $8 billion. The Office of Education has paid the interest for most students at a cost to date of over a billion dollars. Also, to stimulate loan capital, we have put almost $236 million into special allowance payments for lenders.

The issue of education consumer protection often is addressed in isolation by our critics, reflecting their lack of understanding of the program's complexity. It encompasses more than 8,700 schools and colleges and more than 19,000 lending institutions. Most of the schools and lenders are doing an excellent job. However, there are some who abuse the privileges of participation, and specifically the right of students to consumer protection. The April 27 Post article totally ignores the strong actions taken over the past years to protect consumers.

In the past two years we have removed 341 educational institutions from our eligibility list, for a variety of reasons. On April 17 new regulations went into effect that will greatly expand our ability to deal with cases of malpractice by giving us the authority to limit, suspend, or terminate school and lender participation in the program. Among other things, these rules require refunds to students who drop out without completing their course work. We also require private institutions to provide information about job opportunities given to graduates.

Within the past year we have withdrawn recognition status from two accrediting agencies. We have sharply limited the recognition status of three others until deficiencies have been corrected. Another accrediting body has become markedly more effective because of our insistence that its consumer protection procedures be overhauled.

In February I published a notice that spells out our policy on the payment of claims. It made quite clear that no student will be asked to pay back a loan for which no educa-

tion was received. In March we published proposed rules on claims payments.

All of this has been done to protect the student and we are puzzled at the complete failure of the Post to report these aspects of the program.

Since I assumed the post of U.S. Commissioner of Education 10 months ago we have made a great deal of progress in strengthening overall management of the Guaranteed Student Loan Program. We have enlarged the staff, particularly in the Regional Offices, so that we have better and more localized control. I have recommended legislation to eliminate lending by proprietary schools. Our experience has shown that a disproportionate number of loan problems originate with this type of lender-school.

Indeed, the Office of Education has been active in student consumer protection for some time. We were the key agency in the FICE (Federal Interagency Committee on Education) subcommittee on education consumer protection; we provided funding for two national conferences on this subject; we developed a formal system to act on student complaints, and we developed new criteria for recognizing national accrediting agencies and State approval agencies that feature education consumer protection measures.

The great majority of the 4½ million students who have had the benefits of the Guaranteed Student Loan Program have used the program to move upward in our economic system. The program has been instrumental in making taxpayers out of hundreds of thousands of potential welfare clients. The private sector primarily provides the loan capital, so it is not a total drain on the taxpayer.

I want to admit that the Office of Education has made mistakes in managing this huge program. It is difficult to keep it entirely protected from sharp operators who try to "rip off" the students and the Government. Then, too, there are weaknesses in the authorizing legislation. We are now in the process of working with the Congress to improve the program and to provide more protection against fraud and abuse.

The Post has, in my view, failed to explain to the public the many benefits that students have derived from the loan program. It is a vital part of our student financial aid program and deserves plaudits as well as some reasoned, constructive criticism.

Sincerely,

T. H. BELL,
U.S. Commissioner of Education.

THE FUTURE COURSE OF ECONOMIC POLICY

Mr. TOWER. Mr. President, the debate over the future course of economic policy in this country has intensified over the past several months. On the one hand, there are those who would push for a rather expansive package of policy initiatives in the hope that the economy can be put back on its feet in the very near future. On the other hand, there are those who argue that we must move cautiously in stimulating economic activity so that we will not prematurely rekindle the fires of inflation.

Few observers have been as articulate as Arthur F. Burns, Chairman of the Federal Reserve Board, in outlining the dangers of expecting too much too soon from economic policy. In a speech presented before the 12th annual meeting of the Society of American Business Writers on May 6 of this year, Chairman Burns outlined the steps by which we have arrived at our present economic difficulties. In his speech, Chairman Burns notes that the "creeping inflation" doctrine of the 1950's and 1960's was a dangerous one, and that our present economic difficulties are traceable to the chronic bias of the Federal budget toward deficits. In his opinion, we can no longer afford to ignore the crippling effect which inflation has had on the Nation's economic well-being.

I ask unanimous consent that Chairman Burns' speech be printed in the RECORD.

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

THE CURRENT RECESSION IN PERSPECTIVE

(By Arthur F. Burns)

I am glad to meet with this distinguished group of business and financial journalists in a leisurely setting. As a policymaker, I feel I have much in common with the members of your profession. Both you and I must be alert to every twist and nuance of the changing economic scene. Both you and I must keep busy searching the business skies for some clues to the economic future. I find this aspect of my work exciting and intriguing, as I am sure you do. But it does involve a certain risk for both of us.

Sharing—as we do—the problem of continually meeting deadlines, we are in danger of becoming so preoccupied with the very short run that we fail to see economic events in perspective. For that very reason, I have wanted to take advantage of your invitation, so that we might ponder together the historical developments which have brought our economy to its present condition. This is a large and highly important subject. I cannot hope to do full justice to it on the present occasion. Nevertheless, I shall make a start this evening.

As you are well aware, these past few years have been trying times for the American people. Not only have we lived through the agony of Vietnam and Watergate, but some of us have even begun to wonder whether our dream of full employment, a stable price level, and a rising standard of living for all our people is beyond fulfillment.

Early last year, economic expansion began to falter in our country, as it did in other countries around the world. At the same time, the pace of the inflation that had been building for more than a decade accelerated sharply further. As the year advanced, it became increasingly clear that our economy was moving into a recession.

During the past two quarters, the real gross national product has declined by 5 per cent, and the level of industrial production is now 12 or 13 per cent below last September. The unemployment rate has risen swiftly. The decline in business activity since last fall has been the steepest of the post-war period, and yet the advance of the price level—while considerably slower than last year—is continuing at a disconcerting pace.

No business-cycle movement can be comprehended solely in terms of the events that occur within that cycle or the one preceding it. The economic currents of today are heavily influenced by longer-range developments—such as changes in economic and financial institutions, the course of public policy, and the attitudes and work habits of people. By examining the historical background of recent economic troubles, we should be able to arrive at a better understanding of where we now are. Although these interruptions were watched with concern and some anxiety by practicing economists and other interested citizens, they will be passed over lightly by economic historians concerned with large events.

The reason is not hard to see. Putting aside monthly and quarterly data, and looking only at annual figures, we find that total employment rose every year from 1961 through 1973. So also did disposable personal income and personal consumption expenditures—both viewed on a per capita basis, and in real terms. This sustained upward trend of the economy came to an end in 1974.

The successive phases of the long upswing from 1961 to 1974 provide a useful perspective on our current problems. Some years ago, in my work at the National Bureau of Economic Research, I observed a pattern in past long upswings—an initial stage that may be called the "industrial phase" followed by what is best described as the "speculative phase." The imbalances that develop in this latter phase lead inevitably to the final downturn. The events of the past 15 years conform rather closely to this pattern.

The current recession is best viewed, and I believe it will be so regarded by historians, as the culminating phase of a long economic cycle.

There have been numerous long cycles in the past—that is, units of experience combining two or more ordinary business cycles. One such long cycle ran its course from 1908 to 1921, another from 1921 to 1933. And if we go back to the nineteenth century, we encounter long cycles from 1879 to 1894 and from 1894 to 1908. These long cycles differ in innumerable ways from one another. But they also have some features in common—in particular, each culminates in an economic decline of more than average intensity.

The beginning of the long cycle that now appears to be approaching its natural end may be dated as early as 1958, but it is perhaps best to date its start in 1961. The upward movement of economic activity which began in that year was checked briefly in 1967 and interrupted more significantly in 1970.

The period from 1961 through 1964 may be regarded as the industrial phase of the long upswing. Productivity grew rapidly—increasing in the private nonfarm sector at an annual rate of 3.6 per cent between the final quarters of 1960 and 1964, or well above the average rate of the preceding decade. Unit labor costs were then remarkably stable, and so too was the general price level. Real wages and profits rose strongly. During this period sustained economic expansion, unemployment fell from 7 per cent of the labor force to 5 per cent, while the rate of use of industrial capacity rose substantially.

The second—or speculative—phase of the long upswing began around 1965 and continued through much of 1974. This ten-year period was marked by a succession of major interrelated, and partly overlapping speculative waves that in varying degrees gripped other leading industrial countries as well as the United States.

The first speculative movement involved corporate mergers and acquisitions. In the euphoria of what some commentators have called the "go-go" years, rapid growth of earnings per share of common stock became the overriding goal of many business managers. Other yardsticks of corporate performance—such as the rate of return on new investments—were neglected, and so were the serious risks of increased leverage of common stock.

The aggregate volume of large corporate acquisitions, which for some years had been running at about $2 billion per year, jumped to $3 billion in 1965, to $8 billion in 1967, to $12½ billion in 1968, and then tapered off. This was the great era of conglomerates, when a variety of unrelated businesses were brought together under a single corporate management. Entrepreneurs who displayed special skill in such maneuvers were hailed as financial geniuses—until their newly built empires began to crumble. Being preoccupied

with corporate acquisitions and their conglomerate image, many businessmen lost sight of the traditional business objective of seeking larger profits through better technology, aggressive marketing, and improved management. The productivity of their businesses suffered, and so too did the nation's productivity.

The spectacular merger movement of the late 1960's was reinforced, and to a degree made possible, by the speculative movement that developed in the market for common stocks. The volume of trading on the New York Stock Exchange doubled between 1966 and 1971, and for a time trading volume on the American Exchange rose even faster. The prices of many stocks shot up with little regard to actual or potential earnings. During the two years 1967 and 1968, the average price of a share of common stock listed on the New York Exchange rose 40 per cent, while earnings per share of the listed companies rose less than 2 per cent. On the American Exchange, the average price per share rose during the same years more than 140 per cent on an earnings base that again was virtually unchanged.

Much of this speculative ardor came from a section of the mutual fund industry. For the new breed of "performance funds," long-term investment in the shares of established companies with proven earnings became an outmoded concept. In their quest for quick capital gains, these institutions displayed a penchant for risky investments and aggressive trading. In 1965, a typical mutual fund turned over about one-fifth of its common stock portfolio; by 1969, that fraction had risen to nearly one-half. As Wall Street then had it, the "smart money" went into issues of technologically-oriented firms or into corporate conglomerates—no matter how well or poorly they met the test of profitability.

Speculation in equities was cooled for a time by the stock market decline of 1969–70, but then it resumed again and took on new forms. Money managers began to channel a preponderant part of their funds into the stocks of large and well-known firms—apparently with the thought that earnings of those companies were impervious to the vicissitudes of economic life. A huge disparity was thereby created between the price-earnings ratios of the "flavored fifty" and those of other corporations. Share prices of these "favored" companies were, of course, especially hard hit in the subsequent shake-out of the stock market.

Speculation in common stocks was not confined to the United States. From the late 1960's until about 1973, nearly every major stock exchange in the world experienced a large run-up in share prices, only to be followed by a drastic decline. Indeed, speculation reached a more feverish pace in some countries than in the United States. On the Tokyo stock exchange, for example, both share prices and the trading volume actually doubled in the twelve months between January 1972 and January 1973, and then suffered a sharp reversal.

The third speculative wave that nourished the long upswing of our national economy occurred in the real estate market. Homebuilding fluctuated around a horizontal trend during the 1960's. The vacancy rate in rental housing was at a high level from 1960 to 1965, then fell steadily until the end of the decade, and thus helped pave the way for a new housing boom. Between January of 1970 and January of 1973, the volume of new housing starts doubled. Since then, homebuilding has plunged, and in some sections of the Nation it has virtually come to a halt. Failures of construction firms and unemployment among construction workers have reached depression levels. These unhappy developments stem in large measure from the excesses of the housing boom that got under way in 1970.

Inflationary expectations clearly played a substantial role in bolstering the demand for houses. But the boom was fostered also by an array of governmental policies designed to stimulate activity in the housing sector. These governmental measures, however well-intentioned, gave little heed to basic supply conditions in the industry or to the underlying demand for housing.

In response to easy credit and Federal subsidies, merchant builders moved ahead energetically, put up one-family homes well ahead of demand, and thus permitted the inventory of unsold homes to double between 1970 and 1973. Speculative activity was even more intense in the multi-family sector—that is, in apartments built for renting, and particularly in condominiums and cooperatives, which accounted for a fourth of the completions of multi-family structures by the first half of 1974.

The boom in housing was financed by a huge expansion of mortgage credit and construction loans. Real estate investment trusts played an exceptionally large role in supplying high-risk construction loans for condominiums, recreational developments, and other speculative activities. The growth of real estate trusts was extraordinary by any yardstick. Their assets, amounting to less than $700 million in 1968, soared to upwards of $20 billion by 1973. Unsound practices accompanied this rapid growth and, as a result, many real estate trusts now face difficult financial problems.

The speculative boom in real estate was not confined to residential structures. It extended to speculation in land, to widespread building of shopping centers, and to construction of office buildings. By 1972, the vacancy rate in office buildings reached 13 per cent, but this type of construction still kept climbing.

The real estate boom in the United States during the early 1970's had its parallel in other countries. Speculation in land and properties became rampant in the United Kingdom. In 1972 alone, new house prices rose 47 per cent on the average. The amount of credit absorbed in real estate ventures rose so rapidly that the Bank of England felt forced to place special controls on bank lending for such purposes. And in Germany, the boom in residential construction during 1971–73 left an inventory of about a quarter million unsold units—more than a third of a peak year's output—that now overhang the market.

It is in the nature of speculative movements to spread from one country or market to another. Just as the speculative wave in real estate was beginning to taper off in 1973, a new wave of speculation got under way—this time in inventories. That was the fourth and final speculative episode of the long economic upswing from 1961 to 1974. It involved massive stocking up of raw materials, machinery, parts, and other supplies in the United States and in other industrial countries.

The inventory speculation of 1973 and 1974 was the outgrowth of a boom in business activity that had raised its head by 1972 in virtually every industrial country of the world. The synchronism of economic expansion in these countries was partly coincidental, but the expansion that stemmed from ordinary business-cycle developments was reinforced by the adoption of stimulative economic policies almost everywhere. As a result, production increased rapidly around the world, and led to a burgeoning demand for raw materials, machine tools, component parts, and capital equipment—goods for which our country is a major source of supply. The pressure of rising world demand was reinforced in our markets by the devaluation of the dollar, which greatly improved our competitive position in international trade.

By the beginning of 1973, as business firms attempted to meet intense demands from both domestic and foreign customers, serious bottlenecks and shortages had begun to develop in numerous industries—especially those producing steel, non-ferrous metals, paper, chemicals, and other raw materials. In this environment of scarcities, the rise in prices of industrial commodities quickened both here and abroad. The dramatic advance of food prices in 1973, and later in energy prices, greatly compounded the worldwide inflationary problem. In our country, these price pressures were suppressed for a time by price and wage controls, but the general price level exploded when controls were phased out in late 1973 and early 1974.

One of the unfortunate consequences of inflation is that it masks underlying economic realities. As early as the spring of 1973, a perceptible weakening could be detected in the trend of consumer buying in this country. The business community, however, paid little attention to this ominous development. The escalating pace of inflation fostered expectations of still higher prices and persistent shortages in the years ahead, so that intensive stockpiling of commodities continued. Inventories increased out of all proportion to actual or prospective sales. In fact, the ratio of inventories to sales, expressed in physical terms, had risen by the summer of 1974 to the highest figure for any business-cycle expansion since 1957—another year when a severe recession got under way.

In summary, the period from 1965 to 1974 was marked by a succession of interrelated, partly overlapping, speculative waves—first, in buying up of existing businesses; then, in the stock market; next, in markets for real estate; and finally, in markets for industrial materials and other commodities.

A prolonged speculative boom of this kind can seldom be traced to a single causal factor. In this instance, however, a dominant source of the problem appears to have been the lack of discipline in governmental finances.

The industrial phase of the long upswing drew to a close in late 1964 or early 1965. By then, the level of real output was very close to the limits imposed by our nation's physical capacity to produce. By then, the level of wholesale prices was already moving out of its groove of stability. Nevertheless, our Government did nothing to moderate the pace of expansion of aggregate monetary demand. On the contrary, it actually embarked on a much more expansive fiscal policy. The tax reductions of 1964 were followed in 1965 by fresh tax reductions and by a huge wave of spending both for new social programs and for the war in Vietnam. These misadventures of fiscal policy doomed the economy to serious trouble, but we were slow to recognize this. Indeed, substantial tax reductions occurred again in 1969 and 1971, and they too were followed by massive increases of expenditures.

Deficits therefore mounted, and they persisted year in and year out. Over the last ten complete fiscal years—that is, from 1965 through 1974—the Federal debt held by the public, including obligations of Federal credit agencies, rose by more than 50 per cent. The large and persistent deficits added little to our nation's capacity to produce, but they added substantially to aggregate monetary demand for goods and services. They were thus directly responsible for much of the accelerating inflation of the past decade.

Monetary and credit policies were not without some fault. As every student of economics knows, inflation cannot continue indefinitely without an accommodating increase in supplies of money and credit. It is very difficult, however, for a central bank to maintain good control of money and credit

when heavy governmental borrowing drives up interest rates, and when the public is unwilling to face squarely the long-run dangers inherent in excessively stimulative economic policies.

To make matters worse, laxity in our national economic policies spilled over into private markets. The "new economics," of which less is now heard than before, held out the possibility, if not the actual promise, of perpetual prosperity. Many businessmen and financiers came to view the business cycle as dead, and to expect the Federal Government to bail out almost any enterprise that ran into financial trouble. All too frequently, therefore, the canons of financial prudence that had been developed through hard experience were set aside.

Many of our business corporations courted trouble by permitting sharp reductions in their equity cushions or their liquidity. In the manufacturing sector, the ratio of debt to equity—which had been stable in the previous decade—began rising in 1964 and nearly doubled by the end of 1974. Moreover, a large part of the indebtedness piled up by business firms was in the form of short-term obligations, and these in turn grew much more rapidly than holdings of current assets.

Similar trends developed in some segments of commercial banking. Large money-market banks came to rely more heavily on volatile short-term funds to finance their business customers, and at times they increased their loan commitments to businesses beyond prudent limits. A few bank managers, too, began to concern themselves excessively with maximizing short-run profits, so that the prices quoted for their common stock would move higher. Capital ratios of many banks deteriorated; questionable loans were extended at home and abroad; insufficient attention was given here and there to the risks of dealing in foreign exchange markets; and too much bank credit went into the financing of speculative real estate ventures.

A variety of loose practices also crept into State and local government finance. Faced with rapidly expanding demands for services and limited sources of revenue, some governmental units resorted to extensive short-term borrowing and employed dubious accounting devices to conceal their budget deficits. Statutory debt limits were circumvented through the creation of special public authorities to finance the construction of housing, schools, and health facilities. Some of these authorities issued so-called "moral obligation" bonds, which investors in many instances regarded as the equivalent of "full faith and credit" obligations. The novel financial devices seemed innocuous at the time, but they have recently become a source of serious concern to investors in municipal securities.

A nation cannot realistically expect prosperous economic conditions to continue very long when the Federal Government fails to heed the warning signs of accelerating inflation, when many of its business leaders spend their finest hours arranging financial maneuvers, and when aggressive trade unions push up wage rates far beyond productivity gains. After 1965, the strength of the American economy was gradually sapped by these ominous trends. Productivity in the private nonfarm sector, which had grown at an annual rate of 3.6 per cent from 1961 through 1964, slowed to a 2.2 per cent rate of advance from 1964 to 1969, then to 1.5 per cent from 1969 to 1974. Expansion in the physical volume of national output likewise declined during successive quinquennia. The rate of inflation, meanwhile, kept accelerating.

With the pace of inflation quickening, seeds of the current recession were thus soon across the economy. Rising prices eroded the purchasing power of workers' incomes and savings. Corporate profits diminished a fact that businessmen were slow to recognize because of faulty accounting techniques. New dwellings were built on a scale that greatly exceeded the underlying demand. Inventories of commodities piled up, often at a fantastic pace, as businessmen reacted to gathering fears of shortages. Credit demands, both public and private, soared and interest rates rose to unprecedented heights.

These basic maladjustments are now being worked out of the economic system by recession—a process that entails enormous human and financial costs. Our country has gone a considerable distance in developing policies to alleviate economic hardships, and these policies have been strengthened recently. Nevertheless, the recession has wrought great damage to the lives and fortunes of many of our people.

This recession has cut deeply into economic activities. It must not, however, be viewed as being merely a pathological phenomenon. Since we permitted inflation to get out of control, the recession is now performing a painful—but also an unavoidable—function.

First, it is correcting the imbalances that developed between the production and sales of many items, also between orders and inventories, between capital investment and consumer spending, and between the trend of costs and prices.

Second, business managers are responding to the recession by moving energetically to improve efficiency—by concentrating production in more modern and efficient installations, by eliminating wasteful expenditures, by stimulating employees to work more diligently, and by working harder themselves.

Third, the recession is improving the condition of financial markets. Interest rates have moved to lower levels as a result of declining credit demands and of the Federal Reserve's efforts to bolster the growth of money and credit. Commercial banks have taken advantage of the reduced demand for loans to repay their borrowings from Federal Reserve Banks, to reduce reliance on volatile sources of funds, and to rebuild liquid assets. The rapidly rising inflow of deposits to thrift institutions has likewise permitted a reduction of indebtedness and addition to their liquid assets.

Fourth, the recession is wringing inflation out of the economic system. Wholesale prices of late have moved down, and the rise of consumer prices has also slowed. Although general price stability is not yet in sight, a welcome element of price competition has at long last been restored to our markets.

These and related business developments are paving the way for recovery in economic activity. No one can foresee with confidence when the recovery will begin. The history of our country indicates clearly, however, that the culminating downward phase of a long cycle need not be of protracted duration.

Signs are multiplying, in fact, that an upturn in economic activity may not be far away. For example, employment rose in April after six successive months of decline. The length of the workweek also stabilized last month. The rate of layoffs in manufacturing is now turning down, and some firms have been recalling workers who formerly lost their jobs. Sales of goods at retail—apart from autos—have risen further. Business and consumer confidence has been improving. And prospects for an early upturn in economic activity have been strengthened by passage of the Tax Reduction Act of 1975.

Our nation stands at present at a crossroads in its history. With the long and costly cycle in business activity apparently approaching its end, the critical task now is to build a solid foundation for our nation's economic future. We will accomplish that only if we understand and benefit from the lessons of recent experience.

Since World War II, a consensus has been building in this country that the primary task of economic policy is to maintain full employment and promote maximum economic growth. We have pursued these goals by being ever ready to stimulate the economy through increased Federal spending, lower taxes, or monetary ease. Neglect of inflation, and of longer-run economic and financial problems, has thus crept insidiously into public policy making. Our Government has become accustomed to respond with alacrity to any hint of weakness in economic activity, but to react sluggishly, and sometimes not at all, to signs of excess demand and developing inflationary pressures.

The thinking of many of our prominent economists has encouraged this bias in our economic policies. During the 1950's and 1960's, they frequently argued that "creeping inflation" was a small price to pay for full employment. Some even suggested that a little inflation was a good thing—that it energized the economic system and thus promoted rapid economic growth.

This is a dangerous doctrine. While inflation may begin slowly in an economy operating at high pressure, it inevitably gathers momentum. A state of euphoria then tends to develop, economic decision-making becomes distorted, managerial and financial practices deteriorate, speculation becomes rampant, industrial and financial imbalances pile up, and the strength of the national economy is slowly but surely sapped. That is the harsh truth that the history of business cycles teaches.

To emphasize this truth, I should now like to offer this distinguished group of journalists a bit of professional advice. Since few of you are reluctant to pass along hints as to how I should do my job, I have decided to suggest to you what the really big economic news story of 1975 is likely to be.

The story has to do with the drama now unfolding on Capitol Hill in the implementation of the Budget Control Act adopted last year. If I am right in thinking that our present economic difficulties are largely traceable to the chronic bias of the Federal budget toward deficits, there can be no doubt about the importance of what is now being attempted. No major democracy that I know of has had a more deficient legislative budget process than the United States—with revenue decisions separated from spending decisions and the latter handled in piecemeal fashion. Budgets in this country have just happened. They certainly have not been planned.

We are now attempting to change that by adopting integrated Congressional decisions on revenues and expenditures. My advice to you journalists is to follow this new effort closely. It has a significance for our nation that may carry far into the future. But nothing can be taken for granted here. We have tried budgetary reform once before under the Legislative Reorganization Act of 1946, and it failed. It failed partly because of the challenge to cherished Committee prerogatives, partly also because Congress as a whole balked at accepting so much self-discipline. I would urge you to study the history of that earlier effort and to watch the present undertaking for tell-tale signs of similar faltering.

The potential gain for our nation from budget reform is enormous even in this first year of "dry run." If, in fact, the work of the new budget committee produces in the Congress a deeper understanding of the impossibility of safely undertaking all the ventures being urged by individual legislators, a constructive beginning toward a healthier economic environment will have been made. On the other hand, if the new budget procedures are scuttled, or if they are used with little regard to curbing the bias toward large-sized Federal deficits, there ultimately may be little anyone can do to prevent galloping inflation and social upheaval.

I am inclined to be optimistic about the outcome. More and more of our people are becoming concerned about the longer-range consequences of Federal financial policies. Perspective on our nation's economic problems is gradually being gained by our citizens and their Congressional representatives. A healthy impatience with inflation is growing. You journalists are becoming more actively involved in the educational process. I therefore remain hopeful that we shall practice greater foresight in dealing with our nation's economic problems than we have in the recent past, and that we will thus build a better future for ourselves and our children in the process.

DEAN WILTON C. SCOTT HONORED BY GOLDEN CROWN AWARD

Mr. TALMADGE. Mr. President, Wilton C. Scott, dean for extended services at Savannah State College, has been honored by the Golden Crown Award of the Columbia Scholastic Press Association.

This award, 1 of 50 throughout the Nation, is given to those who have contributed, directly or indirectly, over the years to the advancement of scholastic journalism and to the success of its various programs. It is well-deserved recognition of the outstanding work being done by Dean Scott at Savannah State College.

I ask unanimous consent that his citation from the Columbia Scholastic Press Association be printed in the RECORD.

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

GOLDEN CROWN AWARD

The Columbia Scholastic Press Association on the occasion of its Fifty Years of Service to the School Press of the United States and Overseas has reviewed the roster of those currently participating, directly or indirectly, in its continuing programs and has selected Wilton C. Scott as one of the Fifty whose devotion to the hopes and aspirations of the journalistically inclined Youth of America is of such signal moment, noble generosity and unparalleled achievement that they have inscribed a new and brilliant page in the educational history of the Nation we serve and revere.

In testimony thereof, this Association presents its Certificate symbolic of a Golden Crown as evidence of its gratitude for services rendered, its high esteem and affectionate regard.

FINANCIAL STATEMENT OF SENATOR DOMENICI

Mr. DOMENICI. Mr. President, the way to restore trust in public officials is for public officials to practice complete openness in their dealings. For this reason, I am again this year making public information from my 1975 Federal income tax return and an accounting of my financial net worth and business holdings.

I do this as my personal way of contributing to a restoration of confidence in government.

Mr. President, I ask unanimous consent that these documents now be printed in the RECORD.

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

FINANCIAL NET WORTH DISCLOSURE STATEMENT

(By U.S. Senator PETE V. DOMENICI)

FEDERAL INCOME TAX INFORMATION FOR 1974

Income, $53,843.86 (salary of $43,207.16; interest of $34.13; sale of land at Montgomery and Eubank in Albuquerque, N.M., $4,843.75; income from D & V Company, a family partnership, $1,422.24; New Mexico 1973 income tax refund, $378.66; honoraria of $1,150; Senate Campaign Committee Account, $1,207.92; and Domenici Senate Associates, $1,600—an organization of small contributors established under Standing Rules of the Senate Rule No. 42, filed under Senate Procedures, 12–31–74, to help defray additional Senate expenses, including printing, mailing and photographic expenses).

Contributions of $600 from the New Mexico State Republican Party, used entirely for rent for Domenici's Las Cruces office prior to completion of the new Federal Building in that city.

Gross adjusted income of $51,668.80, after $2,175.06 adjustment for excess of expenses over reimbursements for office and travel expenses associated with official Senate duty.

Itemized deductions of $20,028.56, including New Mexico income taxes and property taxes of $3,417.31 and interest paid of $7,914.30.

Standard dependent deductions of $7,500 for Domenici, his wife Nancy, and their eight children.

PERSONAL NET WORTH STATEMENT

Gross assets: Cash on hand, $1,700; cash value of life insurance, $6,400; securities, $22,621 (Bank of America, $621; Edith Land Co., $22,000); household goods, $8,000; 1971 Oldsmobile, $2,800; real estate and family trust holdings, $290,869.00 (home in Rockville, Md., $100,000; 1/10 interest in Kent Investment Co., real estate in Rio Puerco, N.M., $35,000; ⅛th interest in Cushing, et al., real estate holdings in Albuquerque, N.M., $15,000; D&V Partnership, $24,423; ¼th interest in Huber, Domenici, et al., $70,000; mausoleum crypt, $1,490; Domenici, et al., holdings at Navajo Lake, San Juan County, N.M., $7,500; interest in the trust of the will of C. Domenici, my late father, $37,456.

Liabilities: Real estate mortgage on my Rockville, Md., home (through the District of Columbia National Bank) of $64,495; and debt to Albuquerque National Bank, $28,500.

Net worth: $239,394.78.

The only four transactions Domenici has conducted since his election to the Senate have been the sale of his home in Albuquerque, the sale of four lots in that city, sale of a parcel of land in that city, and the purchase of his new home in Rockville, Md. He has dissociated himself completely from his previous law practice and all other business ventures requiring his participation.

THE SHELTERED LIFE

Mr. BIDEN. Mr. President, with the passage of the Congressional Budget Act of 1974 the Federal budget took on a new dimension called "tax expenditures." These are nothing but subsidies to corporations or individuals provided through the taxing system. These subsidies are provided by simply not collecting taxes that might otherwise be payable. Although they represent benefits of about $80 to $90 billion, they have never received systematic scrutiny in the past. Certainly if these were direct cash payments by the Federal Government they would be looked at much more carefully.

Hopefully we are coming to the end of the time when tax expenditures will be passed by with barely a glance. By law they are now required to be considered as a part of the budget. The Budget Committees of the Senate and House of Representatives are directed to study them. In fact, tax expenditures were the subject of discussion at several meetings of the Senate Budget Committee that I attended. A number of the members of that committee, including myself, are clearly concerned that tax expenditures receive the attention they deserve.

One of the witnesses who testified before the Senate Budget Committee was Prof. Stanley S. Surrey of the Harvard Law School. Formerly an Assistant Secretary for Tax Policy at the Treasury Department, Professor Surrey's testimony was most helpful and illuminating.

Professor Surrey has written an article entitled, "The Sheltered Life" which was published in the New York Times magazine on April 13, 1975. It is a most interesting discussion of tax expenditures and how they work—or do not work. Such an article should prove most useful in our consideration of the subject over the next year. Therefore, I ask unanimous consent that the content of this article be printed in the RECORD at this point.

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

THE SHELTERED LIFE

(By Stanley S. Surrey)

To most people, the Federal income tax is a complex system designed to extract large sums from their pocketbooks—about $150 billion, or more than half the Government's total income. Few realize, however, that while collecting these taxes from individuals and corporations, the Government is simultaneously paying between $80 and $90 billion to some of them. It does this by simply not collecting any or all the taxes it might on certain types of activities—those that, because of their claimed value to society, are permitted special tax benefits. If the Government were first to collect this $80- to $90-billion in the regular income-tax sweep and then to disburse it again for these benefited activities, we would refer to the process as a subsidy. Indeed, this often overlooked form of Government spending through the tax system amounts to nearly twice the total of all other Federal subsidies. And it can be argued that it is more wasteful and less fair than almost every other subsidy.

The existence and size of this assistance aspect of the income tax has been little understood by the public or even the Congress. Moreover, both have been scarcely aware of its basic inequity: Since the special tax benefits a person may claim generally increase as his income rises, the poor gain little from them, while the wealthy may utilize them as a major way to supplement their incomes at Government expense.

Incredible as it may seem, this huge item of Government subsidy—which is called "tax expenditures"—has only recently been accounted for publicly. Until 1968, when the Treasury published the first tax-expenditure budget, few in Congress or in the various agencies whose activities were being aided by the tax expenditures knew what was really being spent through the tax system. And it was not until this year that the item of tax expenditures was included in the Federal budget. The disclosure was required by the Congress in a little-noticed provision of the Budget Reform Act of 1974.

The tax-expenditure table included in the budget, revealing as it is for the amounts

and activities involved, does not disclose the large waste and gross unfairnesses of the tax-expenditure system. Nor does the accompanying budget explanation relate the table to the task of tax reform. Yet the Congressmen who argued for the inclusion of the table in the budget, along with other tax experts, believe that a proper understanding of tax expenditures is essential to tax reform and that the tax-expenditure table will turn out to be an important first step in achieving it in any meaningful way.

In fact, the table as it relates to the process of tax reform is particularly relevant right now, since the tax bill recently passed by the House and the Senate includes a provision for the partial repeal of one of the most important tax expenditures—the depletion allowance under which producers of oil and natural gas can ignore the first 22 per cent of their gross income (up to a maximum of 50 per cent of net income) in calculating their Federal income taxes. The vote to repeal the allowance for big companies and to reduce it for small ones was the result of recent reforms in Congressional procedures, as well as the election of many new liberal Congressmen in the 1974 elections, but it could also suggest that the circumstances are right for further efforts at tax reform.

Every tax-reform issue fought over in the House Ways and Means Committee tax-reform bill of 1974 involved items in the tax-expenditure table. Whether those items will remain, whether new tax expenditures will be added—these are the real issues of tax reform today. The table explains why some of our wealthiest individuals pay little or no income tax and why some businesses on Fortune magazine's list of the nation's largest corporations also pay little corporate tax. The table shows why the real rate of tax paid by individuals whose income exceeds $100,000 is between 30 per cent and 40 per cent, with some in this group paying far less or even nothing—even though the law states that they should pay at rates of 50 per cent to 70 per cent. It explains why the average real rate for corporations is around 35 per cent—well below the 48 per cent rate stated in the tax laws—with some corporations paying far less and with the real rate varying erratically among industries and within any industry.

It is important to understand that the concept of tax expenditures is essentially a way of classifying certain provisions of the tax laws, and there are some who challenge the classification as misleading. Irving Kristol, for example, has written that those who use the terms "tax expenditure" and "tax subsidy" to refer to tax benefits "are implicitly asserting that all income covered by the general provisions of the tax laws belongs of right to the Government, and that what the Government decides, by exemption or qualification, not to collect in taxes constitutes a subsidy. Whereas a subsidy used to mean a governmental expenditure for a certain purpose, it now acquires quite another meaning—i.e., a generous decision by Government not to take your money."

But these statements are simply wrong. The concept of tax expenditures does not imply that all income belongs to the Government and any decision to tax less than all that income is an act of governmental generosity. Rather, it is based on the idea that a proper income tax includes in its tax base all sources of income and allows deductions for all the expenses incurred in obtaining that income. If a special provision excludes some types of income, allows deductions for personal expenses associated with consumption spending rather than the earning of income, or allows special business deductions not reflected under proper accounting standards, then it becomes something engrafted onto the income tax for a special purpose—that of subsidy or assistance. When Congress excludes from current tax one-half the income received from export activity—and so forgoes revenue of $1-billion—it is in effect giving a cash subsidy of that $1-billion to companies that engage in export trade. When Congress permits a homeowner in computing his income tax to deduct his mortgage interest and his real-property tax, at a revenue cost of $10-billion, it is really running a housing-assistance program of $10-billion for homeowners, which makes these tax expenditures for home ownership our largest housing program, exceeding by far the direct budget programs for public housing and low-income housing.

Indeed, the proponents of these special provisions understand this quite clearly, for their arguments in defense of the provisions are not framed in terms of proper tax structure or tax equity, but in terms of incentive and assistance for this or that industry or activity or hardship. Here and there theoreticians may disagree on an item included or left out of the tax-expenditure table, but these disagreements are not shaped by Kristol's misunderstanding.

Furthermore, it is only when we realize that these special tax deductions and allowances really function as subsidies that we can understand their huge inequity. A Congressman rarely perceives that if, say, he introduces a bill to give a $1,000 tax deduction for expenses for home insulation as an energy-saving measure—a goal he believes to be in the public interest—he is really giving $700 to a homeowner in the 70 per cent tax bracket (for that is what such a person saves in taxes when he deducts $1,000 from his income), only $140 to a home-owner in the 14 per cent tax bracket and zero to a homeowner whose income is so low that he does not pay taxes. No direct assistance program of grants or loans to homeowners that operated in this upside-down fashion would ever be considered by the same Congressman. Yet almost daily we find such special deduction assistance tax bills being introduced in a variety of areas, and each, if adopted, would mean a new tax expenditure. (Even when the tax expenditure involves a credit against tax payments, so that each taxpayer receives the same benefit, the system does not benefit those too poor to pay taxes.)

The table in the budget gives an over-all picture of the extent of tax expenditures. Figures published by the House Ways and Means Committee, which allocates the tax-expenditure assistance among the income groups in the country, from low-income taxpayers to the wealthy, reinforce the impression that the tax-expenditure system is grossly unfair.

To be sure, the benefits of some tax expenditures fall mostly to lower- or lower-middle-income taxpayers—for example, public assistance payments and disability-insurance benefits are not taxable. And a number benefit middle-income taxpayers—unemployment-insurance or workmen's compensation benefits are not taxed, and consumers may deduct interest they pay on loans and credit-card balances.

Viewed on a per capita basis, however, it is clear that tax expenditures overwhelmingly favor the upper brackets. On the average, based on 1972 estimates, an individual at the $3,000 to $5,000 level received $10 in tax-expenditure assistance; in the $25,000 to $50,000 bracket, $1,358; in the $100,000 to $500,000 bracket, $29,264; and in the $1-million bracket, $725,000.

Information based on averages, furthermore, does not tell us the extent to which some wealthy individuals escape tax because of the tax-expenditure system. The rules against disclosure of tax returns prevent particular identification. But unidentified examples do exist, such as those made public by the Treasury in 1968. (The practice of publicizing such examples should be continued, but the present Treasury and even the tax committees that have access to the data refuse to make them available.) Thus, some individuals whose actual incomes are in the hundred thousands or even millions pay little or no income tax and can show up in Internal Revenue statistics as low-income individuals because their taxable incomes have been so reduced by tax-expenditure benefits. Representative James C. Corman hinted at this situation in the Congressional Record in January:

To study the extent of tax avoidance among wealthy Americans, the Ways and Means Committee last year examined the tax returns of 20 high-income individuals, whose names were chosen for the most part without prior knowledge about their taxes. These returns showed clearly the injustice of our tax laws. Some of the 20 paid very high tax rates because they did not make excessive use of deductions and exclusions. Most, however, paid very low effective tax rates, and two paid no tax at all on incomes over $500,000. A third tried valiantly to escape all tax by claiming $900,000 in tax-shelter losses, and a fourth paid only $25,000 in tax, even though his income exceeded $2-million. There was widespread use of tax shelters, percentage depletion, the capital-gains deduction and gifts of appreciated property to charity . . .

If the actual data were made known to the public, the result would be a national scandal that would surely produce serious tax reform. Every informed tax lawyer knows of individuals with very high incomes whose actual tax payments are on the same level as those of restaurant employes or mechanics or others who service their affluent style of life.

As for corporations, we are beginning to learn how various industries and particular corporations benefit from the tax-expenditure table as a result of a new S.E.C. rule requiring disclosure in corporate financial documents of why actual income-tax payments differ from what they would be at a 48 per cent rate, the rate in the tax law. Here also the Treasury and the tax committees could give us information, but since 1968 they have refused. However, Tax Analysts and Advocates, a Washington public-interest organization, has carefully sifted the S.E.C. data and regularly publishes tables showing the effective rates of tax. Picked almost at random are a few examples for 1973 that show how low are the taxes paid by some corporations—i.e., how large are their benefits under the tax-expenditure table—and how erratic is the distribution of those benefits. Thus, in the drug industry, actual tax payments for Baxter were 13.31 per cent of corporate earnings; G. D. Searle, 32.7 per cent; Abbot, 32.7 per cent; Johnson & Johnson, 46.7 per cent; in chemicals, Olin, 24.7 per cent; Allied 25.2 per cent; Celanese, 34.9 per cent; du Pont 41.7 per cent; in autos, Chrysler, 19.1 per cent; Ford, 32.7 per cent; General Motors, 46.4 per cent.

How do wealthy taxpayers take advantage of tax expenditures? Some of them search among the tax expenditures for the so-called "tax shelters," a term applied to ways by which individuals in tax brackets at 50 per cent and above may escape those high rates. In the real world, they are well-to-do doctors, investment bankers, lawyers, actors, Governors and the like. In the files of the I.R.S., they may be poor folk with hardly a dollar to their names. They enjoy this dual status because their investments in real estate, oil wells, cattle farms, motion pictures, sports teams, leased equipment, ships and other activities show up in red ink on the I.R.S. returns but in black ink on their own financial records. And this transformation occurs mainly because of items in the tax-expenditure table. "Depreciation of rental housing or buildings in excess of straight-

line," "expensing of farm costs," "excess of percentage depletion over cost depletion," plus other tax-assistance devices produce excessive tax deductions which produce losses for purposes of the tax return. The tax deductions may be so excessive that they offset—"shelter"—both income from the tax-favored investment itself and income from other activities of the investor, and thereby change a real millionaire into an I.R.S. pauper.

Other wealthy taxpayers look for benefit in the tax-expenditure category labeled "revenue sharing and general purpose fiscal assistance," which refers to the fact that income in the form of interest on bonds issued by state and local governments is not taxed. Thus Nelson Rockefeller, in his hearings on his selection as Vice President, revealed that he annually received about $1-million in such tax-exempt interest so that he paid no Federal tax on that amount. By putting their money into such bonds, the trusts from which he received the tax-free funds were following a prudent investment policy for wealthy people, since for a person in this 70 per cent bracket, a tax-free bond paying 6.6 per cent is the same as a taxable bond paying 22 per cent, and such taxable bonds do not exist.

In effect, the exemption of interest on state and municipal bonds from Federal tax is a form of Federal assistance to the states and cities, accomplished by reduction of their interest costs. As a program of assistance, however, this tax expenditure is particularly wasteful. For the Federal Government annually loses $4-billion in revenues—the taxes that investors normally would pay on their bond-interest income—but the states and cities gain less than $3-billion in reduced interest rates. The difference is siphoned off by the wealthy individuals and banks that buy the bonds. The tax inequity and wastage in this form of tax expenditure cannot be defended.

Another tax expenditure favorable to the wealthy is listed on the tax-expenditure table as the subcategory "Capital gain: individual" under the main heading "Personal investment." Perhaps more than any other, this item explains why so many wealthy people pay income taxes far lower than their actual income would seem to require. For this item refers to the special treatment of income that results from the sale of appreciated stocks, real estate, oil properties and other capital assets. On this type of income, the tax rate is cut in half—for the very wealthy, this means a 70 per cent tax rate becomes a 35 per cent rate. In addition, all of the appreciation in value of a capital asset is not subject to income tax if an individual dies holding the asset. Therefore, the 70 per cent tax rate of a wealthy individual is reduced to zero on the rising value of a capital holding so long as he doesn't sell it but retains it and passes it on to his heirs. The combined value of these two items to taxpayers is between $7-billion and $10-billion, depending on the condition of the stock market.

Defenders of the special treatment of capital-gains income have argued that it is not really income at all, but rather a nonrecurring gain different from wages, salary, interest and other such items. Most economists, however, regard as income any increase in a person's net worth during the year, and this would include capital gains. Normal intuition tells the public that a capital-gain dollar can buy a Cadillac or a yacht just as can any other income dollar. Next came the argument that it was unfair to tax the capital gain all in one year, but today we do average income for tax purposes, including capital gains, so this rationalization must be abandoned. Now the argument is that capital gains represent only inflationary price increases. This is harder to counter, since inflation does produce a rise in value that reflects general price-level changes and not a real shift in values. But the inflation argument neglects several points. Often the asset has been purchased with borrowed money, and inflation decreases the cost of that debt to the investor. Also, since the tax collector does not collect the tax on an appreciated asset until it is sold, the Government actually "lends" the income tax on the accrued appreciation to the taxpayer for the period of time that he holds the asset, and this "loan" is at an interest-free rate. Over time, this benefit alone would offset the effect of inflation.

So the defenders of special treatment for capital gains turn to still another argument, useful in a recession period: The United States, they contend, needs more capital investment if we are to resume an upward economic path. Those using this approach sometimes will advocate that the rate of tax on capital-gains income should be reduced by even more than half, and urge, for example, that for stocks held over 15 years the exclusion should be 80 per cent. This would mean that a wealthy investor would pay 14 per cent on his gain (70 per cent on the taxable 20 per cent). This is ironic, since 14 per cent is the rate an unskilled worker pays on his first dollar of taxable wage income. This proposal is advanced to assist, according to one Senate supporter, "many middle-income Americans who invest in growth stocks in their late 40's and 50's and would like to sell those stocks on retirement to invest in income-producing stocks."

It is politic, of course, to argue that the special treatment of capital-gain income is beneficial to "middle America," but there is much to suggest that the claim is specious. An article in the November, 1974, Commerce Department "Survey of Current Business" informs us that .2 of 1 per cent of all families—those with income over $100,000, or 140,000 families out of 70 million—own 30 per cent of the individually held stock in this country; 1 per cent own 51 per cent of that stock and 10 per cent own 74 per cent. Any proposal supporting or increasing the capital-gain tax expenditure simply means that the benefits will continue to go to a relative handful of the wealthiest families in this country.

I.R.S. data show that while only 6.5 per cent of tax returns at the $10,000 income level and 12 per cent at the $20,000 level contain capital-gain income, over 50 per cent do so at the $100,000-and-above level, and seven out of eight returns do so at the million-dollar level. The average capital gain in 1971 did not reach $3,000 until the $20,000 income class. But the average gain became $20,000 for incomes between $50,000 and $100,000, $220,000 for incomes between $200,000 and $500,000 and almost $2.5-million for the millionaire group. Over-all, more than half of the capital gains are received by those with incomes of $30,000 or more—only 2 per cent of the families paying income tax. Thus, choosing capital-gain benefits as the method of encouraging investment for economic recovery involves major sacrifice of tax fairness. A better choice is the course taken by Congress in the recent tax bill—large tax reductions aimed at lower- and middle-income groups and an increase in the investment credit for business investment.

The tax-expenditure table makes it possible to design a program to correct the inequities and inefficiencies brought about by these tax expenditures—to accomplish "tax reform"———with some precision. For each tax-expenditure listing, we should ask if the public and the Congress really believe the Federal Government should be assisting the particular activity involved, as a matter of national priority. This is the same question that is asked each year about direct expenditures of Federal money itemized in the budget. For many tax expenditures, the likely answer to the question is a clear "no." In the category "International affairs," do we really want Congress to subsidize our corporations to invest abroad or to export? In "Natural resources, environment and energy," do we want to subsidize oil and timber companies? In "Business investment," do we want to subsidize the construction of office buildings or shopping centers? Where the furnishing of Government assistance is hard to justify, then the subsidy in the form of a tax expenditure should be dropped.

In some cases, however, the answer to the question will be "yes"; the activity encouraged by the expenditure can be considered a legitimate national goal. In these cases, the task of tax reform becomes a bit more complex. In most cases, the best approach would probably still involve doing away with assistance in the form of a tax expenditure, but it would also involve increasing the benefits provided directly under the Federal budget by compensatory amounts.

For example, the construction of low-income rental housing is currently encouraged by both direct Federal assistance in programs of Housing and Urban Development and by tax expenditures. The combined assistance appears necessary to get rental housing built that is within the financial reach of low-income people. But the tax-expenditure part of the assistance involves wastage for the Government and tax-shelter escape for the wealthy. The solution is to improve the direct-assistance programs and eliminate the tax expenditure.

Similarly, while home ownership is a national goal, the huge tax-expenditure assistance granted to homeowners who deduct mortgage-interest payments and real-estate taxes from their taxable income is clearly inequitable, since the least-affluent homeowners may gain the least benefit. The tax assistance should be re-examined in the context of new direct programs to promote home ownership by subsidizing home mortgages directly, or by other direct budgetary devices.

The same approach would be necessary to eliminate the waste and inequity created by the exemption of interest on state and municipal bonds. Federal help for the financing of state and city governments is accepted as a legitimate goal, but it could be accomplished far better if the states and the cities could elect to issue taxable bonds—paying interest rates high enough to compete for investors' funds—on which the Federal Government would directly subsidize, say, 45 per cent of the interest payments. There would be no waste, since all of the direct subsidy would go to the states and cities and would not be shared with the investors. And there would be no tax escape, since the bonds would be taxable. There would be little or no additional cost to the Treasury, since it would simply be transferring a tax-expenditure cost to a direct budget-expenditure cost.

The fact that tax-expenditure analysis offers clearer answers to the problem of tax reform and budget reform does not mean that such reform will be easy to achieve.

For one thing, tax expenditures relate to so diverse a sampling of Government activities that any concerted approach would be difficult to engineer. Moreover, the task of shifting assistance from the tax system to a direct-budget approach—for example, eliminating tax expenditures to assist housing while increasing direct subsidies for housing—would require a higher degree of coordination than now exists in Congress between the tax commitees, which decide on tax assistance, and the housing committees which decide on direct-budget assistance.

More to the point, perhaps, the number of those who benefit from tax expenditures is large, many of them are among the

wealthiest people in the country, and all of them are hugely motivated to defend the effective Government subsidy they currently enjoy. The weight of their natural resistance to changing the tax-expenditure system is great.

However, there may well be hope ahead for those who seek tax reform in little-noticed provisions in the Budget Reform Act of 1974. In that act, the Congress, besides requiring the President to present the tax-expenditure table, also required the new House and Senate committees on the budget established under that act "to request and evaluate continuing studies of tax expenditures, to devise methods of coordinating tax expenditures, policies and programs with direct budget outlays."

Moreover, the new Congressional Budget Office created to assist Congress in controlling the budget is directed to provide information on bills providing tax expenditures. In addition, each standing House committee is now required to study on a continuing basis the impact of tax policies affecting subjects within its jurisdiction.

The tools for coordinating tax-expenditure policy with budget policy, and the work of tax committees and other committees having jurisdiction over the activities assisted by tax expenditures, now exist. These procedural steps, when combined with a new spirit in the Congress and with the knowledge that people really desire an end to the inequities of the income tax, can mean there is now a much better chance to achieve real tax reform.

ECONOMIC RECOVERY AND BEYOND

Mr. HANSEN. Mr. President, in my opinion this Nation is indeed fortunate to have William E. Simon as its Secretary of the Treasury.

His is a thankless job in times like these as was his previous job as head of the Federal Energy Office.

No one has worked harder at both jobs nor with more dedication and consistency to the principles in which he believes.

Time and again he has testified before various committees of Congress as to the causes of our energy problems and what Congress should do to solve them.

As Secretary of the Treasury and Deputy Secretary before, he has consistently recommended that Congress cure its excess spending habits and practice fiscal responsibility in its overall appropriations.

He has warned time and again that inflation can be cured only by biting the bullet of a balanced budget and control of deficit spending.

Last week Secretary Simon testified in hearings before subcommittees of the Committee on Finance on investment needs of the future and the need as we emerge from the recession to focus greater public attention on the longer range problems of our country.

We must be equally concerned, he said, whether the period of the recovery and beyond will bring sustained economic progress or a sorrowful repetition of the boom and bust cycles of the past.

Mr. President, Secretary Simon's testimony was so impressive that I believe most Senators, whether they agree entirely with his views or not, would do well to consider his proposals. I ask unanimous consent that the following summary of his testimony be printed in the RECORD.

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

STATEMENT BY THE HONORABLE WILLIAM E. SIMON

Mr. Chairman and Members of this Distinguished Committee:

I welcome this opportunity to appear before you this morning on a subject of timely and urgent concern: Our capital investment needs for the future.

For several months, many economic policy makers in Washington have been preoccupied with the problems of ending the recession, slowing the rate of inflation and steering the nation back to a course of stable, durable economic growth. Today there are many signs that the economic slide is gradually decelerating, and we can be increasingly confident that we will be on the road to recovery before the end of this year.

As we emerge from the recession, it is especially important that we now begin to focus greater public attention on the longer-range problems of our country. While the process of recovery will require careful and vigilant management, we must be equally concerned whether the period of the recovery and beyond will bring sustained economic progress or a sorrowful repetition of the boom and bust cycles of the past.

Certainly there is no subject more central to our hopes for the future than our ability and our willingness to meet the capital investment needs of coming years. Those needs are impressively large, and they will demand a full-scale effort. In my testimony this morning, I want to draw upon an abundance of documentary evidence showing that the United States has not been keeping pace in its capital investments and that we must devote more of our resources to this purpose if we are to achieve our most basic economic dreams for the future. To summarize, the record shows that:

During the 1960s, the United States had the worst record of capital investment among the major industrialized nations of the Free World;

Correspondingly, our records of productivity growth and overall economic growth during this period were also among the lowest of the major industrialized nations;

As other nations have channeled relatively more of their resources into capital investment and have acquired more modern plants and equipment, they have eroded our competitive edge in world markets:

Our record on capital investments reflects the heavy emphasis we are placing on personal consumption and government spending as opposed to savings and capital formation;

Our record also reflects a precipitous decline in corporate profits since the mid-1960s;

While the U.S. economy remains sufficiently large and dynamic to overcome our investment record of recent years, our economic growth will be tied much more directly to the adequacy of our caiptal investments;

Estimates of future needs vary, but it is relatively clear that in coming years we will have to devote approximately three times as much money to capital investments as we have in the recent past; and

It is an economic fact of life that increased productivity is the only way to increase our standard of living. For the sake of future economic growth—jobs, real income and reasonable price stability—the inescapable conclusion is that government policies must become more supportive of capital investment and that we must make a fundamental shift in our domestic policies away from continued growth in personal consumption and government spending and toward greater savings, capital formation and investment.

Some analysts have concluded that it will not be possible to meet our future capital investment needs. I disagree. I firmly believe that we are capable of achieving our basic investment goals, but I also believe that they represent one of the most formidable economic challenges of the decade ahead.

I. CAPITAL INVESTMENT EXPERIENCE

The beginning point for our consideration of capital investment—and one that should be of keen concern to everyone—is the pattern of economic growth during the decade of the 1960s. The average annual rate of real economic growth during that period for the twenty nations belonging to the Organization of Economic Cooperation and Development (OECD) ranged from a high of 11.1 percent for Japan, to a median of about 5 percent for Australia, the Netherlands and Norway, to a low of 2.8 percent for the United Kingdom. The United States during this time experienced an average growth rate of 4 percent a year—17th among the 20 nations (Table 1).

Of the many economic, political and social factors that influence economic growth rates, none is more important than the level of capital investment. Economists generally agree that the factors affecting growth include: (1) the accumulated base of capital goods; (2) the current pace of new capital investments; (3) the effective application of new technology; (4) the quality of the national labor force—its education, training, discipline and commitment; (5) the infrastructure of transportation, communication, financial and service facilities; (6) access to industrial raw materials; (7) managerial skills; and (8) the organization of the economic system. The mix of these basic economic variables—along with other specific factors not listed—varies from country to country and changes over time. It is also possible to substitute one, or a combination, of these productivity variables for specific inadequacies. Most analysts agree, however, that a strong rate of new capital investment is required to generate sustained growth. In fact, the effectiveness of all of the other factors that determine productivity are heavily dependent upon the quantity and quality of capital goods made available by new investment.

The United States retains a position of economic leadership because it has been blessed over a long period of time with a favorable mix of all of the important economic variables, along with political stability and improving social mobility. For many years our advantageous ratio of capital to labor has been acknowledged as the basis of the remarkable rise of the U.S. economy. Even now spending for plant and equipment continues to increase and these outlays still exceed the amounts invested elsewhere because of the large size of the U.S. economy (Table 2). In 1974, gross private domestic fixed investment totaled $195.6 billion, up from $194.0 billion in 1973 and $131.7 billion in 1970. Investments in business structures and producers' durable equipment totaled $149.6 billion in 1974, up from $136.8 billion in 1973 and $100.6 billion in 1970.

Nonetheless, even though plant and equipment expenditures will continue in the future as the economy grows, it is unrealistic to assume that the historical patterns of investment and productivity will be adequate to meet the priorities of the future. And I certainly am not suggesting that we can fulfill every claim presented by society. The disappointing record of Federal deficits in fourteen of the last fifteen years ending with FY 1975—or forty out of the last forty-eight years—and the unfortunate boom and bust

pattern of economic performance over the past decade indicate that we have not been able to effectively identify and manage our national economic priorities. Some analysts have claimed that future economic growth will release unused resources to fulfill new claims against the national output. To the contrary, the intensity of claims for available resources will likely increase in the future.

The assertion that additional government spending programs can be added without disrupting the allocation of resources in the private sector has been refuted by the events of the past decade, particularly the increasing inflation pressures and shortages of materials and production capacity.

Comparative rates of investment

Recognizing the relatively low rate of U.S. economic growth in the 1960s, it is worthwhile to look now at the relative rate of capital investment in this country. Although the amounts of capital investment continue to increase in the United States and our capital-to-labor ratio is still relatively high, other nations during recent years have allocated a substantially larger share of their resources to new capital formation. Furthermore, the gap between the U.S. level of investment, measured as a share of national output, and the commitments of other leading industrial nations has increased. A study prepared by the Department of the Treasury indicates that total U.S. fixed investment as a share of national output during the time period 1960 through 1973 was 17.5 percent. The U.S. figure ranks *last* among a group of eleven major industrial nations; our investment rate was 7.2 percentage points below the average commitment of the entire group. When only nonresidential investment is considered the level of commitment is naturally lower for every nation but the relative position of the United States is not changed.

The reduced pace of capital investment in the U.S. economy has also been emphasized by Professor Paul W. McCracken, former Chairman of the Council of Economic Advisers and now Senior Consultant to the Department of the Treasury. Using historical figures, reported in constant dollars, for the amount of nonresidential capital formation per person added to the labor force he estimates that commitments in the United States during the 1970s are 22 percent below the level reported in the 1956 to 1965 decade. In terms of business capital investment per worker, the United States still maintains a considerably higher capital to labor ratio than in Europe and Japan. However, our advantage has declined as other nations have increased their capital investments per worker. The Department of Commerce estimates that since 1960 the existing base of plant and equipment assets has nearly doubled in France and Germany and more than tripled in Japan. The cumulative total of such assets in the United States increased at most by about 50 percent during the same period.

Factors influencing U.S. rate of capital investment

In evaluating the relatively slower rate of capital investment in the United States, several moderating factors should be considered.

First, the unusually large size of the U.S. economy and its relatively advanced stage of development, including the accumulated total of previous capital investments, creates a different investment environment. In 1974 the U.S. national output was $1.4 trillion, which is approximately equal to 90 percent of the combined total for the nine countries in the European Economic Community and Japan. Having already created such an impressive productive capacity it is to be expected that our rate of additional growth might be lower than the development rates of other nations who are striving to achieve our relatively advanced level of economic activity.

A *second* and even more important influence has been the historical priority placed on consumption within the U.S. economy. We are a consumption-oriented society and this pattern has been developing for several decades. The emphasis on consumption has undoubtedly caused much of the rapid development of the U.S. economy because it has created a strong demand for goods and services needed to sustain output, employment and investment. In 1974 personal consumption totaled $877.0 billion, or 63 percent of our gross national product; total government purchases of goods and services totaled $308.8 billion, or 22 percent; gross private domestic investment, which includes the change in inventories, was $208.9 billion, or 15 percent; and net exports of goods and services amounted to $2.0 billion or 0.1 percent of total national output. Personal and government consumption outlays have long dominated the GNP totals, and this pattern of economic activity is deeply ingrained in our society. As a result, despite our high per capita incomes, the accumulations of gross savings flows required for capital investment are lower in the United States than elsewhere. It is also important to note that the level of gross private savings in the United States has remained stable throughout the postwar era.

A *third* important factor affecting the pattern of U.S. investment compared with other nations is the relatively large share of total capital outlays we commit to the services category, which includes housing, government and other services. According to a study published by the Organization for Economic Cooperation and Development (OECD), the United States allocated 70 percent of its total investment to the services category during the 1969 to 1971 time period. The U.S. figure is significantly higher than that reported by the other five major industrial nations included in the study (Table 3). Accordingly, the U.S. share of investment committed to the manufacturing sector, 19.7 percent, was considerably lower than the figures reported by France (27.8 percent), West Germany (25.2 percent), Japan (26.8 percent), and the United Kingdom (23.3 percent). Our heavy investment in the services category tends, of course, to emphasize consumption and moderate the growth in productivity. This arrangement may satisfy immediate consumer preferences, but we must weigh those preferences against long-term concerns about domestic productivity and international competitiveness.

A *fourth* influence on the pattern of capital investment in the United States is the relatively large share of our investment that must be used for replacement and modernization of existing facilities. It is estimated that 62 percent of U.S. capital investment during the time period 1960 to 1971 was used for replacement needs, compared to the United Kingdom, 61 percent; Canada, 52 percent; France, 54 percent; West Germany, 53 percent; and Japan, 31 percent. The divergent pattern reflects the advanced status of economic development in some nations and the postwar experience of Europe and Japan in restoring their devastated industrial facilities following World War II. The Department of Commerce estimates that 60 to 70 percent of the U.S. stock of plant and equipment has been added since 1960, compared to approximately 75 percent of the capital goods of West Germany and France and 85 percent of Japan's industrial capacity. It should be emphasized that this heavy replacement requirement does provide a continuing opportunity to introduce new technology into the U.S. economic system. Since the annual value of U.S. capital investment is so large, it cannot be assumed that the entire U.S. industrial system is technologically obsolete, even though some specific sectors have suffered a sharp competitive deterioration. Nevertheless, the otherwise imposing outlays for replacement and modernization do not add to the total productive capacity of our economy.

A *fifth* and final factor influencing the national rate of capital investment is the pattern of government policies. Government can affect investment either directly through the incentives it provides or indirectly through various tax and regulatory policies and its own pattern of spending.

A review of the diversified economic incentives available in other nations indicates the very active investment role played by many foreign governments. Basic industries are frequently controlled by the government with total, or at least dominant, public ownership. Special financial and operating assistance is also frequently provided for preferred private companies to assist their development if it is considered to be in the national interest. The United States has avoided most of the capital allocation and special incentive programs used in other countries. I strongly favor this private sector approach and believe that it has been a positive factor in the development of our economy.

There are some Federal programs which provide direct financial support through the Economic Development Administration, the Small Business Administration and 169 different government credit programs, but the major influence of Federal Government on capital investment comes through the Federal budget. Government budget decisions now represent approximately one-third of the total GNP and this figure will rise even higher if spending trends of the past twenty years are continued. The government also influences private sector activities by providing capital grants, research funding and other incentives which stimulate investment. For example, the FY 1976 budget prepared by the President calls for outlays of $4.6 billion on general science, space and technology programs, $2.2 billion on energy activities and $9.4 billion for environmental and natural resources. Part of these outlays will involve capital investment needs.

The Government is also exercising increased influence over private investment decisions through the growing number of safety, health and environmental standards. Precise estimates are difficult, but it has been estimated that during 1972, 8 percent of the textile industry's capital investments and 12 percent of the steel industry's investments were related to health and safety standards mandated by the government. While such standards may be highly desirable, we should recognize that these investments do not increase the Nation's total productive capacity.

Many State and local governments also provide special incentive programs to attract capital investment into specific geographical areas. Such incentives include capital grants, advantageous credit arrangements, relocation and manpower training grants, special site and building assistance, infrastructure investments, and preferred tax and utility arrangements. While such incentives have influenced the location of some facilities, the total amount of capital investment has probably not been increased.

The private sector continues to be the best means of increasing capital investment in the United States and our government has fortunately not attempted to control the pattern of such investments.

Negative results of inadequate capital investment

While the historical pattern of capital investment in the United States may satisfy our immediate goals, there are serious economic risks in having a slow rate of capital

investment for an extended period of time. The emphasis on immediate consumption has occurred because American consumers have historically preferred to spend 91 percent of their disposable after-tax income. The government has basically supported this independence of choice although its tax and spending policies have unfortunately exercised an increasing influence on private decisions. But we must now question the future adequacy of past investment patterns if we are to adequately prepare for the economic future of our great nation.

Various studies have indicated the close relationship between capital investment and various measures of economic growth and productivity. A dynamic economy is needed to create jobs by applying new technology and expanding production capacity. A productive labor force is also necessary for producing goods and services to meet rising demands for an improved standard of living and as a means of holding down inflation. When productivity increases, the effects of rising wages are offset so that unit labor costs can be held down and prices are more stable. Inadequate capital investment also limits new job opportunities and creates unemployment. Specific examples of production capacity shortages became painfully apparent to the Cost of Living Council (COLC) as it administered the program of wage and price controls from August 1971 until June 1974. Recognizing the inflation pressures created by these numerous capacity constraints, the COLC followed a definite policy of requiring specific capital investment commitments from private industry as a basis for price decontrol decisions. The COLC also became very concerned about future inflation problems that could result from raw materials shortages and increasing capacity shortages in several basic industries as economic growth occurs. Unfortunately, productivity gains in the United States have been disappointing, particularly when compared with the experience of other leading nations.

The rapid growth of the U.S. economy to its present size and the relatively low level of inflation until the late 1960's has been based on the creativity and productivity of the system. Americans have greatly benefitted from this growth, not only in personal economic gains but in terms of national security and international leadership. Continued prosperity, however, cannot be taken for granted; it must be earned. We must be willing to allocate more of our resources to the future and fewer to satisfying immediate demands. This is a difficult concept for some to accept because they prefer current consumption. With so many needs still unsatisfied in a land of relative plenty, this feeling is understandable. Our ability to fulfill these needs will only be restricted, however, if we now fail to prepare for the future. The simple truism that we sometimes ignore it in setting national priorities. And we can no longer afford to ignore the fact that as the real output of other nations has increased more rapidly than our own, our competitive advantage has gradually been eroded.

II. FUTURE CAPITAL INVESTMENT REQUIREMENTS

Economic projections are always difficult, but estimating future capital needs is particularly uncertain at this time because costs and priorities continue to change rapidly. It is obvious, however, that future capital requirements will be enormous—larger than anything we have ever faced before. Clearly we will need to increase the quantity and quality of housing; develop new energy resources; improve the quality of our environment; rehabilitate the existing transportation system and develop a better urban transportation system; continue the mechanization of agriculture; construct new office buildings, communications systems, medical facilities, schools and other facilities; and meet the massive needs for new plant and equipment. In all of these sectors we must not only replace and modernize existing facilities but also add new capacity, particularly in many of our most basic industries.

The Department of Commerce estimates that capital requirements for producers' durable equipment and nonresidential structures will total $3.4 trillion during the 1974 to 1985 period. If annual outlays for residential construction, which have averaged $50 billion during the past four years, are added to this figure, the total capital needs rise to well over $4 trillion. Details of their estimate include:

GROSS PRIVATE DOMESTIC NONRESIDENTIAL FIXED INVESTMENT

[In billions of current dollars]

	1974	1985	Cumulative 1974–85
Total producer's durable equipment	$100.0	$276.7	$2,188.8
Nonresidential structures	54.7	151.3	1,197.3
Total	154.7	428.0	3,386.0

Energy investment requirements

One area of capital investment that is particularly critical for the future is energy. To achieve greater self sufficiency in energy, enormous capital investments will be required. We basically have two alternatives. The first one is to meet our increased energy investment requirements by reducing outlays in other sectors. While energy priorities are indeed important, it would be most unfortunate to disrupt the entire economic system in this way. A second—and more desirable—approach is to include these new requirements within an enlarged total investment goal. Our purpose should not be to redistribute the economic pie, but to continue enlarging it so that everyone will have a bigger share.

Recognizing that the ultimate cost of energy investment needs will be influenced by many variables, it appears that capital requirements over the next decade will total about $1 trillion stated in current dollars to include the effects of inflation. Energy investments will comprise an important share of the total capital requirements discussed above but their financing is manageable if they are given a high priority as part of a comprehensive national energy program. The specific amounts to be spent in each category will depend upon the energy policies adopted and dynamic developments within the economy. Nevertheless, the range of possible needs is indicated in four separate studies prepared by the Federal Energy Administration, National Petroleum Council, National Academy of Engineering and Arthur D. Little, Inc. All four studies are stated in *constant 1973 dollars* to make them comparable. If necessary adjustments are made for potential inflation and the increased needs that have been identified since the studies were prepared the resulting capital needs expressed in current dollars, will approximate $1 trillion between now and 1985.

III. GOVERNMENT POLICIES

Unfortunately, the Federal Government has reported a deficit in fourteen out of the past fifteen years ending with FY 1975. During the single decade FY 1966 through FY 1974, the cumulative Federal deficits totaled $103 billion. Net borrowings for supporting over one hundred "off-budget" Federal programs totaled another $137 billion during that decade. As a result, the Federal Government wtihdrew one quarter of a trillion dollars out of the capital markets. But this record is only a prelude to our present situation when Treasury financing requirements will total about $75 billion in calendar year 1975 in order to finance the massive Federal deficits expected. While much of the current deficit results from the recession, which has caused tax revenue losses, increased unemployment compensation benefits and other outlays resulting from the "automatic stabilizers" used to fight recession, a review of the budget details indicates that traditional spending programs are also rising rapidly and new programs are proposed almost every day. As indicated in Table 4, the spending figures included in the original budget submitted by the President last February called for outlays of $313.4 billion in Federal spending in FY 1975 and $349.4 billion in FY 1976. Recent projections by the Office of Management and Budget indicate that FY 1975 outlays will be $324.2 billion, an increase of 20.8 percent over FY 1974 outlays. It should be obvious that government spending—both for temporary stimulus and traditional programs—is increasing at a rate that is creating serious resource allocation problems far into the future and that these pressures will not conveniently disappear as we gradually emerge from the recession later this year.

Looking beyond the recession problems of 1975, we seem to face the dilemma of having an apparently irresistible force of growing government spending meeting the immovable object of future capital investment requirements. But we should no longer consider the growth of government spending and related deficits to be an irresistible force. To do so will inevitably lead to even more serious economic problems of unemployment, reduced real gains in our national standard-of-living and even more inflation resulting from inadequate physical capacity and reduced productivity. We must recognize the basic reality that when we apply too much pressure on our capacity to produce goods and services, the inevitable result is inflation and shortages. The underlying growth trends of the U.S. economy will continue to provide for further economic progress, but we cannot realistically expect to satisfy every new claim within our economy by simply shifting resources from the private to the public sector. Adding new government commitments is not feasible if the total productive capacity of the economy is exceeded.

This guideline has been frequently violated as total demand has increased too rapidly for the economic system to absorb. When this happens, the economy begins a boom and bust sequence with severe inflation and unemployment distortions. Nor can we wish away the problem by claiming that there is plenty of slack in the 1975 recession and that we can ignore problems of overheating the economy until later years. The escalation of government spending levels summarized in Table 4 has already seriously eroded our future fiscal flexibility and the lagged impact of current spending decisions will directly affect the future. In short, if we are to achieve our crucial goal of adding at least $4 trillion of private capital investment by 1985, we must first establish more moderate and sustainable fiscal and monetary policies.

Tax policies

Federal tax policies affect capital investment decisions by determining the after-tax earnings available for investment and by establishing incentives or disincentives for future investment. An OECD study of tax policies indicates that total government tax collections in the United States during the years 1968, 1969, and 1970 were a smaller proportion of the gross national product than in most other industrial nations. The U.S. figure of 27.9 percent for those three years was above that of Switzerland (21.5) and Japan (19.4 percent) but below the levels reported for many European nations, ranging from Italy (30.1 percent) to Sweden (43.0 percent). Since the study was com-

pleted, the United States undertook major tax policy changes in 1971 and in March of 1975, but the comparative relationships have probably not changed very much. There is, however, a major difference in the distribution of the tax burden. Only 18.1 percent of the U.S. tax revenues in 1971 were provided by taxes on the consumption of goods and services. Other industrial nations relied much more heavily on consumption taxes: France, 34.8 percent; West Germany, 28.1 percent; United Kingdom, 26.6 percent; Canada, 28.7 percent; and Japan, 20.7 percent.

The definite tilt toward personal and corporate income taxes in the United States is consistent with our historical preference for immediate consumption. It is not my purpose to criticize this historical priority, but the future requirements for capital investment indicate that tax policies should be reviewed. Just such a review has been underway in the Department of the Treasury in preparing for the tax law changes completed last month and in anticipation of a joint review with the Congress in the coming months of possible tax reform initiatives. I do not want to make any specific recommendations this morning because we are still working on our analysis and recommendations. We will want to review the options with Congress before specific actions are suggested. I will merely refer to some of the policy areas that need to be reviewed:

1. *Corporate income tax.*—These taxes directly influence the cash flow available for investment. The rate has vacillated slightly above or below the 50 percent level for many years. While a reduction in the rate of taxation would probably be the most straightforward approach to enhancing investment incentives, any change would represent a major shift in policy and would require extensive Congressional consideration. The Tax Reduction Act of 1975 did increase the corporate surtax exemption from $25,000 to $50,000 and decrease the "normal" tax from 22 to 20 percent on the first $25,000 of earnings. These changes, however, do not affect the tax impact on the great bulk of corporate earnings subject to the corporate surtax.

As part of this on-going review of tax policies we also need to consider the influence on investment of our two-tier system of corporate taxation in which income is taxed once at the corporate level and again at the shareholder level. This approach discriminates against corporate investors generally and small equity investors particularly. An individual in the 20 percent tax bracket in effect pays 48 percent at the corporate level and then an additional 20 percent on what is left for a total tax burden of 58.4 percent, or nearly three times his individual rate. If the individual is in the 70 percent bracket, he pays 48 percent at the corporate level and then an additional 70 percent on what is left. His total tax burden is 84.4 percent. If the same business could be conducted in a noncorporate form, the investors would pay only 20 and 70 percent respectively.

Our tax system puts a great penalty on companies that must incorporate. Companies that do incorporate are those that have large capital needs that must be raised from many persons. We should keep in mind that our system of taxation bears more heavily on corporations than do the tax systems of almost every other major industrial nation. In the last few years our major trading partners have largely eliminated the classical two-tiered system of corporate taxation. Through a variety of mechanisms they have adopted systems of "integrating" the personal and individual income taxes so that the double taxation element is radically lessened.

2. *Investment Tax Credit (ITC).*—Business firms have strongly supported the ITC as a major stimulus to additional capital investment. Empirical studies do indicate that the amount of investment in machinery and equipment has increased when the ITC has been put into effect and has declined when it is suspended. Some critics believe, however, that the ITC simply influenced the timing and types of investment rather than increasing the total amount. Whichever view is correct, there was strong support for the investment tax credit provision in the Tax Reduction Act of 1975 which increased the credit to 10 percent for two years and removed the lower percentage limitation for utilities.

Unfortunately, this investment tax credit has had an uncertain status once it was initiated January 1, 1962 and businessmen are justifiably concerned about the stability of an incentive which has already been removed twice and then reinstated.

3. *Depreciation guidelines*—The amount of capital recovery charges permitted for tax purposes also influences the after-tax earnings available for private investment. In 1954 the Internal Revenue Tax Code was changed to permit depreciation charges to be made on an accelerated basis. The official guidelines were again liberalized in 1962, and in 1971 the Asset Depreciation Range (ADR)—along with the investment tax credit—was added to the regulations.

The ADR rules allow companies to select a time period for calculating depreciation within a range of 20 percent above or below the Treasury guideline which specifies useful life periods for various assets. Despite these adjustments, American businesses complain that they have a competitive disadvantage compared with some other nations. American firms using both the ADR and the investment tax credit can recover 55 percent of the value of new investments during the first three years. By comparison, the allowances in other nations are as follows: Canada, 100 percent; France, 90.3 percent; Japan, 63.9 percent; United Kingdom, 100 percent; and West Germany, 49.6 percent. It should be added that the U.S. position becomes more comparable by the seventh year. Various business groups have proposed further liberalization, such as a wider ADR percentage, but further consideration should be part of the general tax reform analysis involving the Department of the Treasury and the Congress.

4. *Special Incentives*—The government is frequently asked to provide special incentives in the form of reduced or delayed taxes, accelerated depreciation schedules, capital grants or other benefits to enhance the rate of return on capital investments. While such incentives are usually requested on the basis that they will contribute to the achievement of some national priority, it is usually difficult to justify such special treatment. When special advantages are given to a specific industry or geographical region, others become relatively disadvantaged and it is very difficult for government authorities to determine which claims should be favored, particularly in a dynamic economy where priorities can change rapidly. While there may be a few specific situations where the government should intervene in the allocation of resources which is now handled efficiently by the private markets, my overwhelming preference is to avoid the economic distortions which are found to occur.

Corporate profitability

The final area of concern that I want to address here is the future outlook for corporate profitability. Such profits are, of course, *the* major incentive for additional investment and an important source of funds for financing outlays, along with various external sources. In a fundamental sense profits are the driving force of our system—the engine that pulls the economic train for the 85 percent of our work force still in the private sector—and they are just as much a "cost" of doing business as payments to workers, supplies of materials and services, taxes, etc.

Unfortunately, corporate profits are too often thought of as an unnecessary claim required by greedy businessmen rather than the basic incentive in our economic system. Public opinion surveys in the 1930s and in more recent years are consistent in indicating that the general public thinks that profits account for approximately 28 percent of the sales dollar. The fact is, however, that profits account for approximately 5 cents out of each dollar of sales. Actual earnings of business firms are thus far below what the general public—and some Members of Congress—perceive them to be. In fact, corporate profits will have to improve substantially in order to provide the necessary incentives and to make the necessary contribution to future investment outlays. My concern is that the negative attitudes about profits held by many Americans might become an unfortunate part of public policy. We must avoid legislation and regulation that is punitive of profits honestly earned. The result could only be that capital formation would be inhibited, and the real purchasing power to wage earners would rise more slowly. We must always be alert to the fact that profits translate into jobs, higher wages, and an increased standard of living for all of our people.

One important reason why there is so much misunderstanding about corporate profitability is that our accounting system has not yet been able to adapt to the disruptive effects of the double-digit rate of inflation we have suffered. Inflation hurts investment by increasing the prices of new assets and eroding the purchasing power of corporate earnings. Taxes must be paid on reported earnings even though these figures are exaggerated by inventory valuation profits and the inadequacy of capital recovery allowances, which are based on the historical costs of existing assets rather than the inflated outlays required for new assets. Inflation also disrupts investment by discouraging savings once the general public recognizes that the purchasing power of such commitments is eroded so quickly.

IV. SUMMARY

As we strive to end the most severe economic recession in our postwar experience, my deep and abiding concern about the future adequacy of capital investment will perhaps appear to be ill-timed to some analysists. There is extensive slack in our economy with an unemployment rate near 9 percent and reduced rates of plant capacity utilization in many specific industries. The economic slide, however, will not last much longer, and we will again be reporting real growth gains before the end of the year. As the pace of economic activity accelerates, we will likely rediscover shortages of labor and production capacity. In fact, some industries still have high plant capacity utilization ratios, and many types of skilled labor will be difficult to find even in the early stages of economic recovery. In 1971 it was widely believed that extensive slack existed but the economy was again operating at a very high rate of capacity by 1972 and shortages and explosive inflation soon occurred.

Our statistics on plant capacity have always been uncertain measures, and current economic conditions have motivated the Department of Commerce to give top priority to a comprehensive survey of production capacity as a basis for preparing more meaningful estimates of plant capacity utilization rates. It is ironic that such a fundamental factor in preparing national economic policies has been based on such uncertain economic statistics.

Dr. Pierre Rinfret, President of a well known economic consulting firm, Rinfret Boston Associates, Inc., has published an

impressive study of the national production capacity which indicates that our current government statistics grossly underestimate the rate of capacity utilization in American industry and that there is virtually no reserve capacity. His study estimates that the capacity utilization rate for manufacturing industries was 86.6 percent in 1974 (Table 8) a figure well above the government's estimate for 1974, of 78.9 percent. It should also be emphasized that the concept of operating at 100 percent of physical capacity is misleading. Over the last fifteen years the government figures indicate that manufacturing capacity utilization has averaged only 83 percent despite some periods of intense output. The highest figure reported by the government during these fifteen years was 91.9 percent for 1966. Most companies need to preserve some reserve capacity to handle unexpected output requirements and to substitute for operating assets which need repairs or replacement. Therefore, the existing government figures do not accurately measure the realistic level of capacity utilization.

Looking beyond the current problems of recession and sustaining an economic recovery, the additional capital investment of at least $4 trillion from 1974 to 1985 represents a major challenge to the future growth of our economy. We must also give careful attention to the problems of specific industries in attracting needed investment for balanced growth. I am confident that these basic goals can be accomplished. But the desired results will require government policies which will moderate inflation and balance the Federal budget over time in order to avoid diverting needed capital away from investment and into the financing of chronic Government deficits. A continuation of the fiscal and monetary distortions of the past decade will only frustrate our capital investment efforts and lead to still more serious economic problems in the future.

FULL FUNDING FOR NASA

Mr. TUNNEY. Mr. President, I would like to take a few moments to express my views in H.R. 4700, the authorizing legislation for fiscal year 1976 for the National Aeronautics and Space Administration. I strongly support full funding for NASA, and for that reason, I strongly supported passage of H.R. 4700, and I am pleased that the Senate approved this important legislation.

I am aware that some would have us cut our funding for NASA, or end it altogether. That seems to me to be a shortsighted attitude, which, in the long run, may cost us dearly.

The NASA budget request for fiscal year 1975 is $3.539 billion. The bill authorized the expenditure of some $3.544 billion. Both of these amounts represent less than 1 percent of our projected Federal budget of close to $370 billion for fiscal year 1976. For the price, I believe we are getting benefits so fundamental and so important to our future that we can hardly afford not to pay for them.

First, we can expect to continue to expand our knowledge of space itself, and consequently extend man's capacity to understand and utilize the hostile environment beyond the Earth's atmosphere. We have seen in past years how our knowledge of space both within and without our solar system has helped us to know more adequately the fundamental facts about the origins of the solar system, man's capacity to adapt to unfriendly circumstances, and ultimately the key to the origins of life itself. Our need for such knowledge did not end with our trips to the Moon or the Skylab program.

Knowledge about space is worthwhile in and of itself. On these grounds alone, we would be well justified in continuing manned space programs like the Space Shuttle, and unmanned programs, such as Viking.

Of course, our benefits do not end there. NASA's work and our space program have paid bountiful dividends here on Earth. We can cite a few of the thousands of examples. Unmanned satellites such as Landsat and Seasat have enabled us to map Earth's resources comprehensively for the first time, the first necessary step toward the coherent resource planning which is a must for the future. Knowledge about the solar environment and our own atmosphere have allowed us to minimize disruptions in our worldwide communications network, a vital lifeline around the globe. Weather and geological information fathered from our manned and unmanned space vehicles has vastly expanded our capacity to understand Earth's environment and man's interactions with it, giving us the capacity to minimize man's harm to nature and nature's harm to man. Breakthroughs in space medicine have been translated into lifesaving health benefits here at Earth.

In short, the NASA program has produced undeniable and incalculable gains in man's scientific and technological knowledge, and better understanding of the steps necessary to preserve the planet and improve living conditions here on Earth. As chairman of the Science and Technology Subcommittee of the Commerce Committee, I am fully aware of the role science and technology must play in our Nation's future. I am even more aware of the central role which NASA has played in making this country the scientific and technical leader of the world. If we are to preserve our lifestyle, and to solve successfully the increasingly complex environmental and resource riddles facing us, NASA will continue to be an indispensable cog in our scientific and technical apparatus.

The alternative to full NASA funding is the steady decline of NASA matched by the steady deterioration of our scientific capacity. We should not delude ourselves in the belief that we can gear up quickly to reverse any such decline. It is taken us almost two decades and many billions of dollars to create a technological complex of NASA's sophistication. It would be unbelievably difficult, perhaps impossible, for us to repeat that process. The decision we make today on funding will mark our degree of commitment to the future of NASA—whether to begin the dismantling process or allow it to function as an important part of our complex for dealing with the future. I believe we must decide in favor of full funding, and for that reason, I will vote in favor of H.R. 4700.

There's another reason why this authorization is crucial. It is not just a bill to preserve our scientific know-how. It will also help to assure jobs for hundreds of thousands of Americans in the aerospace industry and related fields.

It is been estimated that 72 percent of NASA's spending goes into payrolls. That means that over $2.5 billion of the $3.5 billion we authorize here today could go into job creation. That is pretty encouraging, when we consider the bleak unemployment statistics we face today, especially when those jobs are producing high-quality results—the kind NASA produces.

In my home State of California, for example, it is estimated that full funding for NASA would mean almost 52,000 jobs—2,200 civil service and permanent NASA jobs, and 49,700 contractors' positions. Also, 27,000 jobs will be provided by the Shuttle program alone, as well as 500 or so for the Landsat program, 400 to 500 positions for the vital Seasat concept, 100 jobs in the large space telescope study, and about 2,000 posts in connection with the high energy astronomical observatory. All of those programs perform important scientific functions, and they will put Americans to work. The number of jobs in California by the end of fiscal year 1976 will be about 6,000 more than it will be at the end of fiscal year 1975. And that increase will occur with virtually no increase in funding. Any time we can get more jobs without massive increases in authorizations, we should support funding for such a program. That is what the NASA program will give us, and it is a very good reason for us to back it with Federal dollars.

Direct NASA funding of jobs is not the whole story, either. Every NASA job results in the creation of 2.8 other jobs in peripheral activities. In California, that means over 200,000 jobs will result from our efforts. In the Nation as a whole, more than a half million jobs could be created directly or indirectly through NASA funding. That makes the economic justification for funding NASA as persuasive as the scientific reasons.

In short, I regard the NASA authorization as vital to our country's scientific and economic well-being. It is one of the very best investments we could make. The dollars we spend on NASA funding will be returned to us many times over during the coming years. The people employed, the hardware created, and the knowledge generated will be invaluable in providing better lives for us and our children and in solving the complex problems lurking in our future. NASA's record and its promise make this funding legislation a long-term bargain. Cutting NASA funding may gain us a few dollars for the present, but it could cost us immeasurably in the future. I am gratified that the Senate has seen the importance of NASA's continued vitality to our country's future and acted to secure that future. Approval of H.R. 4700 was a large step in that direction.

DEATH OF KIVIE KAPLAN

Mr. BROOKE. Mr. President, Kivie Kaplan, a crusader for civil rights, a philanthropist and a dear friend, died as he had lived, traveling on a mission of good works.

He had labored long and well as Presi-

dent of the National Association for the Advancement of Colored People and as the builder and chairman of its Life Membership Committee. He is also recognized as a "prime contractor" in the building of the NAACP into what he called, "the oldest, largest, most feared and most respected civil rights organization".

He had, as a Jew, lived and worked in the highest tradition of Judaism.

He had served his country and fellowman with patience, perseverance, and total dedication to the principles of equal opportunity and equal justice under the law.

To those of us who were privileged to know him, Kivie will be remembered as a quiet, gentle man who did good deeds all the days of his life and who somehow always managed to smile and to recommend smiling to others.

Mr. President, a grateful people extend to his loving wife, Emily, and his devoted children, Edward, Sylvia, and Jean, and to his grandchildren, family and host of friends, our deepest sympathy.

We have truly lost a good and righteous man.

THE TAX REBATE

Mr. BIDEN. Mr. President, during consideration of the Tax Reduction Act, along with several of my colleagues, I supported efforts to eliminate the tax rebate provisions. Virtually every poll taken indicates that the rebate will not be spent on new consumer goods and thus will not accomplish its purpose of stimulating the economy. In other words, Mr. President, we are not getting sufficient "bang for the buck."

In his typical tongue in cheek fashion, Art Buchwald described the probable use of the rebate in a recent column in the Washington Post. As Buchwald indicates, the money will be used to pay higher food, fuel, and governmental costs. This is no doubt a laudable purpose—after all, who would not want some extra money? However, that is not what we were trying to do by enacting the Tax Reduction Act. What we were supposedly doing was stimulating the economy and, as Buchwald makes clear, the rebate provisions do not aid in this effort.

Mr. President, I commend this column to the attention of my colleagues and ask unanimous consent that it be printed in the RECORD.

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

TAKING THE FUN—AND PROFIT—OUT OF THE TAX REBATE

(By Art Buchwald)

The day Malcolm Dundee's $200 income tax rebate was scheduled to arrive, a large crowd gathered on his lawn. Word had gotten out that Dundee was to be the first person in Clarion Falls to get the rebate, and the town was full of excitement. His congressman, Jeremiah Lowball, had flown in from Washington for the occasion, the Clarion Falls High School band had suited up in their blue-and-gold uniforms and a television crew from Grimstead had set up their cameras to record the historic event.

Dundee had made his children get dressed up in their Sunday clothes, and he and Mrs. Dundee stood nervously on their porch awaiting the arrival of their check.

"Here it comes!" someone shouted as the mail truck hove into view.

It stopped at the curb and the mailman got out holding the familiar brown government envelope with the green check peeking through the cellophane window.

A TV correspondent pushed a microphone in front of the mailman's face and he said, looking into the camera, "Neither snow, nor sleet, nor heat of day would stop me from delivering this tax rebate to Malcolm Dundee of 110 West Zitherford Drive."

The crowd broke into a cheer and the band struck up "Pennies From Heaven."

"Give him room," someone yelled, "to deliver the check."

"It's out of my hands," Lowball said. "We voted you a rebate to spur the economy but we can't tell you how to spend it."

The mob reluctantly opened up a path on the sidewalk.

Dundee was beaming, and his wife squeezed his hand. "Did you ever think we'd see the day," she whispered to him, "when we'd get a tax rebate?"

"I dreamed about it," Dundee whispered back, "but I never thought it would happen."

The mailman walked slowly up the walk as Dundee waited, hand outstretched.

Suddenly from out of the crowd a man jumped forward and grabbed the check.

"Hey, what are you doing?" the mailman said.

"This check belongs to me," the man said. "Who are you?"

"I'm from the electric company. We've just raised our rate and the $200 check should cover it."

Another man grabbed part of the check and said, "I'm from the telephone company and this check belongs to us."

"Be careful," Dundee cried, "you'll tear it."

A third man joined the melee and grabbed the envelope.

"I'm from the bank. Dundee owes this for interest on a loan we made to him to pay his income taxes."

A fourth man pushed the banker away. "Not so fast. I'm from the county real estate tax assessor's office and this check must go for the surcharge we put on Dundee's house."

"Over my dead body," said another man. "I'm from the state income tax bureau. We have a lien on all tax rebates Dundee gets from the federal government."

The men were now rolling on the ground trying to get their hands on the brown envelope. They were joined by a collector from group health, the gas man, a water inspector and a lawyer who helped fill out Dundee's tax return.

In no time at all the check was in shreds. Mrs. Dundee was in tears.

"Congressman, can't you do something?" Dundee said.

PERSONAL FINANCIAL REPORT OF SENATOR MATHIAS

Mr. MATHIAS. Mr. President, I have made a personal disclosure of assets and liabilities to the Select Committee on Standards and Conduct on behalf of Mrs. Mathias and myself. I ask unanimous consent that the report be printed in the RECORD, so that it may be available to the public and to the press.

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

MAY 14, 1975.

Hon. HOWARD W. CANNON,
Chairman, Select Committee on Standards and Conduct, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Senate Rules 42 and 44, I have submitted the information required.

In addition to that disclosure, Mrs. Mathias and I wish to follow the practice that we established when I was a member of the House of Representatives of informing the public of what we own and what we owe. We have listed our assets, our liabilities, taxes paid and our income over and above Congressional pay. A copy of this voluntary report is enclosed for your information and an additional copy will be submitted for publication in the Congressional Record.

Sincerely yours,

CHARLES MCC. MATHIAS, JR.,
U.S. Senator.

Enclosure.

DISCLOSURE OF FINANCIAL INTERESTS

ASSETS

Equity in Federal Retirement System
Life Insurance
Livestock and Farm Machinery
Real Estate

House: RFD#2, New Design Road, Frederick, Maryland, Liber 623, Folio 90, Frederick County. Purchased 1958.

House: 3808 Leland Street, Chevy Chase, Maryland, Liber 3328. Folio 060, Montgomery County. Purchased 1965.

Half interest in Farm: 41.66 acres, Frederick Election District, Liber 587, Folio 339, Frederick County. Purchased 1957.

Half interest in House: 306 Redwood Avenue, Frederick, Maryland, Liber 577, Folio 489, Frederick County. Purchased 1956.

Lease and option in Farm: 370 acres, Kabletown District, Jefferson County, West Virginia, Liber 196, Folio 337, Jefferson County. Leased 1963.

STOCKS

Farmers and Mechanics National Bank, 1,551 shares.
Capitol Hill Associates, 4 shares.
Citizens Bank of Maryland, 19 shares.
Frederick Medical Arts, 15 shares.
G. D. Searle & Co., 90 shares.
First Pennsylvania Corporation—common, 137 shares.
First Pennsylvania Corporation—preferred, 2 shares.
Massachusetts Investors Growth, 139.446 shares.
The Detour Bank, 7 shares.
The Great Atlantic & Pacific Tea Company, 6 shares.
Warner Lambert Pharmaceutical Company, 152 shares.
Maryland National Corporation, 258 shares.
Farmers Cooperative Association, 3 shares.

Liabilities

Debts due on mortgages, collateral and personal notes to:

First National Bank of Maryland, Baltimore, Maryland	$40,500.00
Frederick County National Bank, Frederick, Maryland	3,200.00
Farmers & Mechanics National Bank, Frederick, Maryland, mortgage, farm, Frederick County	46,000.00
Walker & Dunlop, mortgage 12/31/74 3808 Leland Street, Chevy Chase, Maryland	25,217.40
Walker & Dunlop, mortgage 12/31/74 306 Redwood Avenue, Frederick, Maryland	1,251.24
Total interest paid	8,704.18

Interests in Trusts or Remainders

Trust established under the Will of Grace Winebrener Trail, Circuit Court for Frederick County, Maryland, Equity No. 7707.

Trust established under the Will of Charles McC. Mathias, Sr., Orphans Court, Frederick County, Maryland, Estate No. 8983.

Trust established under the Will of Fanny Gore Cutler, Suffolk County Court, Boston, Massachusetts, No. 046024572.

Year, 1974.
Investment income, $2,105.20.
Interest income $365.47.
Honoraria (net), $9,300.00.
Net rents, $1,300.00.

Federal Income Tax paid, $6,668.98.
State & local taxes paid, $5,208.89.

PROPOSED WHITE HOUSE CONFERENCE ON WOMEN

Mr. HOLLINGS. Mr. President, I would like to speak today in behalf of Senate Joint Resolution 25, a joint resolution introduced by Senator INOUYE authorizing the President to convene a White House Conference on Women next year as part of our Nation's Bicentennial celebration.

I can think of no better time and no better forum for affording the women of our country an opportunity to assemble to discuss their common problems and to inaugurate some definitive programs for improving the status of women in the United States.

Certainly 1976 would be a good starting point from which the Nation could proceed to settle some of the real problems women face today. We will be focusing our attention on the revolutionary beginnings of the country at that time, and it will be an opportune time to remind ourselves of the integral role women have played in the history of the greatest democratic nation in the world. As we know, in the past, a White House conference has been instrumental in finding ways to solve problems in areas such as old age, youth, labor, and minority status, and it would offer an excellent vehicle for assimilating the diverse opinions and ideas surrounding the status of women and effecting a meaningful national program aimed at solving such problems as equal credit opportunities, availability of child care services, and flexible hours for working mothers.

I would point out that 1975 has been proclaimed International Women's Year by the United Nations. There has been almost no official interest in the event across the country. I agree with Senator INOUYE that passage of this resolution would raise the level of consciousness in America concerning the problems of women, and I would urge my colleagues in the Senate to support its enactment.

Many of us in the Congress have worked long and hard trying to bring about meaningful change for women. We have not always been successful. But I think we can prove that America is still a nation dedicated to equality and fairness if, in 1976, we make a maximum effort in this area. And I think that authorization of a White House Conference on Women would demonstrate the good faith of the Government in being dedicated to improving the status of women.

For that reason, I support Senate Joint Resolution 65, and I urge my colleague in the Senate to do the same.

EQUAL EMPLOYMENT OPPORTUNITY ENFORCEMENT

Mr. JAVITS. Mr. President, the chairman of the Committee on Labor and Public Welfare, Mr. WILLIAMS, and I are both deeply distressed by reports which have appeared in the press this past week, and by two reports issued by the General Accounting Office last week, which indicate gross inadequacies and inefficiencies in the enforcement of equal opportunity legislation by the Department of Labor, the Equal Employment Opportunity Commission, and the Civil Service Commission.

I ask unanimous consent that a joint statement on behalf of Senator WILLIAMS and myself on this vital subject be printed in the RECORD. I also ask unanimous consent that a September 10, 1974, letter from myself and Senator WILLIAMS to then Chairman John Powell of the Equal Employment Opportunity Commission detailing our earlier concerns on this matter, also be printed in the RECORD.

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

JOINT STATEMENT OF SENATORS WILLIAMS AND JAVITS ON EQUAL EMPLOYMENT OPPORTUNITY ENFORCEMENT

Last week the General Accounting Office issued a report evaluating the activities of the Office of Federal Contract Compliance of the Department of Labor and the various other Federal agencies with compliance responsibilities under the Federal Contract compliance program.

We are shocked by the apparent existence of pervasive maladministration and inefficiency which are pointed up in the report. We are equally distressed by the continuing inadequacy of the Federal Government's entire equal employment opportunity program, as administered by OFCC, the Equal Employment Opportunity Commission, and the Civil Service Commission.

The letter of the law is clear and unequivocal and it must be implemented by those agencies of the government to which it has been entrusted.

As a result of the continuing ineffectiveness of the government effort to eradicate employment discrimination, we have ordered the staff of the Committee on Labor and Public Welfare, on which we serve as Chairman and ranking minority member, to conduct an immediate investigation of the entire range of activities in the employment discrimination area in order to determine what remedies must be applied in order to insure that the law, as contained in Title VII of the Civil Rights Act and Executive Orders 11246 and 11375 is complied with.

We will not permit this unconscionable situation to continue. When the report is complete we will take whatever further legislative or oversight actions are necessary to speed compliance with the law.

The level of achievement of equal employment opportunity is wholly inadequate when measured in terms of the number of years that this issue has been recognized as a leading cause of social injustice in this country and in light of the numerous Congressional efforts to assure the full eradication of employment discrimination.

Despite the adoption of major amendments in 1972 to strengthen that agency's role, its effectiveness continues to be hampered by a low level of enforcement and administrative problems.

The Labor and Public Welfare Committee has continued an on-going investigation of this agency for several years now. Based on preliminary information which we had received, during 1973 we requested the General Accounting Office to conduct a thorough investigation of the operations of the EEOC, report back to the Committee the problems that they found, and offer recommendations as to how the agency's performance could be improved.

When we received the first preliminary findings from the GAO in June of 1974, the record of ineffective enforcement coupled with major internal administrative problems at the agency was clearly presented. At that time, we submitted a summary of the GAO's findings by letter to the then Chairman of the EEOC as suggestions to the agency for its improvement. We have attached that letter to this statement so that our efforts in this area become a matter of public record. The investigation of that agency is continuing, and we are hopeful that additional findings of the GAO will be helpful in fulfilling that agency's vital role.

Similarly, at the end of last month, Mr. President, we received a report from the GAO on its investigation of the operations of the Office of Federal Contract Compliance. That report was the outgrowth of a series of hearings on the status of women in employment which were conducted by the Fiscal Policy Subcommittee of the Joint Economic Committee. The initial investigation was confined to an evaluation of efforts at improving equal employment opportunity for women. However, the GAO found that there was reason to believe that the entire federal contract compliance program was not meeting its responsibility of enforcing equal employment opportunity among all federal contractors and the inquiry was broadened to include the entire area of OFCC responsibility. The report by the GAO, which was made public last week, reinforces this initial conclusion. It points to serious deficiencies in the compliance efforts by the Department of Labor's OFCC, and the various Federal compliance agencies assigned responsibility to insure that the Federal prohibitions against discrimination by Federal contractors are effectively carried out.

The Federal Contract Compliance program, as embodied in Executive Order 11246, is designed to insure that Federal contractors and sub-contractors are providing fair and equal job opportunities for all persons. Federal contractors employ approximately 25 million workers, more than one-fourth of the total work force in the country. The Federal contractor enforcement program is administered by 11 Federal Agencies who are responsible for the actual contract compliance functions. Overall supervision and policy determination is the responsibility of the Department of Labor through the OFCC. It is indeed tragic that these rights are not being effectively enforced.

The report from the GAO points up an unconscionable number of serious deficiencies in the operations of the entire federal contract compliance system, and notes several areas where lax administration and a lack of procedures have resulted in weak and erratic enforcement.

Executive Order 11246 requires that when Federal contractors do not meet the requirements for fair employment set out in the order, the various compliance agencies must initiate enforcement actions, which may include contract cancellation or debarment from future contract bidding. The GAO report notes that at this time 10 years after the issuance of the Executive Order only a single debarment action has taken place. The Department of Labor and the OFCC also have not yet developed a fully operational system for assessing the progress Federal non-construction contractors have made or are making in achieving equal employment opportunity for minorities and women. Similarly, Mr. President, the report shows that the Department and the OFCC are virtually ignoring the necessary follow-up and monitoring of compliance programs in the non-construction industry necessary for effective compliance. For example, the report notes that since 1972 the Department has evaluated the non-construction compliance program of only one of the 11 compliance agencies.

The report also notes that there are numerous weaknesses in the entire system. For example, certain of the compliance agencies are shown to be approving affirmative action programs which do not meet the minimum guidelines established by the OFCC; most of the compliance agencies are not reviewing an adequate proportion of the contractors for whom they have responsibility; and, in direct derogation of Department guidelines, some compliance agencies are authorizing contract awards without the required preaward reviews.

One fact is particularly indicative of the laxness with which the enforcement program is being carried out. As noted on page 30 of the report, twelve of the then thirteen compliance agencies have not yet even identified all of the contractors for which they have responsibility. This fact, Mr. President, is inexcusable.

The Federal Government spends in excess of $50 billion per year on Federal contracts. It has established rules and regulations requiring that any Federal contractor receiving such public money must adhere to the national policy of equal employment opportunity. Yet, those Federal agencies which have the responsibility for insuring that these requirements are met are not even aware of all of the contractors whose compliance they must assure. We must admit, Mr. President, that is close to total irresponsibility.

The report notes another fact that we have been aware of for some time; there is virtually no communication between the OFCC and its compliance agencies and the Equal Employment Opportunity Commission. Despite the existence of a memorandum of agreement between the two agencies, which appears to require a close and cooperative effort, the real facts show that these two agencies frequently not only do not know what the other is doing with respect to the identical employer, but are often working at odds with each other. The GAO found, for example, several instances of compliance agencies issuing preaward clearance for contractors who had several EEOC complaints against them. This area deserves further attention, since it is both a waste of valuable government resources and unfair for the Federal Government to subject employers to repeated inconvenience and disruption of their operations on similar or identical issues when a cooperative and concerted effort could achieve a much more effective climate for insuring equal employment opportunity. Further, where there are conflicting and inconsistent requirements or agreements by the OFCC and the EEOC, which inevitably occurs without close cooperation, the employer involved will feel encouraged to evade compliance altogether by playing the one agency's requirements and procedures off against the other.

We attempted to remedy this situation in 1972 when we provided for the Equal Employment Opportunity Coordinating Council. This body, comprised of the top Federal officials responsible for equal employment opportunity, has the assigned task of providing for policy coordination in this area. It is obvious to us that this has not been fully effected and we will re-emphasize the need for that body to function effectively.

These facts are bad enough, Mr. President, but there is one other area of equal employment opportunity which we cannot overlook. For the Federal Government to enforce equal employment opportunity requirements on employers in the private sector, it must also put its own house in order. It is a well-known fact that employment discrimination in the various federal agencies is frequently as prevalent and as blatant as that of the worst private sector violator.

We have had occasion to address this problem before. In 1972, when we adopted the Equal Employment Opportunity Act of 1972, we added a new section 717 to Title VII of the Civil Rights Act of 1964 which reaffirmed the principle that the Federal Government must itself eliminate discrimination in its own ranks, and which established certain requirements and rights within the Federal employment sector toward this end.

Our review since that time, Mr. President, leads us to the conclusion that the Federal agencies have been less than fully committed to achieving this goal. Since the adoption of the 1972 amendments, we have carefully observed and monitored the progress which the Federal agencies have made in this area. It appears to us, virtually without exception, that the commitment to equal employment opportunity in the Federal sector and compliance with nondiscrimination requirements has been minimal at best.

The Committee on Labor and Public Welfare has several investigations currently underway to determine more precisely the level of compliance in the Federal sector. We are also aware, Mr. President, of the periodic reviews that have been done in this regard by the U.S. Civil Service Commission, which has the overall responsibility for enforcing these rights. However, the problems which we are uncovering are abysmal, and have confirmed our worst fears as to haphazard and cavalier treatment of these important rights. We feel that the Commission is relying too much on the judgments of the agencies and is not paying enough attention to the rights of the employees and needs to reform its performance accordingly.

Last month we received a report from the GAO of an investigation undertaken at our request of the National Aeronautics and Space Administration (NASA). This report points up our worst fears and is, we believe, typical of the kinds of problems that are encountered by aggrieved employees in many Federal agencies.

Without enumerating all of the findings and recommendations that the GAO has included in its report, we would like to note that the report indicates generally that the current system of agency handling of equal employment opportunity complaints, as prescribed by Civil Service Commission procedures, is not effective in rooting out the causes of employment discrimination. During its investigation, the GAO has noted that 24 per cent of employees interviewed at NASA indicated that they would not file a discrimination complaint even if they felt that they had been discriminated against and 58 percent of the equal employment counselors themselves indicated that they felt that employees had no confidence in the current complaint system. Similarly, 35 percent of the employees did not know the first steps to take in registering a complaint; 72 percent did not know that a complaint had to be filed within 30 days after the discriminatory act occurred, and 55 percent did not know that their names could be kept confidential.

These figures reflect one part of the total picture of the lack of understanding and commitment on the part of the agency. There are other portions of the report which are similarly critical of the hiring and promotion systems of the agency, the procedures used in evaluating the agency's affirmative action plans, and the system of candidate referral from the Civil Service Commission.

While this Committee has already conducted extensive studies and reviews of the Federal and private equal employment enforcement effort, we do not intend to stop here. As long as we continue to receive reports of the maladministration of equal employment programs, and the persistence of discrimination against minorities and women, we will continue to strive for improvement by the government, both as an employer, and as the guarantor of fair employment practices in the Nation.

We are currently continuing investigations in nine Federal agencies and will begin a study of the hiring practices of 10 selected agencies this fall. We are also continuing our review of the operations of the EEOC, with the aim of assisting in the establishment of an effective and efficient system of Title VII enforcement throughout the Nation. We have shared our views with the agency, and we have seen some positive changes made in its operations as a result, but many more are needed. We will continue to accelerate this effort.

We also feel, Mr. President, that the Committee will have to become more actively involved in the administration and enforcement efforts of the Civil Service Commission pursuant to the 1972 amendments.

In sum, Mr. President, our work to date has shown us that there is much that remains to be done in the area of equal employment opportunity in this Nation, and that neither this Committee, nor the Congress, can rest on the accomplishments of 1964 and 1972 with the adoption of the major Civil Rights laws designed to achieve this end. Equal employment opportunity continues to be a matter deserving of the highest National importance, and this Committee and the Congress must continue to take all legislative or oversight actions which are necessary to insure that the attainment of this goal not be allowed to lag or be eclipsed by other matters.

WASHINGTON, D.C., *September 10, 1974.*

Hon. JOHN H. POWELL, Jr.

Chairman, Equal Employment Opportunity Commission, Washington, D.C.

DEAR MR. CHAIRMAN: This past January we requested the Comptroller General to obtain detailed information on the Equal Employment Opportunity Commission's implementation of Title VII of the Civil Rights Act of 1972. The Subcommittee staff has analyzed this data and identified a number of issues which should be thoroughly reviewed. We know that you are already cognizant of the need for improvement in the Commission's operations and trust that these comments and findings will assist you in addressing the problems which appear to have hindered the implementation and positive impact of the 1972 amendments.

COMPLIANCE PROCESS

Successful implementation of the Act depends upon the effectiveness of the nonlitigation methods of enforcement since the litigation process itself cannot be expected to handle the large volume of charges referred to the Commission. It is imperative therefore that the investigative-conciliation function handle a large majority of charges in an effective and timely manner. The investigative-conciliation stages appear to suffer significant deficiencies.

Investigation constitutes a major bottleneck, accounting for the bulk of the steadily increasing backlog of unresolved charges. At the conclusion of Fiscal Year 1973, 83 percent of the active charges were in the investigative and preinvestigative stages. As of February 5, 1974, this proportion had increased to 90 percent.

Part of this increase can be attributed to insufficient manpower resources. As of January 15, 1974, 20.4 percent of the budgeted investigator and conciliator positions were vacant. This may be partly attributed to the lack of advancement opportunities, attractive job offers from other agencies, and the demands of the job. However, the resulting heavy workload and lack of motivation operates to place tremendous pressure upon the EOS investigator in two ways: (1) charges cannot be handled in a timely fashion and heavy backlogs have developed; and (2) the investigator is frequently forced to emphasize quantity considerations at the expense of quality investigations.

The apparent poor quality of investiga-

tions has been noted frequently. Some conciliators indicate that they must often re-investigate cases to obtain remedial information. The Justice Department reports that their investigators must often re-investigate cases referred to them by the Commission because the original investigations are inadequate. Part of the high rejection rate of cases referred to litigation centers is also attributable to the poor quality of investigations.

The de-emphasis of quality considerations is apparent from the fact that quality is not included as a variable in the Performance Measurement System (PMS). Therefore, when PMS is used as a performance measurement tool, individuals are judged on the number of determinations made. Investigators are encouraged to complete a large number of investigations without regard to the thoroughness of the investigations or the number of successful conciliations achieved from their investigations. It is essential that a program which deals with such a sensitive matter as discrimination, and which seeks an impact on well-entrenched institutional, forces such as seniority systems, should build quality criteria into its performance evaluation system.

The situation is aggravated by training that is lacking in proper planning, preparation and goal orientation. Classroom experience is often repetitive and uncorrelated with practical situations. In addition, training activity appears uncoordinated and fragmented. The Employee Development and Training Branch, the Decision Division and field offices are all conducting training. There exists no single division which has the responsibility for training or even for coordinating the training efforts of the various divisions.

In regard to the conciliation process, the success record has not improved overall in the last 5 years. Only 43 percent of the conciliations were successful in 1973 (down 15 percent from 1971). Much of the recent reported increase in successful conciliations is due to the use of Predetermination Settlements (PDS). In addition, we find that if the two factors included in the calculations of the PDS success rate (namely, unsuccessful to investigation and unsuccessful to determination) were included in the computation of the conciliation rate, the rate would drop from 51.5 percent to 43 percent, a considerable reduction. Some of the same problems noted with regard to the poor quality and the backlog in investigations are probably also responsible for failure to show significant improvement in the success rate. Indeed, the investigations themselves are a major contributor to the low success rate of conciliations.

LITIGATION PROCESS

The passage of the 1972 amendments provided for the first time an Office of General Counsel (OGC) to conduct litigation in behalf of the Commission. It was expected that litigation centers would handle only a small residual of the charges. However, the ineffectiveness of the investigative-compliance process has led to a significant number of unsuccessful conciliations being forwarded to the litigation centers. The length of time required for approval of cases is over three months, and each case that is referred is already an average of three years old. In spite of the large number of cases referred, the number of cases actually initiated or filed by the centers is far below the goals they set; for the first half of Fiscal Year 1974, less than 50 percent of the planned cases were initiated and only 2 of 21 planned regional cases were initiated. It appears that both over-burdening and poor organization are responsible.

That 80 to 90 percent of the unsuccessful conciliations are rejected as unsuitable for litigation indicates that the coordination between litigation centers and district offices is inadequate. According to the Office of General Counsel, most cases are rejected because of insufficient evidence. This is at least partially attributable to the fact that the standard used by litigation centers for finding cause is preponderance of the evidence while the standard adopted by the district offices calls merely for reasonable cause. No attempts to adjust these differing standards seem to have been made. Neither have the litigation centers availed themselves of the use of discovery. As a result, major morale and credibility problems have developed at the litigation centers.

Finally, in respect to overall personnel strength, upon examination of the fiscal year 1973 workload, there seemed to be no relation between charges received, charges resolved and positions allocated or on board. EEOC officials could state only that they eventually hoped to secure 60 EOS personnel for each district office, but could offer no rationale for that number. It is evident that as yet no systematic allocation method has been devised. The same holds for the personnel at litigation centers. In large measure, this is due to the state of the present data-collection systems.

DATA COLLECTION SYSTEMS

Another major impairment can be found in the lack of an accurate record-keeping system. Evidently, EEOC has experienced record maintenance problems for some time. A 1972 EEOC report implies that of the 32 district offices analyzed, 22 had discrepancies of 20 percent or greater in their charge inventory accounts. Many charges and cases are simply and irresponsibly lost. Of 75 charges and cases studied in two district offices, 23% could not be located. This situation, unfortunately, still remains. Recent follow-up information, which tested the validity of 77,402 charge records, found:

Approximately 6,000 charges assigned to investigators which were not reported as assigned to investigation.

10,346 charges reported as returned from deferral which had not previously been reported as deferred.

11,433 deferred charges on which additional actions were reported without return from deferral being reported.

5,186 charges reported as investigation complete were not reported as assigned to an investigator.

This is but a partial list of the discrepancies found. In view of the need for a statistically reliable data-keeping system in any large national policy organization as a basic management decision tool, the situation is in need of immediate rectification. Part of the problem seems to be with the Equal Employment technicians who are responsible for record maintenance and the general control function of the district office. As of January 15, 1974, the EET position was experiencing an EEOC-wide vacancy rate of 22 percent. Several district offices indicated that their control units were continually understaffed to the point where investigators were being diverted to perform tasks normally handled by technicians. Several officials indicated that the professionalization of the technical position is warranted in order to ensure that high quality personnel are retained. In addition, there is inadequate training of EOS personnel on the importance and mechanics of reporting changes in the status of charges.

The Commission has apparently never attempted to develop an integrated Management Information System. Instead, each information system is discrete and has been developed at the request of various headquarter groups. We were informed that no one has been responsible for the coordinated development of the various systems, and that no one has exercised centralized control over information systems development.

The Complaint, Statistical Record System (CSRC) records information to reflect EEOC field activity such as the status of investigations. The Work Measurement System (WMS) was developed to record work performance and cost effectiveness of line operations. These systems are neither integrated nor coordinated, logically they should be in order to obtain an accurate picture of manpower utilization.

The Commission has also developed a resource allocation system designed to insure optimum utilization of its investigative and litigative resources. Under this system, respondents are separated into one of four tracks.

In enacting the Equal Employment Opportunity Act of 1972, Congress recognized a change in the definition of employment discrimination to include employment systems that perpetuate discrimination. In accordance with this, Track I respondents included large national companies and unions upon which resolution of charges involving personnel management systems would potentially yield the largest national impact.

During fiscal years 1973 and 1974, only 12 percent of the investigative and 15 percent of the litigative resources were allocated to this group. In addition, as of April 15, 1974, all fiscal year 1974 cases were still in the early investigative stages. In light of this, it is hard to conceive that efficiency has been significantly improved.

Also, after the respondents are selected for Track I, all activities relating to cases involving these respondents are suspended pending review of each case. In one instance, this resulted in the suspension of a significant successful conciliation attempt, involving a $50,000 settlement.

Although the ATT settlement, which serves as a prototype for Track I, was considered successful in terms of monetary benefits, it has failed to resolve EEOC's charge backlog. The settlement has also been difficult and expensive to monitor. One full-time national coordinator and 31 field investigative man years have been used to monitor the settlement. When asked about the impact of the ATT settlement, Office of Compliance officers admitted that their information system was inadequate for a proper evaluation of the ATT settlement. This would seem inexcusable as every consideration should be given to the measurement of impact in terms of future resource allocation adjustments.

Track II cases cover respondents which are multi-unit employers with potential regional impact. EEOC is also behind in its field activity in this area.

In respect to Track III and Track IV, charges resolved are not being separately distinguished under the present track system. There has apparently been no demonstrated need to separately report the number of Track III and Track IV charges resolved. We can not concur with this. We recognize the right of all individuals, regardless of size of establishment, number of charges, or potential national impact, to avail themselves of their rights under the law. It would seem important for management to closely monitor and evaluate all types of complaints, their sources, and types of charges resolved in order to optimally allocate resources.

Thus, it seems that the resources allocation system has not demonstrably improved efficiency nor is the present information "feedback" system providing adequate data which can be utilized in determining future readjustments to resource allocation. Furthermore, the Resource Allocation System is not integrated with the CSRS or WMS systems. Also, there has been no determination within EEOC as to whether cases should be given priority based on national impact or number of charges. Yet, a resource allocation system exists.

Finally, there is the Performance Measurement System. According to EEOC, the PMS is an attempt to measure how well Federal

programs are operating in terms of actual results versus budgeted resources consumed and to report this information to key executives in a usable form to support vital decisions. There is a separate PMS system for compliance and litigative processes.

The PMS system for compliance stipulates numerical goals for charges resolved, charges investigated, charges conciliated and charges determined. These goals are supposedly based on realistic appraisals of EEOC's capabilities. On the basis of this criteria, charges determined and charges conciliated are below their projected goal for fiscal year 1974.

In addition, several important measurements seem lacking which deal with the utilization and coordination between various agencies: (1) the number of unsuccessful conciliations which are rejected as unsuitable for litigation; (2) the quantity and quality of State agency involvement and coordination; and (3) the performance of the district counsel who serves as the private liaison between EEOC and the private bar.

UNDERUTILIZATION AND LACK OF COORDINATION WITH OTHER AGENCIES

It may be argued that to some extent the steadily increasing backlog of charges is due simply to increased awareness on the part of the public of their rights and can't be absorbed merely by improving the efficiency of the existing Federal manpower and that, consequently, the use of other public and private resources is required. However, we have found that the EEOC has failed to utilize other agencies and organizations currently available to it.

Title VII requires that appropriate enforcement agencies be given first jurisdiction (for 60 days) over cases and authorizes payment under section 706 for services rendered to EEOC to assist in implementing its statute. This relationship makes it possible for EEOC to have a portion of its workload processed at the State level. However, until very recently, the States were not even recognized by EEOC as potential backlog reduction resources. As a result, state and local agencies are under-utilized. EEOC doesn't even have the basic data on state resolutions. Currently, they are recorded as administrative closures under the PMS, but the data collection system does not break down the administration of how many were the result of state charge resolutions. Consequently, under the current compliance performance measurement system, the district office–State agency relationship is not measured and no information on State capabilities is available. If state and local resources were better utilized, it might be possible to achieve projected goals.

In addition, there is very little coordination between the EEOC and private bar resources. Yet, EEOC in developing its resource allocation system, made the assumption that many Track III and IV charges were to be sent to private litigation groups.

Likewise, there seems to be little coordination between EEOC and other relevant Federal agencies such as the Department of Justice and the Office of Federal Contract Compliance. We feel that cooperation could have a positive effect.

The problem areas that we have mentioned in this letter are in need of serious revision if the fiscal year 1975 goals are to be achieved.

Consequently, we are requesting specific recommendations from you on each of the problem areas mentioned above.

We have asked the Comptroller General to provide us with in-depth analytical information on these aspects which are hindering the development of the Act. We trust that serious evaluative and remedial efforts will continue to be undertaken in an effort to correct these problems.

Sincerely,

HARRISON A. WILLIAMS, Jr.,
Chairman.

JACOB K. JAVITS,
Ranking Minority Member.

DEATH OF FORMER SENATOR KEATING

Mr. KENNEDY. Mr. President, on May 5, Kenneth Keating died at the age of 74. A former Member of this body, Mr. Keating was known for his personal integrity and devotion to public service.

Kenneth Keating served his country with distinction in many different ways. He loyally served the Nation in World Wars I and II. As a Congressman, and later as a Senator, a member of the New York State Court of Appeals, Ambassador to India, and Ambassador to Israel, he was an outstanding public servant who inspired respect and affection from all who knew him.

The difficult situation in the Middle East made Mr. Keating's recent service as Ambassador to Israel a challenging and difficult undertaking which he carried out with great skill and understanding. His presence was a source of confidence for all of us concerned about the achievement of a lasting peace in the area. His contributions were substantial, and his service will be remembered.

Mr. President, I was proud to serve for 2 years in the Senate with Kenneth Keating. He had many friends on both sides of the aisle, and we shall miss him.

ST. ADALBERT SCHOOL, CLEVELAND, OHIO

Mr. TAFT. Mr. President, I wish to pay special tribute today to St. Adalbert School in Cleveland's inner city. St. Adalbert's roots were begun in 1922, when a group of black Roman Catholics in the east central area banded together to establish a Catholic Church that would speak to the needs of the black people. After only a year, the people petitioned Bishop Schrembs to establish a school for the neighborhood needs for education. By 1924 the school opened, under the auspices of the Sisters of the Blessed Sacrament. In 1960 a new school was built, and Our Lady of the Blessed Sacrament—St. Adalbert School became the newest alternative school structure in Cleveland's inner city. St. Adalbert continues to be the only school of its kind in the east central area.

The school was founded, not as a citadel for Catholic education, but rather as an alternative to public education. Throughout the year, St. Adalbert has met the particular educational, moral, and spiritual needs of innercity children, in an effort to provide their students with strong Christian values with which to judge their lives on the street. Crime and dope are among the every day problems of these children; St. Adalbert is dedicated to eradicating them from our society by educating the children. St. Adalbert provides individual attention to the personal, family, and societal problems of their students, with the belief that Christian values can and will change the problems of society.

At the present time, the school enrolls 300 students; 45 percent are Catholic, and 55 percent are members of other denominations. As a community school, St. Adalbert's main concern is with poor black students who would not normally have the opportunity for a satisfactory education. Children enrolled whose families are financially well off, share a larger part of the financial burden, although this amounts to only about 50 families of the 200 families who attend the school. In this community-oriented school, the St. Adalbert Community School Parent-Teacher Unit is the policymaking board for the school. Their main concern is to see that the needs of the black people are met. This includes clothing and food distribution, as well as nonpartisan political activities, recreation, and youth activities.

This year marks the 50th anniversary of the St. Adalbert School in educating the children of Cleveland's east central area. Although the school faces some sad financial facts, the members of the community are hoping for 50 more years of alternative education, providing for the needs of the impoverished blacks in the community.

THE OIL DEPLETION ALLOWANCE

Mr. HATHAWAY. Mr. President, several months ago this Chamber echoed with the protests of what the repeal of the oil depletion allowance would do to the major oil companies. We were told that the search for oil would come to a halt if this highly profitable tax deduction were to end. We were told that the major oil companies would be brought to the edge of bankruptcy, if not further, if we were to take from them this 22 percent encouragement to explore and develop oil and gas fields.

Most of my colleagues, a majority anyhow, did not believe those tales of agony, and this Chamber, as well as the Members of the lower Chamber, voted to end the oil depletion allowance for the major oil companies.

I have been reading the papers of late, looking for some adverse reaction to our action. Well, Mr. President, that has not been the case. Profits are still high, and the oil industry executives still enjoy salaries that are beyond my limits of comprehension. I did note, however, a story in the Wall Street Journal which addresses itself to this problem: a story of a man who has made one fortune in the oil drilling business, and is willing, the repeal of the oil depletion allowance notwithstanding, to take one more gamble on hitting a gusher. The most interesting fact about his objective is that the American taxpayers are not going to be subsidizing his efforts. If he makes it, he will be richer than before, and the American public will have additional fuel for their homes and industries. If he misses it is his money he is putting on the line, and not that of a Maine potato farmer or a Florida shrimp fisherman.

This is still the land of opportunity for those who are willing to take the risk. I fought for, and supported, the effort to repeal the oil depletion allowance out of a deep feeling that the American public should no longer provide risk capital for the oil industry. This story reaffirms that position.

Mr. President, I ask unanimous consent to have printed in the RECORD the newspaper story of one man who wants to make another bundle in the oil industry—on his own.

There being no objection, the article

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

[From the Wall Street Journal, May 1, 1975]

OLD WILDCATTER CITES HIGH OIL PRICE, SEEKS ONE MORE BIG ONE

(By Bill Paul)

WICHITA FALLS, TEX.—In 1931, while millions of Americans stood in bread lines, D. Houston Bolin became a millionaire, Mr. Bolin owned an interest in the first successful "deep-hole" oil wells drilled in the Chalk Hill oil field on northwest Texas, a field that still produces more than 200 barrels of oil a day and last month alone earned Mr. Bolin a tidy $32,000.

This year, while millions of Americans stand in unemployment lines, the 78-year-old Mr. Bolin will try to make a million—one more time. Within the next several days, Bolin Oil Co. of Wichita Falls will start drilling in King County, Texas, on land Mr. Bolin considers quite promising. "I don't care how many big strikes I've had over the years," he said, "I've just got a yen to do it all one more time. I feel like I've got one more big one in me."

Even if Mr. Bolin's "last" big venture should prove a bust, his $900,000 or so 1974 pretax income, plus assets of many millions, will soften the blow. "I need more money like I need a wart on my nose," he says. "Actually, I don't want anymore, but if I say that I sound old and foggy and I'm not that."

Mr. Bolin, a short, portly man who describes himself as "just a good country boy," lives in a 17-room mansion that his wife, Delores, has furnished in priceless antiques from Europe and decorated with a museum of 16th and 17th Century paintings by such artists as Brueghel.

OIL IN THAT THERE WELL

While Mr. Bolin knows little about antiques, he knows a lot about oil. As he sits in his office chawing a plug of tobacco, Mr. Bolin pulls out a map of King County and begins describing his latest dream.

"There's never been a better time to look for oil," he says, noting that the energy crisis has driven the price of oil up to around $12 a barrel, some four times what it was a couple of years ago. "The Arabs changed the whole ball game. This country is in a fix for oil, and," he adds while jabbing a finger at the map, "I just know there's oil on this land. All the tests look good. I'm going to make beaucoup money."

Not even the recent changes in the oil-depletion allowance, and the resulting higher taxes that oil men eventually will have to pay, dim Mr. Bolin's enthusiasm. Thus, anytime Mr. Bolin or anyone else drills a well, he had better be pretty sure there's oil under that spot, because otherwise he will have a tough time trying to recover the heavy expenses.

Mr. Bolin cites some favorable signs for his next well. Just the other day, some men sold their interest in wells on land adjacent to his for about $22 million. Six months before that, the same men had sold their interest in a number of nearby wells for about $16 million. "That's the boat I'm trying to ride," Mr. Bolin says with a smile.

RAGS TO RICHES

That boat was far out of reach in the Bolins' early days. During the 1920s, for example, when many Americans were amassing wealth, Mr. Bolin lived with Delores in a room over his small oil-equipment supply store. Mrs. Bolin could see her husband at work through the cracks in the floor.

But that all changed with the big strike in 1931. As reported in the Wichita Falls Record News of March 24, 1931, when Mr. Bolin's well started shooting oil 100 feet in the air, "a mighty cheer went up from the 1,000 or more throats that resounded for miles around." The story says that "a shower of high-grade petroleum drenched the wheat fields in all directions."

If it seems tempting to round up some dollars and copy Mr. Bolin's style to become a millionaire, forget it. The catch is that if Mr. Bolin didn't already have big money, his chances of making it would be slim because drilling costs can run into the millions of dollars per well. "If you've got a million dollars that you would otherwise have to give to Uncle Sam, then you're ready to be an oil man," he says. "But if you're selling stocks and bonds to raise the dough, forget it."

There are always several failures for every successful well, so even Mr. Bolin may have to be content with the 200 or so leases with producing wells that he already owns in his own name. Additional leases are owned by Bolin Oil Co., a venture with his three sons, which also does oil drilling.

One senses that Mr. Bolin is worried about running out of time the way other people are worried about running out of money. "I just want to get back in there for another couple of years," he says with visible emotion. "I just want one more big one."

THE BALANCED GROWTH AND ECONOMIC PLANNING ACT OF 1975

Mr. HUMPHREY. Mr. President, yesterday, Senator JAVITS and I announced that we will soon introduce the Balanced Growth and Economic Planning Act of 1975.

The purpose of the legislation is to put the Nation back on the road to prosperity by reorganizing our Government machinery to accomplish for long-term economic policy what Congress did for short-term economic policy last year when it passed the Budget Reform Act.

The Federal Government has become the last bastion of unplanned activity in the modern world. All other industrial nations plan. Businesses, universities, foundations, and families have learned that they have to plan in order to achieve their goals with the available resources.

The Federal Government, too, must learn to look ahead to at least try to see down the road. That is what our bill is designed to do in a free, democratic, and orderly way. I hope many of my colleagues will join me in sponsoring this important new legislation.

Mr. President, I ask unanimous consent that a fact sheet describing the bill and remarks made by Senator JAVITS, Leonard Woodcock, Wasily Leontier, J. Irwin Miller and myself at the press conference, and an article from the Washington Post, May 13, 1975, by Hobart Rowen, be printed in the RECORD.

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

FACT SHEET ON THE BALANCED GROWTH AND ECONOMIC PLANNING ACT OF 1975

The purpose of the Balanced Growth and Economic Planning Act is to establish procedures within Congress and the Executive Branch to formulate systematically and comprehensively long-term national economic goals and to recommend policy that will match goals and resources.

BASIC ASSUMPTIONS

The bill proceeds on two basic assumptions: first, that the economy will perform better with planning procedures and, secondly, that economic choices will be more explicit and widely debated so that Congress and the public can participate fully in the making of economic policy.

Under the proposed new procedures economic policy will be developed from an improved information base, it will be better coordinated, it will consider emerging and long-term problems to a greater extent than is the current practice, and it will take into account the views of state and local officials and the public.

VOLUNTARY PLANNING

The Balanced Economic growth plan that results from the new procedures will establish long-term economic objectives, paying particular attention to the attainment of the goals of full employment, price stability, balanced economic growth, an equitable distribution of income, efficient utilization of private and public resources, balanced regional and urban development, stable international relations, and meeting essential national needs in various sectors of the economy. The plan will identify the resources required for achieving the objectives and recommend legislative and administrative actions to achieve them.

Implementation of the plan within the Federal Government will be achieved through coordination of policy and actions among Government agencies. Implementation in the private sector and in States and localities will be achieved through voluntary co-operation.

ECONOMIC PLANNING BOARD

The bill sets up an Economic Planning Board in the Office of the President, provides for Congressional review and approval or disapproval of each proposed plan, and establishes procedures for public participation in the planning process.

The Economic Planning Board is composed of three members, appointed by the President with the advice and consent of the Senate. The Board will operate in close association with the Council on Economic Planning, composed of members of the President's Cabinet, and other high-ranking officials. There is also an Advisory Committee on Economic Planning composed of 4 members appointed by the President, 4 members appointed by the Speaker of the House, and 4 members appointed by the President of the Senate.

It is the Board's duty to submit a proposed balanced economic growth plan to the Council for its approval. In drafting the proposed plan, the Board is required to seek the active participation of regional, State, and local agencies and private persons through public hearings and other appropriate means to insure that the views of all segments of the economy are taken into account. The Board is responsible for evaluating and reporting on achievement of the goals and objectives in any approved plan, determining whether major Federal programs are consistent with any approved plan, and coordinating the long-term planning activities of Federal agencies.

The function of the Council is to review any proposed plan submitted by the Board, and transmit it together with revisions to the President. The functions of the Advisory Committee are to help provide the Board and the Council with the views of broad segments of the public, including business, labor and consumer interests, about matters relating to the formulation and implementation of any plan, and to establish advisory subcommittees.

The Division of Economic Information is established in the Economic Planning Board. The purpose of the Division is to help the Board obtain information and estimates directly from Federal agencies and to assist in the dissemination of information to State and local governments and to private persons so that they can make informed economic decisions and participate effectively in the planning process. An initial function of the Division will be to survey and assess gov-

ernment information gathering programs and recommend reforms.

SUBMISSION OF PROPOSED PLAN BY PRESIDENT

The President is required to submit to Congress, every 2 years, a proposed Balanced Economic Growth Plan together with a report prepared by the Board to aid in the consideration of the proposal. At the same time, the President submits copies of the proposed plan to the Governor of each State and to other State and local officials.

CONGRESSIONAL REVIEW

It is the duty of the Joint Economic Committee to hold public hearings on the proposed Balanced Economic Growth Plan after its submission to Congress, to consider the views on the plan of each standing committee of Congress and the reports of the Governors, and to report to the House and Senate within 105 days after its submission a concurrent resolution approving, disapproving, or modifying in whole or in part, the proposed plan. The Committee must also make a report with findings and recommendations with respect to each of the main recommendations in the proposed plan.

LOCAL PARTICIPATION

The Governor of each state may submit, within 60 days from the submission of the proposed plan by the President, a report to the Joint Economic Committee responding to the proposed plan. A governor's report should include the views of citizens within the State after public hearings have been held within the State.

The purpose of this part of the bill is to provide for the widest public participation. The Governors, local officials and citizens of each State are given the option of commenting on the proposed plan at the same time it is being considered in Congress.

CONGRESSIONAL ACTION

Congress must act on the proposed plan within 135 days from its submission by the President by adopting, modifying or rejecting the concurrent resolution reported by the Joint Economic Committee.

If the concurrent resolution disapproves the entire proposed plan the President must revise and resubmit it. If any portion of the proposed plan is disapproved by Congress, that portion may not be implemented by the President or the Director.

REMARKS OF SENATOR HUMPHREY ON BALANCED GROWTH AND ECONOMIC PLANNING ACT OF 1975

The bill that Senator Javits and I will introduce later this week. The Balanced Growth and Economic Planning Act of 1975, is the most important piece of legislation I have authored in twenty-five years of public service. I say this because the legislation will fundamentally reform the Federal government's management of economic affairs, which in turn will significantly improve the performance of the American economy. This legislation is the key to putting the nation back on the road to economic prosperity.

Last year Congress passed the Budget Act so that short-term economic policy can be made in a rational, orderly way. It is time that we looked at long-term economic policy in the same rational way.

We must begin looking ahead, calmly, intelligently, and systematically if we are to make progress toward meeting our goals and at the same time dealing successfully with the kinds of economic crises and international shocks that have occurred in recent years.

We cannot hope to find full employment, price stability, and economic growth the way a beachcomber hopes to find seashells. Our goals will not be brought in with the morning tide. They will not turn up by luck or by nature.

But the point is not engage in planning just for the sake of planning. The kind of planning Americans do want must be suited to our own unique and peculiar needs. It must make it more likely that we will solve our economic problems and achieve our goals.

Our bill is therefore based on the following fundamental principles:

First, planning must be open and democratic. Long term economic policy is too important to leave to the economists. There must be full citizen participation, and state and local officials must also be fully involved.

Second, Congress must study, debate, approve, disapprove or modify any plan. We don't do things in this country by executive fiat. Ours is a representative form of government and we will continue to define our goals and make our choices through our elected representatives.

Third, we must make it possible for the private sector to function more smoothly and more efficiently and with greater knowledge. We need better and more timely information about the economy. We need to improve both the way information is gathered by the government and its availability to the public.

I feel sure that this legislation will spark a vigorous national debate on economic planning. That is as it should be because such a debate would be of historic importance to the American people. For the debate to be productive, however, I believe we ought to view planning in the context of something Abraham Lincoln said in his famous house divided speech:

"If we could first know where we are, and whither we are tending, we could then better judge what to do and how to do it."

In the present economic and social circumstances, I am afraid we know where we are, but we don't where we are headed. Because we can't see the road clearly we don't know what to do. The nation is like a car chugging down a foggy road without a reliable steering mechanism. It's my view that planning in this country would provide a map of the country ahead, it would clear some of the fog from our view of the road, and it would steady the steering mechanism of the car.

The need for greater economic planning arises from the poor performance of our economy. In the past, the U.S. economy has been a source of productivity and pride to all of us. The system provided the best hope for combining economic well-being with personal liberty. But in recent years the performance of the American economy has been a source of bitter disappointment. We have just gone through the worst period of inflation since the Civil War, and we are now experiencing the highest level of unemployment since the Depression. Economic growth is completely out of balance, with shortages in some areas and surpluses in others. As a result, our standard of living is today lower than it was eleven years ago.

Despite this poor economic record, I have not seen any substantial effort to reform the economy, or our piecemeal and shortsighted economic policies. Instead, we continue to put bandaids on our economic problems, with a little tax cut here, an energy tax increase there, a jiggling of the money supply, and so forth. These short-term efforts, although necessary, are inadequate because they fail to address the following realities:

First, there is no one in government today looking ahead to spot problems such as shortages before they become crisis. Nor do we do an adequate job of estimating the long-term impact of government policies.

Second, the current inflation and recession—caused in part by the energy crisis, food and commodity shortages, supply bottlenecks, and structural barriers in our economy—have made it painfully clear that our economic problems are interrelated and cannot be dealt with in an isolated, uncoordinated way. Yet, the federal government grows like topsy, with little attention given to getting the government organized about its involvement in the economy.

Third, we are not going to meet our critical needs in areas such as employment, price stability, housing, education, health, and transportation unless we establish some long-term goals and focus our economic policies on the achievement of those goals.

Finally, I also believe that we have to know not only what the federal government is going to do, but what state and local governments can and are willing to do, and what the impact of government actions will be on the private economy. And this needs to be better coordinated by making the planning process open to all segments of our society.

The Balanced Growth and Economic Planning Act is an effort to come to grips with these realities and to create procedures within Congress and the Executive to provide a comprehensive, long-term economic policy. You have a fact sheet before you decsribing the details of the bill and we would be happy to answer any questions.

It has been correctly observed that the federal government has become one of the last bastions of unplanned activity. Private corporations, universities, foundations, and many local units of government and others with liimted resources are committed to long-term planning. They know that the chances of meeting their goals are slim if they do not look beyond their immediate needs.

The Federal government has an obligation to the people under the Employment Act of 1946 to do as much to intelligently plan government activities. If we do less, in my opinion, we jeopardize our basic economic system because we will continue on a roller coaster ride from crisis to crisis. If we do not plan, we will have food and commodity shortages; if we do not plan, we will have wage and price controls; if we do not plan, we will continue to have high unemployment and inflation. The American people do not want crisis economic policy and they will demand something better.

I believe that the Balanced Growth and Economic Planning legislation we are releasing today is a major step in providing the modern tools we need to improve the performance of the economy. A major piece of complimentary legislation is the Equal Opportunity and Full Employment Act of 1975, which would focus federal planning and policy on providing full employment. I intend to hold hearings before the Joint Economic Committee in June to carefully integrate these two major policy areas.

In the last six months Senator Javits and I have had the benefit of the expert counsel of the members and supporters of the Initiative Committee for National Economic Planning. This distinguished group, representing business, labor, consumers, and the intellectual community, have worked with us to develop sensible legislation to establish a process of economic planning in this country. I am delighted that members of the Initiative Committee are here today to launch a campaign to enact economic planning leigslation in the ninety-fourth Congress.

REMARKS BY SENATOR JACOB K. JAVITS

In the next few days, Senator Humphrey and I will introduce the Balanced Growth and Economic Planning Act of 1975. I regard this bill as one of the most important we shall deal with in this Congress, and a logical and necessary compliment to the Budget Act passed last year.

Many people are reluctant to consider the need for planning in this country because of its pejorative connotations. At bottom they are convinced that planning means regimentation, the loss of economic freedom and the end of the American free enterprise system.

This concern proceeds from the assumption that planning will dictate economic activity and supplant the free market. This assumption is highly erroneous in the case of our bill for several reasons: first, the

Economic Planning Board cannot tell anyone what to do—its powers are those of persuasion—not direction. Second, the planning process brings in all parties and interests and requires the approval of Congress—it will open up economic debate in this country rather than limit it.

I view this press conference today as the opening of a great national debate on the American economy, its directions in the next decade, and the role of economic planning—free of coercion direct, or indirect—in a democratic society. We have to face squarely the issue of whether this nation intends to pursue an essentially unplanned course—relying on increasingly questionable means to promote growth, reduce unemployment, and check inflation—or to recognize the absolute necessity for a coordinated, rational approach to our interconnected problems.

Our economy is in its worst state since the Depression. Large-scale unemployment—almost 9% and rising—means tragedy for individual families and lost production for the nation—a cumulative loss of real potential output estimated at almost $350 billion over the next five years. Meanwhile, basic human needs are inadequately fulfilled: large numbers of Americans lack basic medical care, housing costs are soaring beyond the reach of even middle class families. New York City is flat broke, and an enormous unemployment rate among teenagers—40% for black teenagers—attest to the inability of our society to provide useful employment for this volative age group. Is it possible to believe that we have reached this state because this is what the American people want?

Moreover, it is increasingly difficult to argue that merely reflating consumer demand for the same products that have used our resources so profligately and have produced so much environmental damage will solve our economic problems. Bad as is our present condition, the outlook for the longer term could be far more serious if we do not begin to deal wisely with certain fundamental and structural aspects of the economy.

Let me list a few areas in which we have yet to reach agreement or even begin to move to provide long-term solutions: energy, long-term capital requirements, endemic high unemployment, transportation, and food and raw material requirements. We know these problems will not solve themselves. The longer we delay, the more we foreclose our options and the greater the cost of ultimate solutions.

We also know that our problems are interconnected—an enormous tangle that cannot be unknotted by pulling on one string. Short-run solutions and treating issues in isolation can progressively worsen our economy, undermine our national strength and weaken our national character. Already a number of economists are fearful of a new round of inflation picking up speed in 1976, producing renewed shortages in productive capacity, accentuating the unresolved worldwide problems over food, energy, and raw materials, and leading to an even worse recession by late 1977.

The prospect is intolerable. But, honestly, how do we intend to deal with such possibilities? We cannot solve our economic problems through piecemeal legislation. We face the same urgent need for a comprehensive, rational approach that led Congress to pass the Budget Act for annual budget purposes and to submit to the discipline of the budget process. Our legislation today seeks to do for the government's role in dealing with the national economy what the Budget Act did for the budget.

Planning will be what we make it. There is absolutely no evidence that planning leads to a particular economic system. Planning is a neutral tool that adapts to the character of a country. Planning is socialistic in Russia because of Marxist policy. In France, however, the planning process conforms to French political philosophy and in fact has been regarded as favoring the business community.

In want to stress that planning has nothing whatsoever to do with greater government interference in the private sector. Opponents do not seem to believe that rational planning can be a force for improving competition or for abolishing outdate government regulation. Why not? Why should a government planning agency have a bias against capital formation or economic growth?

It is also assumed that in the absence of planning there will be less government regulation of the economy. Since we had wage and price controls in the absence of planning and are likely to have worse controls in the future if we persist in short-term remedies, the opposite is the more likely case. There will be more overlapping and inconsistent regulation in the absence of planning.

However, government involvement in the economy is here to stay. Government is more involved because our economy is far more complex, because we face environmental and resource limitations for the first time, and because social objectives are pursued more vigorously. None of these constraints will vanish in the absence of planning. Instead, the pressures on the economy will continue to mount, we will continue to waste resources, and we will fritter away our economic strength through short-term, contradictory and perhaps even self-defeating measures.

STATEMENT BY LEONARD WOODCOCK, PRESIDENT OF THE UAW

We are grateful to Senators Humphrey and Javits for the introduction of this bill. I hope, as I am sure my colleagues hope, that the subject matter will provide the impetus for a great debate on the decision of national economic planning.

The need for long-range democratic economic planning on a national basis has never been more urgent. We have lived too long with boom and bust. Experience has taught us that the unseen magic of the so-called free market does not work.

We have learned the bitter lesson that the failure to make intelligent, long-range economic decisions has touched the lives of all Americans—especially working people—and injured them in their pursuit of happiness.

The Federal Reserve System and the Council of Economic Advisers have made short-range decisions which have been disastrous—foolish, irrational or selfish economic decisions made by these few have ruined the lives and futures of the many.

Our economic well-being and our basic freedom of choice too often have been decided by the wrong people, for the wrong reasons, in the wrong time frame.

A growing number of Americans, from all walks of life, see the need for a mechanism to enable us to plan democratically for prosperity, full employment and stability—to meet the nation's economic and social needs.

It is time to begin to plan. Americans will no longer tolerate an economy run by accident or caprice.

Rampant inflation, serious recession, massive unemployment and national misery have been the natural results of our failure to plan the national economy in any rational way.

This bill provides a framework for democratic national economic planning. It provides the instrument—the procedure. Substance will follow—based upon national will.

I am enthusiastic about this bill for a number of reasons.

First, it establishes the principle of national planning, long overdue.

Second, it establishes a crucial role for the Congress, which is directly responsible to the people.

Third, it provides for important local input from ordinary people, so that decisions are not made in a lofty vacuum.

Fourth, it mandates a coordinated government effort, rather than a fragmented system where one hand is out of touch with the other.

The bill is distinctively American—which is Federalism in action.

I hope that the Congress, the Administration, and the American people can focus on the issue, and let the debate begin.

STATEMENT BY J. IRWIN MILLER, CHAIRMAN OF CUMMINS ENGINE CO.

Every major American Business today is intensely perfecting its skills at short- and long-range planning, and using these plans to guide major business decisions.

Business has been forced to plan, to set priorities, to allocate assets, because nearly all its necessary assets, whether one speaks of capital, labor or raw materials, are either in short supply, or are becoming very much more costly.

If business did not plan careful cost-effective use of scarce assets, it could not long survive, and some businesses in fact will not survive.

As business looks at the nation, much the same conditions seem to lie in its future as well. We are short of oil, and do not ourselves control adequate supplies of such essential raw materials as tin, nickel, chrome, platinum, zinc. We are not generating enough capital for investment, nor enough revenues to prevent decline in cities, schools and the environment.

Finally, we seem to have no means for stopping inflation other than unemployment, no means for eliminating unemployment other than inflation.

Without taking careful look at the consequences of our combined public and private actions, we have allowed problems to multiply, swings in the economic cycle to become more erratic, and prospects for a stable economy to diminish.

Business needs economic stability if it is to flourish and serve. Yet economic instability appears to be the only realistic prediction for the decade ahead, if we continue as at present.

I do not understand how the nation, given its current outlook, can achieve a reasonable and necessary measure of economic stability, unless the Congress and the Executive have at all times available to them intelligently formed and farsighted economic plans aimed at preserving stability, and simultaneously promoting growth and minimizing inflation and unemployment. We need also (as business does) to perfect an economic model which can allow us to foresee with an adequate degree of reliability the total consequences of any contemplated program of government actions.

Planners are not rulers or implementors in business. No more should they be in government. Our historic system of checks and balances is essential to the continuance of responsible democratic government, responsive to the needs of all the people. Within our democracy, however, planning is now a necessary and vital tool for the accomplishment of any long-term economic objectives, public or private. The U.S. government should, in the extraordinarily difficult days which appear to lie ahead, avail itself of every useful aid for making wise and farsighted decisions.

STATEMENT BY WASSILY LEONTIEF, HARVARD UNIVERSITY, NOBEL LAUREATE IN ECONOMICS, CO-CHAIRMAN OF THE INITIATIVE COMMITTEE FOR NATIONAL ECONOMIC PLANNING

The founding of this country was a bold response by determined, self-confident people to a challenge which they had to meet. The subsequent development of our private and public institutions is a history of con-

structive responses to a succession of difficult questions, each of which had to be answered before the country could move ahead.

The trouble in which the American economy now finds itself is not an unfortunate accident, neither has it been brought about by someone's malevolent intent or by uncommonly incompetent leadership. This trouble reflects the failure of our institutions to keep up with the accelerated change in the technological and economic structure of modern society and with its advancing needs and aspirations.

Those who compare the functioning of the market mechanism in a free economy—the interplay of the impersonal forces of demand and supply—with the automatic operation of a gigantic electronic computer are right. However, anyone who has had practical experience with large computers knows that they do break down. No one would ever dream of stacking, at the end of the day, a complicated problem into the machine, pushing the starting button and going home in the expectation of finding the correct answer neatly printed out when he returns next morning. If left unattended overnight, the computer would probably give a wrong answer, come to a standstill, or even burn out.

The framers of the bill, "The Balanced Growth and Economic Planning Act," propose to establish an adequate institutional framework for keeping the complex and delicate mechanism of the American economy in good working order. This involves much more than watching a few aggregative pointers on a stripped-down statistical dashboard and shifting back and forth two levers: one controlling the budget deficit, the other regulating the discount rate.

It requires lifting the hood, observing, and if necessary adjusting, the operation of all moving parts of the engine, and occasionally replacing those that turn out to be defective. What the government and the public need is a Service Manual describing gears, nuts and bolts—not just a Keynesian "Owners Manual," of the kind usually found in the glove compartment of a new car, which tells you only how to replace a bulb or change a tire. In other words, maintenance of our national economy in good working order is predicated on a steady, massive flow of detailed, up-to-date factual information.

The effectiveness of the planning process will depend not so much on the coercive or regulative powers of the government—of these we have enough and they are used as often as not without much rhyme or reason—but rather on organized factual knowledge and analytical foresight more nearly perfect and complete than any individual company or private citizen can possibly attain.

Let us hope that the publication of the draft bill, "The Balanced Growth and Economic Planning Act," will mark the beginning, not of an acrimonious emotional debate, but of a constructive, serious discussion which will contribute to remedying the weaknesses that a first draft would naturally contain. The fact that two prominent members of the Congress, from different sides of the aisle, are sponsoring the proposed legislation, and that in addition to those present, many business and labor leaders, members of the scientific intellectual community, and concerned citizens have expressed their support of this initiative, justifies the belief that this hope will not be disappointed.

[From the Washington Post, May 13, 1975]

HUMPHREY-JAVITS BILL URGES LONG-TERM ECONOMIC PLANS

(By Hobart Rowen)

Senators Jacob Javits (R. N.Y.) and Hubert H. Humphrey (D. Minn.) yesterday announced they are introducing legislation that would for the first time require the federal government to do long-range economic planning.

Both senators compared the bill in importance to the Employment Act of 1946 and to the Budget Act passed last year, and said it is essential for the rational management of the nation's economic affairs.

But they acknowledged, as well, that the concept of "planning" is controversial and that it would not have an easy passage through Congress.

The idea behind economic planning, Javits and Humphrey said, is that the development of full employment and price stability "can no longer be left to luck." They pointed to the program to put a man on the moon, and the Marshall aid plan of the post-World War II period as isolated examples of successful U.S. planning. And they noted that nations have long since adopted the planning concept on a regular basis.

Opponents fear that planning will mean more government interference with private business affairs.

"It takes time to change perspectives," Humphrey said, "but in any event, I hope this bill will spark a vigorous national debate."

The bill, titled the Balanced Growth and Economic Planning Act of 1975, would amend the Employment Act to set up an economic planning board of three members that would develop a plan for economic growth.

The plan would be submitted to the President after being reviewed by a council consisting of cabinet officers and other designated high officials. Beginning in 1977, the President would submit a plan to Congress every two years, with copies to all governors of the states, and to other local officials.

The Joint Economic Committee of Congress would review the plan, and report to the House and Senate within 105 days a concurrent resolution approving or disapproving it.

The sponsors left somewhat vague a definition of what would be encompassed in the "economic growth plan." A fact sheet said that long-term economic objectives would be set out for full employment, price stability, balanced regional development, and an equitable distribution of income—among other things.

But asked if these goals would be set out in specific numbers or percentages, Humphrey said they would not. "We first need to get the structure of the organization established," Humphrey said. But later the Senator said that the use of numbers may be necessary.

According to Javits, the economic objectives of the government will be made explicit, "but there would be no coercion." To carry out any specific recommendations of the planning board, Congress would have to agree on specific legislation.

Humphrey observed that the need for setting out national goals "arises from the poor performance of the economy." Inflation, recession, and the energy crisis, have demonstrated, he added, that "our economic problems are interrelated and cannot be dealt with in an isolated and unco-ordinated way."

The sponsoring Senators recognized that many opposed planning "because of its pejorative connotations." Just last week, for example, First National City Bank president Walter Wriston rapped the planning idea. He told a meeting of the Society of American Business Writers that if planning advocates "came right out and said they wanted to create an economic police state, their cause would never get off the ground."

Javits said that such assumptions are "highly erroneous," because the Humphrey-Javits bill relies on the power of persuasion, and would open up economic debate, instead of limiting it.

We had wage and price controls in this country when we had no economic planning," Javits said, "and in all probability we had controls precisely because we had no planning."

He noted, however, that "government intervention and involvement in the economy is here to stay . . . our economy is far more complex (than it used to be). . . . None of these constraints will vanish in the absence of planning."

By implications, the legislation severely criticizes the President's Council of Economic Advisers for failure to develop a long-range economic plan.

This point was made explicit by Leonard Woodcock, president of the United Auto Workers, a member of a private business-labor-academic group in favor of planning that appeared at a press conference with Javits and Humphrey to endorse their bill.

Other planning advocates who spoke at the press conference included Nobel Laureate Wassily Leontief, and J. Irwin Miller, chairman of the Cummins Engine Co.

THE IMPORTANCE OF SWIFT CONGRESSIONAL ACTION TO REFORM INTERNAL REVENUE SERVICE AND INSURE TAXPAYER PRIVACY

Mr. BENTSEN. Mr. President the Subcommittee on Administration of the Internal Revenue Code recently conducted important hearings on taxpayer privacy. Five former Commissioners of the Internal Revenue Service unanimously endorsed congressional attempts to limit disclosure of tax information to other Government agencies.

I commend Senator HASKELL, chairman of the subcommittee, for conducting these hearings. Greater legislative oversight of the activities of the Internal Revenue Service, through congressional hearings such as these, will help insure that our tax laws are enforced and administered in a more equitable manner.

Mr. President, revelations of abuses involving our tax system clearly demonstrate the importance of prompt enactment of legislation to insulate the Internal Revenue Service from political abuse, to protect the privacy of taxpayers, and to insure that our tax laws are administered in a fair and equitable manner. Last year I introduced my proposed Internal Revenue Service Reform and Taxpayer Privacy Act to help achieve these objectives. In January I reintroduced this bill, S. 442.

Abuses involving the administration of our tax laws have been vividly demonstrated by the House Judiciary Committee's impeachment inquiry, the final report of the Senate Watergate Committee, as well as the revelations of the political activities of the IRS special services staff, which operated between July 1969 and August 1973. Just recently we learned about an operation called "Project Leprechaun" which reportedly involved widespread spying by IRS agents into the private lives of public figures in Miami, Fla. These agents were apparently attached to the Justice Department's Organized Crime Strike Force.

The enactment of legislation to prevent these abuses and to protect the privacy of tax returns will greatly bolster public confidence in our system of government.

Such legislation will demonstrate to the American people that their leaders in Washington can respond to the tragic

lessons of Watergate with strong and constructive political reform legislation.

S. 442 which I introduced earlier this year includes six major items:

First, criminal penalties would be imposed against the use or attempted use of the IRS for the purpose of political harassment.

Second, the General Accounting Office, which is an arm of the Congress, would be directed to audit the operations of the IRS and report its findings annually to the Senate Finance Committee, the House Ways and Means Committee and the Joint Committee on Internal Revenue Taxation.

Third, strict procedural safeguards would be established to prevent the President and the White House staff from misusing confidential tax information.

Fourth, increased criminal penalties would be imposed against anyone who knowingly and without authorization discloses confidential tax information.

Fifth, a taxpayer would be allowed to file suit for damages against any person who knowingly and without authorization discloses the taxpayer's confidential tax information.

And, sixth, clear limitations would be established on the access of Federal and State agencies to confidential tax information.

The new law I propose will carefully restrict the existing practice whereby confidential tax returns and tax information are often distributed to a large number of Federal, State, and local government agencies which play no role whatsoever in the enforcement of our Federal tax laws. Unrestricted dissemination of confidential tax information throughout all levels of government poses a grave threat to our right to privacy. Since the American Revolution we have cherished this very fundamental human value. The right of privacy was included twice in the Bill of Rights—in the fourth amendment which protects all Americans against unreasonable searches and seizures and in the fifth amendment which guarantees the privilege against self-incrimination. Congress must continually make every effort to prevent any abuse of this precious right.

My proposed legislation will also help prevent political misuse of the Internal Revenue Service which can seriously undermine public confidence in the enforcement of our Federal tax laws. This bill will help insure that our tax laws are administered fairly and impartially.

Several examples of misuse of the Internal Revenue Service were described in the final impeachment report of the House Committee on the Judiciary.

In 1970 the White House obtained tax information on Gov. George Wallace of Alabama and leaked this to the press.

In 1972 the White House demanded an IRS investigation of Democratic National Committee Chairman Lawrence O'Brien.

On September 11, 1972, White House Counsel John Dean personally gave the Commissioner of Internal Revenue a list of 575 names of staff members and contributors to Senator McGOVERN's Presidential campaign. John Dean asked that the IRS investigate or develop information about the people on the list.

All these were indefensible attempts to misuse the IRS. Under my proposal all would be specifically outlawed and subject to stiff criminal penalties.

These grave abuses of our tax system clearly demonstrate the need for prompt passage of remedial legislation.

However, it must be emphasized that even if the tragic events of Watergate had never occurred, other incidents in which our Federal tax system has been flagrantly abused by Federal, State, and local officials would still dictate the need to enact my legislative proposals.

Within the last few weeks, we learned about "Operation Leprechaun" which reportedly involved widespread spying by IRS agents into the private lives of prominent figures in Miami, Fla.

Most Americans are unaware of just how many agencies of the Federal Government have access to individual tax returns. For example, according to IRS statistics, during 1973, 15 Federal agencies requested and received tax returns from the Internal Revenue Service.

In addition, practically all State governments and many local governments receive Federal tax returns.

Such widespread distribution of confidential tax information is clearly open to serious abuse, and in fact, abuses have occurred.

Employees of Federal agencies have acquired confidential tax returns for their personal use.

Officials of State and local governments have given confidential tax information to private credit agencies.

In addition, there have been well-publicized efforts to authorize the Department of Agriculture to inspect the Federal tax returns of our Nation's farmers.

The legislation that I have introduced will help prevent abuses of this kind in the future.

It is essential that Congress take swift action on this legislation.

AGRICULTURE: A BUBBLE JUST WAITING TO BURST

Mr. McGOVERN. Mr. President, the "Outlook" section of yesterday's Washington Post contained an article describing, in human as well as statistical terms, the perilous state of much of agriculture in America today. This article—"Costs, Risks, Debts: The Farm Plagues," is especially timely. The House failed to override the President's veto of a very mild farm bill this week.

Every Member of the Congress should read and reread this exceptional article by Dan Morgan. I cannot recall a work of journalism in a large metropolitan newspaper that described modern agriculture so accurately.

Mr. Morgan tells of the enormous increase in debt load borne by American farmers, and the shockingly small returns which a farmer or rancher earns on an investment of nearly half a million dollars.

He describes the collapse of our cattle industry, from a value of $34 billion to one of $21 billion, in just a year. He tells how ranchers not only lost all of the equity built up over many hard years, but lost also their investment of sweat and toil—a loss, in human terms, that is far greater than any which can be measured in dollars.

The message for all Americans is that we simply cannot afford to force farmers and ranchers to bear all of the burden, all of the risk, of producing for a market without any real underpinning.

For a collapse in agricultural prices in 1975—an event that is not entirely impossible—some contend it is likely—would plow under not only hundreds of thousands of farm families, but it would bring down hundreds of rural banks, thousands of main street businesses and food-related industries, and the millions of jobs which are dependent thereon.

Mr. President, this analysis is not one-sided, it is not an appeal for any special interest at the expense of another. But facts and the logic of this example of newspaper reporting at its best constitute a clear appeal to the policymakers of this Nation to take a sober look at the real world of American agriculture, and to do something—before it is too late.

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

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

COSTS, RISKS, DEBTS: THE FARM PLAGUES

(By Dan Morgan)

Paul and John Kruse would almost certainly object to being lumped together with the nation's money managers.

They are farmers and, like farmers everywhere, they take pride in the earthy hardships of their calling. In the early Nebraska spring, the frozen barnyard of their farm had turned to foot-deep mud, negotiable only by tractor.

In a warm workshop the brothers reminisce about winter tasks: checking a sow with litter at 2 a.m., or fighting their way into the cold mornings when the barnyard water tanks were frozen and the tractor's failing engine made a bump-bump-bump noise starting.

For all that romance, finance rather than the farmyard has become the main preoccupation for the Kruse brothers as for other American farmers.

The Kruse brothers probably handle as much money in a year as many middle-income city dwellers earn and spend in a whole lifetime.

Their indebtedness averages $700,000 to $800,000 most of the time—about the level of a medium-sized business. That is what it takes to operate their cattle feeding and corn raising farm, which normally holds 1,500 to 2,000 cattle.

Today most of the feed-lots are full of mud but no cattle. The Kruses have scaled down their operation in response to sagging cattle prices. They are tightening their belts and have taken out a mortgage on their farmland, for the first time in years, to pay the bills.

In some respects their operation typifies the economic crunch in American agriculture. The high costs, the bills, the enormous requirements for credit and capital and, above all, the risks are forcing farmers all over America to become money managers on a grand scale.

Four or five times a year, they make decisions that can mean savings or losses 10 times what is at stake when an executive who lives in the city buys a home.

At dusk one cold early April evening, down in the Missouri River bottomland north of Kansas City, Joe Naylor gazed out at the field he had just plowed.

What to plant?

His decision could mean the difference between profit and loss this year.

Corn might give good yields from the rich gummy soil, he figured. But corn would need lots of chemical fertilizers, very costly this year. Soybeans on the other hand, wouldn't require nitrogen. And they'd stood up well in last year's drought when corn was hard hit. Naylor leaned toward soybeans. He'd skimp on fertilizer, hold spray and seed to $20 an acre and "do it myself."

Naylor has been right more than he has been wrong since he started farming in 1960. But in today's farm economy not even good sense is enough.

Factors beyond farmers' control can often affect the outcome. Monetary fluctuations can effect imports and exports, and events such as the failure of the Peruvian anchovy catch can boost soybean prices, since fish meal and soybean meal are both used for animal feed.

In 1973, he recalls, "Mr. Nixon devalued the dollar and the Peruvians didn't catch enough fish and all at once soybeans were $3.84, highest I'd ever seen 'em."

Naylor sold his soybeans at $5 a bushel. They went to $8. That $3 difference would have meant another $15,000 for Naylor on a 5,000 bushel crop.

The requirements for capital and credit in agriculture have reached staggering proportions.

Consider the following:

In the depths of the Depression, the average loan for annual farm operating costs was around $4,000; today it is over $100,000.

Farm debt reached $95 billion in January.

Buying farm property is beyond the means of many would-be-farmers now, especially young ones. Studies suggest that it requires an average of more than $100,000 to buy an adequate spread in most farm states, and over $400,000 in California and Arizona.

Some feel the ballooning of credit needs, land values and risk in general raises fundamental questions.

"We know that, regardless how difficult conditions may seem, an average man with average health and a good setup can work his way out of a $4,000, $11,000, $45,000 or even an $81,000 debt," a Colorado banker said.

"But when we bring this indebtedness up to $150,000 and he fails one year's operation and his loan then goes to almost a quarter of a million dollars, we simply don't work our way out by hoping conditions will improve."

The trend poses "deep and troublesome questions about the future of America's traditional land tenure system," said Don Paarlberg, director of economics at the U.S. Agriculture Department.

He estimated that $390,000 worth of capital investment in land, machinery and other assets is needed to provide a family farmer with income comparable to that of nonfarm wage-earners.

"We may be at a stage when it is no longer possible for most farmers to supply by themselves all the factors of production," said Paarlberg. "It may be that more and more of the land will have to be supplied by one person and the working capital by another."

To some, this vision of the future smacks of an advanced corporate feudalism. Reformers argue that the drive for farm expansion, more modern equipment and chemical and technological solutions to farm problems has been nurtured by agribusiness to sell more machinery and fertilizer. Farmers, they maintain, should break the credit cycle by turning back to more traditional methods.

Whether or not that is still possible, developments of recent years have plainly intensified the struggle for economic survival. Land values have been pushed up more than 30 per cent, excluding younger buyers and inviting outside investors.

A boom-bust cycle of farm pricing has set in, exposing all but the strongest to financial strains.

"It would have been impossible for me to go into farming nowadays," said an older Kansas farmer. With a few exceptions, a rich parent provides the surest access to the credit needed to start farming.

These concerns are uppermost in the conversations of Midwestern farmers interviewed during an eight-day trip through Kansas, Missouri, Iowa and Nebraska—America's food belt.

Yet the love of farming, a desire to farm, a determination to perservere add up to a tradition that still runs deep in the American countryside. It was expressed this way by a Nebraska farmer, Loren Schlitz, age 37:

"If I didn't love it, I wouldn't be here. I dunno. I think it's something you see what you did from day to day so much better than any other job. Just like in spring—you look across a field and see exactly how much you got done in a day. You're sittin' in a factory turning out the same old thing, and when you get done that night, you actually don't see how much you got done, as much as on a farm."

Garden City, in southwest Kansas, is the home of some of America's largest, wealthiest family farmers and ranchers. Truman Capote's saga of crime and punishment, "In Cold Blood," had its gory beginnings on the prairie near here. Two youths killed the family of Herbert Clutter in the futile hope of finding piles of cash stashed in his farmhouse.

Tragic as the event was local farmers still smile at the misguided notion that inspired it.

Some of the wheat and cattle farms in the area are worth a small fortune. But very little of the wealth is in cash. The riches take the form of land, cattle, crops and equipment. It is an affluence that often rests upon a shaky pyramid of debt and mortgages.

The adage that farmers live poor so they may die rich—die with valuable land that they can bequeath to their offspring to start the cycle anew—applies even in this booming country. For Garden City is a striking example of American agriculture's staggering requirements for ever-expanding amounts of capital and credit.

It is true that farmers around Garden City probably live better than most. Some have been to Europe or to ski resorts in Colorado. And there are farmers like Cecil O'Brate, who has moved his family into a sprawling new home in town and set up a one-room office in Garden City. O'Brate is branching out, diversifying, making the transition from farmer to businessman. He bought a welding company "on a shoestring" and also operates a farm implement company.

O'Brate's office is adjacent to that of his business adviser, Danny Trayer, who recently established a private consulting firm to meet the growing needs of farmers for analyses of their business efficiency, estate planning and income tax assistance.

Trayer's service augments that of the local agricultural extension service's quarterly computer readouts to farmers, detailing their cash flow, expenses, income, crop value and capital commitments.

It is also true that Garden City bustles with business activity. The town's half-dozen modern motels put out their "no vacancy" signs by 5 p.m. during the planting season because of the influx of salesmen pushing seeds, fertilizer, machinery and pesticides.

A visitor is lucky to find a room available at the neglected old downtown hotel, the Warren, which charges $7.21 a night.

Evenings, well-to-do people gather in a crowded supper club next to the Wheatland Motel. Finance seems to dominate. There are half a dozen banks or loan companies, including the Production Credit Association, the agricultural credit union which is a member of the federal farm credit system. It is housed in an opulent, ultramodern glass edifice that some farmers call ostentatious.

Loan officer Frank Kinney said southwest Kansas farmers are sharpening their managerial skills out of sheer necessity. Kinney who occasionally uses a technocratic turn of phrase that seems oddly alien in prairie country, said agriculture today "isn't a whole lot different from a diverse manufacturing process with different lines of products."

Garden City's prosperity is real. Yet is also somehow misleading. There is a whiff of Las Vegas in the air. At the airport, a local man in Stetson and boots saunters among arriving passengers, telling all who will listen that the slump in cattle prices has wiped out 10 years of his profits.

Many cattlemen have suffered such losses, bankers confirm, though few have gone bankrupt. "They are bent but not yet broken," a Kansas City banker said briskly. At the start of 1973, cattle in the United States was worth $43 billion; a year later the value was down to $21 billion.

The cattle market has behaved erratically, rising or falling by more than $10 a hundred pounds three times since 1973.

At the grass roots, the impact has been shattering.

Over at the Fidelity State Bank, Hoy B. Etling, a shrewd agricultural loan officer with the hands of a farmer, recalls the debacle. In the spring of 1973, the banks were routinely issuing notes to farmers and feedlot operators to cover the full purchase price of cattle. A few months later the bankers saw the value of those same cattle halved. To cover themselves, they demanded more collateral from farmers, including land. The Fidelity Bank hasn't been strained, said Etling, but some others have been.

Farmers and bankers alike in this part of the country are disturbed by the increasing demands for cerdit and capital. The financial statement of a single successful local farmer indicates the dimensions.

In 1974, Harry Lightner raised corn, wheat and milo, a grain sorghum, on 1,397 acres south of town. The value of the assets he manages is well over $1 million. The computer printout for his operation indicates capital assets of $1,401,983, including land worth $775,000, buildings, equipment, grain in storage, cattle, buildings and 640 acres of leased farmland.

That year he grossed $247,926, placing his operation in the top 2 per cent of American farms—those that sell more than $100,000 worth of products annually.

But the bottom line of all this was a net farm income of only $15,800.

Farmer-businessman O'Brate is disturbed about the implications.

"If somebody doesn't get aware of it, this country's going to run out of food, because our costs are so high now, we're either going to have to get paid for it or we'll go broke . . . that's all there is to it," he said.

The Kleysteuber Farm, 20 miles south of Garden City, is the envy of many a local farmer who believes that expansion is the key to his economic problems.

It covers some 4,000 acres (including leased land) of the flat prairie. A motorist driving toward the farm from Garden City goes first through rolling, sandy hills and then arrives in the Kansas of folklore. Tumbleweed blows across the highway. Miles are measured in the dirt access roads that lead off the highway with exact recurrence.

Dennis Kleysteuber is a blond, chunky man who is almost the prototype of the young professional farmer. He takes a two-week skiing vacation in Colorado, pays himself a $15,000 salary from the proceeds of the Kleysteuber family farm corporation and reads a pile of periodicals and newspapers, in-

cluding the Wall Street Journal and a Chase Manhattan Bank economic survey.

To work on his books, Kleysteuber can retire to a paneled, air-conditioned farm office.

A business graduate from Kansas State, Kleysteuber talks articulately about economics. Several years ago, the farm was incorporated, with his father, brother-in-law and himself receiving stock. A small, but growing number of farmers in the United States incorporate their operations to facilitate dividing the assets of their estates among their heirs.

The Kleysteuber farm, for all its modern attributes and size, seem to be suffering from the same problems of debt and costs which dog lesser operations.

"We're living right now on depreciation, or did last year," he said, referring to tax write-offs on equipment which allow farmers to reduce some of their obligations to the Federal government.

Loans on the farm are approaching a million dollars, and last year the farm lost $52,000, after paying all expenses totaling $802,000. The losses came in the feedlot and cow-raising operations. "We've lost a tremendous amount of money. It's been almost a disaster and we're still at the mercy of the prices," he says.

The Kleysteubers reduced their losses somewhat by feeding their own corn to their cattle. But that reduced the amount they could sell at the record high prices of 1974.

Cows which the corporation purchased two years ago for $80 to $90 a hundred pounds were sold in 1974 for $30 to $40 a hundred pounds—after the Kleysteubers had added 400 pounds to their weight by feeding them expensive grain. To raise money to pay off short-term debts, the corporation has mortgaged farmland.

Dennis Kleysteuber is more fortunate than many young Americans who aspire to a farming career. As the son of a prosperous, landowning farmer with a sizable equity, his opportunities are considerable. For other young people without an established farming parent or some equity of their own, the road is far rougher, if it is not blocked altogether.

The cases of Ray and Helen Davison, both 31, both caught in a web of debt, legal tangles and tax worries, is typical of the plight of underfinanced young people.

The Davisons are now living in a farmhouse belonging to friends about four miles out of Bedford, Iowa. Ray Davison is short, introverted, sharp-featured. His wife is bright, saucy and very well informed on political and economic matters. In the company of their two children, who play around the farmhouse kitchen, the word "bankruptcy" is never said out loud. But, in fact, the Davisons filed for bankruptcy last month.

Seven years ago, Davison gave up his job at a local service station to fulfill his dream. He was able to lease some acreage from an out-of-town doctor and start farming.

The Davisons slowly built up assets of $50,000 to $60,000, mostly in equipment, and some $7,000 in savings.

However, last year Davison was hit by a double blow: the economic slump which halved the value of the several hundred head of cattle he was fattening, and a drought-caused failure of his corn crop.

After selling his cattle and what he had of a crop, there was not enough money to pay debts. And his lender, the Production Credit Association in the county seat of Clarinda, refused to extend his loans.

Today, Ray Davison is broke. He has more than $50,000 in debts; and he has put his equipment up for sale. Last fall, in addition, the doctor whose farm he was leasing sold the property and the new landlord did not allow the Davisons to stay.

Davison, his attorney has told him, owes $6,000 in 1974 income taxes as well. That is because he had to sell all his cattle and crops but had few offsetting expenses since local lenders cut off the credit he needed to pay bills.

When the man from the Farmers Home Administration bank asked him last fall, "How did you get yourself in such a mess?" Davison responded:

"Seven years of working my butt off."

Davison's main problem is credit worthiness. Older farmers with land or other assets built up have weathered the storm in western Iowa for the most part. They are tightening belts, going into savings or refinancing their land.

Yet the Production Credit Association was not willing to carry Davison along.

"About $100,000 to $150,000 is what we would have had to have to continue our type of operation." Helen Davison said recently. "The PCA loan came up for renewal in November. We went over umpteen times to try to get it renewed. They wouldn't tell us, 'Yes, we're closing you out,' or 'Yes, you have to quit farming.' They should have told us one way or the other. They kept shoving at us, 'You don't have enough net worth.' We went through our whole savings this winter, then they told us no."

The Davisons said they have also been turned down by Farmers Home Administration in Clarinda for a livestock disaster loan under the $2 billion Federal loan guarantee program approved by Congress last year. "They said we were too much of a disaster," said Mrs. Davison.

Now Ray Davison is doing chores for a neighbor.

"He's determined we're going back in farming next year," Mrs. Davison said. "We like farming. I hate it when my husband works around the clock in the planting season . . . When he comes home at 4 a.m. from plowing because it looks like rain the next day. But the rewards you get! My famous last words were I wouldn't marry a farmer. But you know you always eat your famous last words."

Chuch Ehm is one of those small town Midwestern bankers who seems to know more about the pulse of his community than anybody else in town. He is deeply worried about young farmers like the Davisons, caught up as they are in agriculture's escalating financial stakes.

If the stakes force out young farmers, the family farming way of life that has assured the economic and social health of Midwestern communities will pass, he reasons.

Ehm is vice president of the Iowa State Savings Bank, a down-to-earth, old-fashioned sort of institution, in Creston. Men clad in overalls and high rubber boots mill around waiting to consult with one of the tieless bank officials who work right out in the front room. There are linoleum floors, standup radiators and a bulletin board covered with hand-scrawled advertisement for "precision sharpening of scissors or shears" or "all kinds of roofing and guttering."

Ehm strides down the street, past the ancient Iowana Hotel, with its clubroom for railroad men, past the still more ancient, boarded-up railroad station. Half a dozen times, people stop to say hello before he reaches the local buffet restraurant.

Ehm is elated. That very morning he set a young farmer up in business. The customer for an $18,000 loan was a young man who had arranged to lease some farmland. He needed the money to buy livestock, fertilizer, corn and beans. But he had a few assets to put up for collateral. He also lacked a wealthy, land owning father to guarantee the loan. Chuck Ehm by some fast talking persuaded the wealthy older farmer who was leasing the land to cosign the bank note. A young farmer had a start.

If a sociologist were researching the reason for the health of rural communities in Iowa, he or she might conclude that one reason was local bankers like Church Ehm.

Ehm has his roots in local soil. He knows the farms, knows the character of the people farming them and probably knows how often they oil their machinery.

Ehm's father came to Iowa from Germany years ago. His youngest brother still lives on the farm purchased by the father and Ehm himself owns a farm.

Why did he come back to Creston after graduating from Iowa State University?

"It has something to do with rural America," he said. "And service to people."

The rural communities around Creston are fairly typical of those left in the wake of the great rural migrations to the cities in the 1950s and 1960s. The trend has reversed in the last couple of years, spurred by the agricultural boom that began in 1972 and by the economic troubles of the cities.

But for many little farm communities, it is already too late. In places with names like Gravity, Sharpsburg, Diagonal and Shannon City, the scene is Main Street in the nostalgic film "The Last Picture Show"—only five years later. Garbage dumps, empty wooden houses, burned down hulks along main street, perhaps a hardware store or grocery, occasionally a post office or bank that is open for check-cashing (but no deposits) a few hours a week.

The loss of young people has been a fatal tragedy for these towns. During the 1960s, the proportion of farm people over 55 rose by a third while the share under 14 declined by half.

Those towns that have survived often have been helped by chance, or the determination of a few local citizens with nerves steady enough to resist being panicked by deteriorating surroundings.

The tiny town of Clearfield (pop. 500) has been aided by both. The county kept the local high school open, while closing others in neighboring towns. There is a hard surface road to other main highways. And Dale Juergens, the local banker and Lions Club booster, has fought for the town's survival.

The Lions Club raised money for a community center and restaurant and sold subscriptions for the local paper when businesses started to close.

Clearfield now has two gas stations, a nursing home, mortuary, seed dealer, two grain elevators, hog-buying station, grocery, two churches and a movie theater.

How does Juergens explain Clearfield's renaissance?

"A lot of it is attitude and confidence," he said. "In some of those other communities it must be that people gave up. But most of all what kept us going was a few good years of farming. Our whole prosperity depends on agriculture."

All across the Midwestern farm belt, growers are preparing to plant "from fencepost to fencepost" in response to the Ford administration's request for all-out production.

It is a situation that makes many farmers very uncertain about their economic prospects. In several states, such as Iowa, farmers are trying to organize voluntary planting cutbacks. They fear that the massive corn crop that could be harvested in good weather would force prices down.

Critics of the administration's farm policies say the government expects the farmers themselves to take all the risks—to plant as much as possible, but with little protection should massive harvests collapse prices. President Ford's veto of emergency farm legislation to increase price supports and income guarantees to farmers proved that, they maintain.

As farm state Sen. Hubert H. Humphrey (D-Minn.) says, no other part of the American economy is asked to take such risks; no other section of the economy is locked into a production cycle that can be adversely affected by so many factors, from unpredictable weather to suddenly soaring fixed costs.

In fairness, the critics say, a way must be

found for consumers and taxpayers to share some of the risk. It is not fair, they insist, that those at the bottom of the food production chain should accept the most risk.

Yet many farmers themselves seem divided on the kind of government protections they desire.

An Iowa farmer, for example, said, "Get the government out of agriculture." But in the same breath he denounced Agriculture Secretary Earl L. Butz, who favors just that.

Some farmers clearly would like to return to the programs of the 1960's, when the government "managed" agriculture, supported the price of products, accumulated big reserves and told farmers how much land to plant.

But others blame the government for stockpiles of that era for stabilizing prices at a level satisfactory to consumers, not farmers. They seem unenthusiastic about a return to government planting controls. Yet some in Washington feel that farmers ultimately will have to accept that in return for more stable prices.

Farmers' opinions, naturally enough vary according to their specific economic headaches. Fruit and vegetable farmers in Michigan chafe at government regulations, from quality standards to minimum wages for migrant laborers.

But tobacco farmers in North Carolina depend on the government's planting allotments to protect them from free market competition, and dairy farmers want higher government price supports and limits on imports.

Others are as angry as consumers at profiteering middlemen in the food processing chain. They insist that they are suffering as badly as consumers in other respects, too. Net farm income dropped from $32 billion to $27 billion between 1973 to 1974 and is expected to dip still lower this year.

More than anything, farmers say they want one thing: a fair return on their escalating investments.

BRITAIN—SICK MAN OF EUROPE

Mr. EAGLETON. Mr. President, with the fall of Indochina and the collapse of Secretary Kissinger's Middle East negotiations, the United States is, quite naturally, reappraising and reevaluating its foreign policy for the year ahead.

Today I would like to touch briefly on one aspect of that reappraisal policy.

Europe and NATO are very much on our minds. The strength of our European relationship depends in large measure on our long-standing friendship with Great Britain. For generations now we have been able to count on the British for, at the very least, moral support—or polite silence even when we were wrong, as in Indochina. The American-British relationship has withstood the test of time and the test of adversity.

Mr. President, I am deeply disturbed by recent developments in Great Britain. A great nation is rapidly becoming the "Sick Man of Europe." Unlike the far-flung Ottoman Empire at the turn of the century, Britain's illness is not one of geographical overextension. The British Empire was dissolved responsibly, largely the result of political accommodation rather than lost battles.

Her illness goes to the very care of her compact society. By every test of strength and stability—societal cohesion, economic vitality, industrial productivity—Britain is far less well off than she was 20 years ago.

I was moved recently by two television broadcasts of Eric Severeid. Long a friend and admirer of Britain dating back to his World War II broadcast coverage in Britain along with Edward R. Murrow, Mr. Severeid paints a grim picture of Britain today.

Neither Mr. Severeid nor I have the instant or easy answers to Britain's dilemma. Nevertheless, Britain's plight and Britain's future must cause us to think deeply and constructively. The reappraisal of American policy should begin with the trauma of our closest ally.

Mr. President, I ask unanimous consent that the text of Mr. Severeid's two CBS broadcasts of May 5 and 6, 1975, be printed in the RECORD.

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

CBS EVENING NEWS WITH WALTER CRONKITE: MONDAY, MAY 5, 1975

ROGER MUDD. Eric Severeid has just returned from an assignment in West Germany, and here's his commentary on what he found there, three decades after the war ended.

ERIC SEVAREID. In Southeast Asia, where the vital security interests of the United States do not lie, the century's longest war—thirty years—has ended. In Europe, where our vital interests do lie, the century's longest peace reaches the thirty-year mark this week.

Thirty years ago, this reporter crossed the River Rhine into a German scene of total destruction and abject, exhausted people. We were in the same region the other day and everything has come full circle. Then, a pack of American cigarettes bought obeisance. Today, an American, with his debased dollars, feels humiliated by the mighty German mark. The greatest warrior race has become the greatest merchant race. The conquered of that time are economically stronger than any of the surrounding conquerors today. Germany, too, has felt the general western recession but mildly, compared to other countries, and they are pulling out of it already.

Responsible Germans keep a low profile about their astonishing success. It is the frankly stated wish of leaders like Willy Brandt that Germany not become an economic super-power in Europe, and they foresee unhappy political and psychological consequences should that occur. They want Britain to stay in the Common Market—and the British vote on this in a month's time—partly to dilute their own power in the European community, to reassure the French most of all.

More remarkable even than the German economic miracle is the German political miracle. Few societies have ever gone from the dictatorial, authoritarian tradition to open democracy and managed to stay there, but the Federal Constitution has lasted now a quarter century and shows only minor strains.

There is an air of confidence. The parochial nationalism of the previous generation is muted. Paranoia has all but disappeared. The new, young generation is remarkably objective about their society, free of guilt feelings about the past and properly so, pan-European in outlook, quite willing to get along with the east, and regarding East Germany itself as a different nation.

This is an immensely important and hopeful thing for the future of the west—a democratic, stable, rational Germany. In terms of our own long-range interests, this surely over-balances the collapse into Communism of Indochina.

But there is a giant fly in the European ointment, with a more serious potential than what is happening in Portugal, Italy, and Turkey. And that is the condition of Great Britain. One comes away from London with a sense that a great industrial system is not only running down but breaking down. The conflict is still mostly articulated in the old accents of tolerance, but beneath the surface, the tension gathers. An endless economic crisis is approaching some kind of political and social confrontation of rather ominous proportions—another story for another time.

CBS EVENING NEWS WITH WALTER CRONKITE: TUESDAY, MAY 6, 1975

ROGER MUDD. Rapid and drastic political change is now most noticeable in Southeast Asia, but it's also occurring in western Europe and in Britain, which is the subject of Eric Sevareid's commentary.

ERIC SEVAREID. The President will go to Brussels this month to tell the Atlantic allies that America's word is still its bond. He will also touch down in Spain, scene of a coming political transition. He will not visit Portugal, trying to find a new footing after a generation of authoritarian rule. And he will not visit Britain, our closest ally, always regarded as the strongest and most reliable. But it's a serious question whether it can be so regarded any longer.

It is not merely that her military strength is ebbing and her economic strength weakening but that Britain is drifting slowly toward a condition of ungovernability. It is now a debatable question whether Parliament or the great trade unions are calling the political tune. The country, as one English writer puts it, is sleep-walking into a social revolution, one its majority clearly does not want but does not know how to stop. As a rough analogy, Wilson's government is at the stage of Allende's Chilean government when a minority tried to force a profound transformation of society upon the majority—not that the backlash in Britain need be militaristic, but some kind of backlash is building up, with no certain policy and no certain leader.

In the last year, the cost of living rose some twenty-one-percent but average wages by thirty-two-percent, and worker productivity steadily falls, as does business investment. The city of London is financially broke. Property taxes rose by seventy-five-percent in two years. Thousands of middle-class people move out of the city every year, like New York. Unemployment, Britain's special nightmare, rises steadily, and great corporations are insolvent, one after another.

Behind all this are the doctrinaire socialists, the true believers, for whom the picture in their heads is more real than the reality around them. One of the troubles with Marx was that he lived before Freud; human psychology was not his strong suit. The socialists persist in thinking that a worker in a nationalized factory will feel he owns it and will joyously work the harder. The opposite happens, for everybody's property is nobody's property and is so treated.

Their emphasis is on sharing wealth over producing wealth, on equality over liberty. The end of this is almost certainly the loss of the wealth and, less certainly, the loss of the liberties. It is no small matter that the regime is trying to force all British journalists, editors included, into one monopoly union, sure to be dominated by what we call the radical chic and what they call the trendy left.

The powerful Communist influence in trade union leadership is no longer disputed. What do they want? Not a Communist Britain in the foreseeable future, much more likely a chronically weak, dispirited Britain, able to play no effective role in the world or the alliance. That would suit very nicely the long-range strategies of the Soviet Union.

MINNESOTA CORRESPONDENT REFLECTS ON AMERICA'S INVOLVEMENT IN VIETNAM

Mr. HUMPHREY. Mr. President, much will be written about the Vietnam war. There will be volumes of postmortems. I call to the attention of the Senate a recent article by Mr. Ronald Ross of the editorial staff of the Minneapolis Tribune. Ronald Ross served as the Minneapolis Tribune's correspondent in Vietnam from 1965 to 1970, and has followed developments there since then in his role as a Tribune editorial writer. When Saigon fell 10 days ago, his editors asked him to set down his personal reflections on the conflict. This article is the result.

I ask unanimous consent that the article entitled "The Vietnam War Is Over: What Was It All About?" be printed in the RECORD.

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

THE VIETNAM WAR IS OVER: WHAT WAS IT ALL ABOUT?

(By Ronald Ross)

A letter to my daughter:

You often asked me, when you were a little girl living in Hong Kong, what the Vietnam War was all about. Now that it has ended I will try to explain.

A lot of it has to do with American fears of the spread of communism after the second World War. To some extent those fears were justified. By 1950 Americans could see that Communists ruled in Russia, Eastern Europe, China and North Korea, and appeared to be threatening in other parts of the world, including Vietnam and the rest of Southeast Asia. Many Americans thought then that hordes of Communists, led by Russian and Chinese spies and soldiers—all lumped together in a huge global conspiracy—were about to take over everywhere.

Today, of course, we know that Russia and China have little in common—even their communism is different—that "global communism" is a myth. But it is a myth that many Americans—some of them in very important positions—believed in. And they believed that it had to be fought wherever it threatened.

Lyndon Johnson, who might have been a great president if it hadn't been for his obsession with Vietnam, was quite capable of telling people in the 1960s, for example, that if we didn't stop the Reds in South Vietnam, tomorrow they would be in Hawaii, and next week they would be in San Francisco.

The United States got really involved in Vietnam for the first time when it supported France's return to its Indochina colonies after the defeat of Japan in 1945. That support soon was translated into massive amounts of military aid with the surfacing of Ho Chi Minh's Vietnamese independence movement, which the French tried in vain to crush. When the French were defeated in 1954 by the Communist-led revolutionaries, the United States stepped into the breach, or quagmire, as some have called Vietnam for the Americans.

An anti-Communist president, Ngo Dinh Diem, was installed in Saigon—the capital of the southern half of Vietnam—and the first American advisers were sent out to help him. That was in President Eisenhower's days. From that small beginning, the American presence grew until there were 550,000 troops in South Vietnam in 1970, when President Nixon was in the White House. Getting involved in Vietnam we know now was a mistake, but once America's leaders got locked into it, they found it hard to get out. And in the 1950s and 1960s the leaders were backed by a majority of the American people.

If you have ever seen films of Sen. Joe McCarthy in action you will understand something about the mood of America in the 1950s. McCarthy finally was broken, but his malevolent anti-Communist crusade left many deep scars on American society and drove out of office many fine diplomats and scholars who could have helped policy-makers in the decisions they were making about Vietnam.

Those were times when you would have thought that many Americans had lost their senses. In a way, they had. They had certainly lost their sense of perspective. Many of them were not to regain it until much, much later. And there are some who still haven't. Those also were the days of Secretary of State John Foster Dulles and his messianic, muscle-flexing diplomacy. Dulles even wanted to drop an atomic bomb on Indochina at one time, but, mercifully, wiser heads prevailed.

John Kennedy inherited much of Dulle's vision of America's role in the world. When that was put together with Kennedy's illusions about counter-insurgency and the new weapons that were being developed for the U.S. military, it seems now that a "Vietnam" somewhere in the world was probably inevitable.

There also was an underlying streak of racism in the attitude of many Americans, and that led some of their leaders, including presidents and secretaries of state, to make the big error of underestimating the Vietnamese: "Charlie Cong" to some generals, and "gooks" to a lot of GIs.

It was an error that was to cost the lives of more than one and a half million soldiers (only 56,000 of them American) and the lives of hundreds of thousands of civilians (all but a handful of them Asian).

Vietnam was not America's finest hour abroad. Nor was it America's finest hour at home, where the better things about JFK's New Frontier and LBJ's dreams for his Great Society crumbled under mounting inflation and political and social dissent.

There was little to be seen of America's generosity or intellectual ferment, but plenty of its arrogance, its violence, its passion for manipulation. America was to look even worse under Richard Nixon and Henry Kissinger, the co-authors of the last chapter of America's tragic Vietnam story.

Nixon was ideally suited by temperament to succeed to "Lyndon's war"—manipulating men and machines to prove that America was not a "pitiful, helpless giant" and wrapping his actions in a cloak of secrecy and mistrust. If he had stayed within the limits Johnson had set (at least publicly), Nixon might have survived, but he chose instead to send the U.S. cavalry after more Reds in Cambodia—launching death and destruction on that little country in the name of saving American lives. (There really was a cavalry unit out there. It went to war in helicopters. Now it's back in tanks.)

The campuses exploded, but Nixon might have survived even that had it not been for his paranoia about secrecy. It was his and Kissinger's vain efforts to hide massive, pre-invasion bombing in Cambodia that led to White House orders to wiretap U.S. officials and reporters suspected of leaking the story. That was the first link in the miserable chain of clandestine operations that produced the White House "plumbers" and, eventually, the Watergate scandals. With those, Nixon was out.

For six years, Nixon and Kissinger, and then Gerald Ford and Kissinger, strung out the last chapter—from 1969, when a settlement could have been reached, through the Christmas 1972 bombing of Hanoi, the 1973 signing of the Paris agreements and the return of the American POWs, to the resignation of President Thieu on April 21 of this year and his flight to Taiwan on April 26 and the surrender of Saigon to the People's Army of the north and the Revolutionary Government of the south on April 30.

It might have gone on longer. Even until the last weeks, there still were hundreds of American military advisers in South Vietnam and billions of dollars worth of American guns, planes, bombs, helicopters and tanks. In Washington, President Ford and Kissinger still were pushing Congress hard to give Thieu even more. But Congress balked, finally responding to the feelings of millions of Americans that enough was enough. As the book closed in the White House, it opened on Saigon, renamed Ho Chi Minh City, Vietnam at last was for the Vietnamese.

Kissinger lingers on, continuing to treat domestic politics and the country's public opinion as something to be manipulated so that he can be free for dealings with other nations, preferably America's "adversaries" who, he once said, gave him less trouble than America's friends.

Some years ago, in a rare unguarded moment, Kissinger explained his own vision of himself to the Italian woman journalist, Oriana Fallaci: "The main point stems from the fact that I've always acted alone. Americans admire that enormously. Americans admire the cowboy leading the caravan alone astride his horse, the cowboy entering a village or city alone on his horse . . . a wild West tale, if you like."

"When people really digest what has happened, then they will begin to see that the Kissinger style of diplomacy is incompatible with our ideals as a people."

Those were the words of a wise man spoken last week here in Minneapolis. He is Maurice Visscher, regents professor emeritus at the University of Minnesota. In 1966, he helped form Minnesotans Against the War. That was a time when many prominent people in Minnesota, including Sens. Humphrey and Mondale and some of the senior executives and editors of this newspaper, thought that what America was doing in Vietnam was right.

Do you remember the Beatles' song: "I read the news today oh boy . . ."? Well, there always was news about Vietnam in the newspapers and on radio and television, as far back as the 1960s, when Kennedy was in the White House, and even further back when the French were in Vietnam.

There was plenty of deception by government officials, but information always was available, at least to those who cared to take an interest. If there was any sense in which it could be said that Americans were not well-informed, it was not that they lacked facts. Rather, it was that the press in those early days did not try hard enough, or was not bright enough, to make sense of them. One of the reasons for this failure was that many reporters and their editors agreed with Presidents Eisenhower, Kennedy and Johnson that the line against "global communism" had to be held in Vietnam.

It was not as though the United States was not warned about getting involved in Vietnam, either. There were always a handful of Americans saying, "No."

There were foreigners with insight and experience saying "no" too: Gunnar Myrdal, the famous Swedish social anthropologist; U Thant, the gentle Burmese. And then there was the French president, Charles de Gaulle. France was forced out of Indochina. Under De Gaulle, France was to give up Algeria. Surely he knew what he was talking about.

As far back as 1961, when there were only a few hundred American soldiers in Vietnam, De Gaulle told Kennedy: "You now want to assume our succession to rekindle a war that we ended. I predict to you that you will, step by step, become sucked into a bottomless military and political quagmire. . . ."

But few American politicians ever paid much attention to the French. The French were too cynical; worse, they were losers. It was a French general who first said there

was "light at the end of the tunnel." That was Henri Eugene Navarre, commander of all French forces in Indochina, and he said it in September 1953—barely eight months before the French defeat at Dien Bien Phu.

Despite France's experience, America's Cold War warriors took up the trail. Secure in their myths and moral pretentions, they kept sending young Americans out to die in the search for that "light." All for nothing. Sometimes the absurdity of it all was shattering. I came to appreciate the true whimsy of "Alice in Wonderland," and when that no longer sufficed, the near silence of Samuel Beckett: "You must go on, I can't go on, I'll go on."

For a young woman who has grown up in a reasonably rational home, the whole Vietnam War must be very hard to understand, particularly since a lot of what you might have read about the big battles in Vietnam and and the Pentagon's "pacification" and "nation-building" schemes obscured what really was happening out there.

It was not "foreign aggression." It wasn't even a "civil war" though I have used those words myself in an attempt to catch the flavor of Vietnamese struggling against Vietnamese. It was a revolution. There is no other word to describe it, for that's what the Vietnamese have known it to be since the 1920s.

That shouldn't be hard for Americans to understand. The Vietnamese revolution had its own Declaration of Independence (proclaimed by its founding father, Ho Chi Minh, 30 years ago this August) and its own Redcoats and Hessians—the French, the Japanese, the British, who held Vietnam until the French returned, and finally, when the French lost, the Americans and their allies.

As for the war, itself, is wasn't wall-to-wall war every day of the week, you understand, though it must have seemed that way to your mother from TV and the headlines. A lot of the war was like being in a series of college locker-rooms, where it was "frig" this and "frig" that. "When you can kill hell out of them out there, goddamit, you feel real good." That was Maj. Gen. James Hollingsworth in April 1972.

It was all very macho—males testing themselves, going out on combat. "humping the boonies." Some of the American press was like that, too, I regret to say. It's a pity there weren't more women reporters out there to have pricked all that macho.

There were a few, though among them Oriana Fallaci and Gloria Emerson, who reported from Vietnam for the New York Times for more than two years.

Here is a sample of Ms. Emerson's thoughts about the men who fought the war (much the same could be said of some of the senior U.S. diplomats out there, too): "Many officers were small men with a talent for deceit. They lied about bodycounts, military targets, the war they insisted they were winning and even the morale of their troops. They were men with pleasant manners and dim minds . . . and carefully turned up sleeves to show a bit of muscle . . . for whom only other Americans were real. . . . It always surprised me that so many of them were such fussy men, always quite anxious to prove how hard-core they were and that there was really something between their legs."

The GIs, generally, she adds, "were very much smarter and understood so much more than their officers." How true. And many of them, fighting for a losing cause in a strange faraway land, continued to make personal sacrifices and perform acts of bravery that were all the more remarkable.

Not all the officers were of the mold that Ms. Emerson wrote about, though I must agree they certainly seemed to be in the majority; maybe that's what the army does to men. But there were bright and sensitive ones, too, and several of them became my close friends. There was much that their country was doing in Vietnam that they deplored. On the whole, however, the war was a massively nasty business, stripping away from many it touched the little decencies that are a hallmark of civilized people.

An incident I witnessed stays with me to this day. A regiment of the 1st Air Cavalry, the glamour unit of the early days of the American war, had just come back from a running battle up the Ia Drang valley in the Central Highlands.

It had been a long and dirty battle; I had been along for part of it. The regiment (which bore Custer's number, ironically) had claimed a big bag. After we had all showered, we gathered in the officers' mess. Some of the officers were missing, and quite a number of GIs had been killed. But the officers were in great form, laughing and flirting with a couple of Red Cross nurses. The chaplain bought a round of drinks.

Another time I was having a drink in the bar at the top of Saigon's Mia Loan hotel, which was, in truth, a seven-story whorehouse, but the bar was a good place to get away from everything. Pete Kumpa of the Baltimore Sun and I used to wander up there from time to time to get the "air." The 18-year-old son of a well-known Southern senator turned up, drunk as a young Bourbon lord, $200 in his pocket and a Polaroid camera in his hand. He had just come up from the Mekong Delta, where he was flying helicopters. He was, he said, going to take pictures in every room on every floor of the hotel. I heard later that he had tried, but finally got thrown by an enraged soldier who couldn't have cared less that the chopper-jockey was a warrant officer and a senator's son to boot.

War stories. They weren't all bad; there were a lot of Americans out there who really tried hard to do something for the Vietnamese. I still have some twinges of nostalgia—like the nostalgia of an aging ex-colonial—for the good things, the fine meals at Rene's Golden Lotus and a small but trusted parcel of friends, Vietnamese, American, German, British, French. Rogues, some of them, but they had some style.

Anyway, it's all over now for the Americans—for the time being at least. "Chacun son tour. . . . Aujourd'hui le tien, demain le mien," as Francois Sully used to say. "To each his turn. Today yours, tomorrow mine." (Sully, one of Newsweek's finest, was killed in Vietnam.)

"It's over," a young Revolutionary Government official told an Associated Press correspondent in Hue last week. "But what a cost. Thirty years of people being killed and our land destroyed. Now there is much to do."

But don't think for a minute that it couldn't happen again. Don't let the men who run this country push it under the rug. Insist that you see what's under that rug, and when you have, hang it up in the fresh air and give it a good beating.

BUSINESS WEEK ARTICLE ON TRANSPORTATION REGULATION

Mr. KENNEDY. Mr. President, Business Week magazine in its May 12 issue ran an excellent cover story entitled "Transportation: Freedom from Regulation?" The debate over regulatory reform of transportation is a complicated one and sometimes does not receive the attention that it deserves. The Business Week article is, however, an exception. It is one of the more comprehensive pieces I have seen on the subject for some time.

The Subcommittee on Administrative Practice and Procedure, which I chair, has been taking a close look at airline regulation. Many of the issues developed at our hearings were touched on in the Business Week article. The subcommittee has found that lower air fares without substantial reduction of air service is both possible and desirable. I ask unanimous consent that the article and my letter to Business Week be printed in the RECORD.

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

TRANSPORTATION: FREEDOM FROM REGULATION?

Never in the memory of anyone connected with transportation has there been such a large and concerted outcry calling for its deregulation. "The American consumer is being forced to pay from $4-billion to $10-billion a year for the high shipping rates and inefficiency of railway operations caused by Interstate Commerce Commission regulations," says Senator Robert Taft (R-Ohio) in a characteristic statement representing the mood of the times. "We need to return America to the free-enterprise system and end wasteful federal bureaucracy."

The issues in deregulation are three: whether there should be freedom for new or existing transportation companies to enter markets; whether there should be freedom to stop serving markets; and whether there should be freedom to let the marketplace set prices in open competition subject only to antitrust laws.

Those in favor of deregulation believe that regulation was created in a different economic era, specifically when railroads had a monopoly on transportation. They argue that after the trucking industry grew big enough to challenge this monopoly, Congress—as deregulators see it—made a mistake. Instead of deregulating railroads and letting competition work, Congress brought the trucking industry under the regulatory umbrella. Subsequently, it regulated some water carriers and all surface freight forwarders.

Today, advocates of deregulation insist, there is no need to build fences around transportation companies or even transportation industries. In fact, doing so keeps rates artificially high, and the nation, which can ill afford it, is obliged to subsidize a lot of waste in the transportation of its goods and people. Just as the Interstate Commerce Commission was created to meet an economic need of the time, the Civil Aeronautics Board was created to promote and protect a fledgling industry. Today, aviation is a huge and powerful industry that should have more competition from innovators, say the deregulators.

Critics of deregulation, on the other hand, argue that this country has the best, most efficient, and lowest-cost-to-consumers transportation complex in the world. It is also, they point out, the only one that is still largely in private hands, and it got this way and prospered, by and large, thanks to intelligent regulation. The regulatory system is not, they admit, perfect by any means and is certainly subject to improvement. But allegations of huge waste fostered by regulation have no factual support. Tearing down the regulatory fences without fully understanding why they were put up in the first place would be a national disaster.

Nevertheless, in today's post-Watergate superinflation world, in which so much of the public distrusts big, entrenched business, labor, and government, such calls for transportation deregulation have enormous popular appeal. A view once held universally by academic economists but by few others has now become a rallying cry for everyone from free-market conservatives to extreme liberals, with consumer-activist groups scattered throughout the spectrum.

PUSHING FOR REFORM

Riding the wave of this belief and trying to combat inflation by eliminating waste, the Administration is vigorously pushing for

regulatory reform. Although it is not going nearly far enough to satisfy the deregulators, the Transportation Dept. thinks it has a program that can pass Congress.

As part of this, they want more freedom of entry and more flexible rate setting. However, the first priority for government action is the railroad industry—because it is the sickest. And, ironically, that part of the program appears to favor more—rather than less—regulation.

Even as President Ford this week called for an across-the-board reduction of federal business regulation, Transportation Dept. officials were mapping plans to do just the opposite: increase federal control over the railroad industry. The plan, in fact, violates the Administration's abhorrence of another kind of federal intrusion in the free-market economy—allocation of credit by other than market forces.

The scheme calls for a massive $2-billion loan-guarantee program for railroads. To get this cheap money, reasonably healthy roads would first have to merge with one or more losing lines in accordance with a grand design for restructuring the national railroad network.

The program being drafted for the railroads, which is due for submission to Congress this week, is part of an over-all Administration strategy to "rationalize" the nation's transportation system. As such, it calls for a good deal of "deregulation" and a greater reliance on market forces for setting prices and developing new and more competitive carriers in transportation. But it also recognizes the need for the government to help channel billions of dollars into new transportation investment—especially in the railroad industry. Largely because of this investment program, which will increase the federal role in railroading, the new Transportation Secretary, William T. Coleman, is soft-pedaling the deregulation issue.

"There is no talk of deregulation if by that you mean no regulation whatever," says Coleman. He adds, "The Administration's aim is to modernize and reform the regulatory system."

For example, Coleman would like to simplify rail merger regulations in order to promote consolidation of rail facilities and the development of a more efficient rail system. He proposes that many of the ICC's procedures on mergers be waived. This appears to be consistent with removing the heavy hand of government from private business transactions such as mergers, but in reality it is not. It simply replaces the presence of the ICC with that of the Transportation Dept.

The catch in the Coleman plan is that railroads could obtain waivers from present merger regulations only if they merged with certain other railroads stipulated not by the ICC but by the Transportation Dept. And only then would the railroads get the loan guarantees.

Says Coleman: "I hope I can create a situation in which the first railroad knows it better go through the gate, and the others as a matter of defense will go through the gate. I hope that eventually I can say, 'Well, you're too late, the gates are closed.'" The scheme apparently fits the Administration's over-all deregulation strategy because the loan plan is viewed as a temporary measure, designed to create a more efficient and viable rail system. After that goal is achieved, Coleman hopes the government will remove itself from funding and merger issues as the railroads regain investor confidence and access to capital markets.

THE STRUGGLE OVER FREEDOM

The other part of the Ford program is more directly related to removing government controls on transportation. Briefly, it calls for:

Rate freedom: In the first year, railroads will be able both to raise or lower rates by 7% without the ICC's prior approval. The limits would increase to 12% in the second year and 15% in the third. After the third year, the results will be evaluated.

Standards: Carriers can base rates on their variable costs and do not have to factor fixed costs into their rate base. This would allow railroads, which have higher fixed-cost rate bases, to lower prices in competition with trucks and barges. When a railroad tried to do this in 1963 by lowering rates on ingot molds to variable costs, barge competitors took it to court and were upheld.

Entry requirements: New entries into the trucking business would get ICC operating approval if they could show that they would operate more efficiently than present carriers. In addition, subsidiaries of large companies hauling their own freight would be permitted to haul products of other subsidiaries or affiliates of the parent company without ICC approval.

In the airline field, the Administration favors an even greater range of price freedom, perhaps as much as 15%—up or down—immediately, as well as a simplification of procedures designed to encourage present airlines to compete more vigorously in strong markets. Coleman also hints at reviving earlier proposals to permit a company to own more than one form of carrier, which would allow railroads to expand into trucking.

The Administration's plan is sure to face stiff opposition in Congress, however, where a number of competing transportation plans have already been tossed into the legislative hopper. It is not clear that Congress will accept a plan such as Ford's for reviving rail service—for instead of a temporary loan-assistance plan, many lawmakers are calling for near-nationalization of the railroads. In areas such as less ICC control over prices and market entry, the trucking industry—both management and labor—is sure to dig in its heels. And despite Coleman's contention that times have changed, there is still great concern among many lawmakers that such abuses of free-market competition as rebates and discrimination against small shippers would crop up again if government vigilance lessened.

One criticism of the rail loan-guarantee program comes from ICC Vice-Chairman A. Daniel O'Neal, who characterizes it as an exercise in "funny money." Says O'Neal: "We need to bite the bullet and provide real money—cash—for the railroads."

He has been joined by other ICC officials, including George Chandler, director of its Rail Services Planning Office, which has been evaluating the U.S. Railway Assn.'s preliminary plan for revitalizing rail service in the Northeast and Midwest. Calling the USRA financing plan inadequate, Chandler has proposed a $2-billion federal program in which the government would match, dollar for dollar, new railroad investment by giving the railroads cash grants paid for out of new federal fuel taxes. Other plans call for a railroad trust fund paid for by surcharges on freight bills and federal ownership of the railroad right of way.

Representative Brock Adams (D-Wash.), who heads the new House Budget Committee, is a leading regulatory expert in Congress. He has introduced his own bill, which also allows greater rate freedom. But he would not allow railroads total freedom to reduce prices, as the Administration would. "It does not make sense to give them financial assistance and then allow it to be given away through decreased rates," he says. Otherwise, his proposal closely parallels the Administration program.

DRAWING THE BATTLE LINES

But others are not so agreeable to Ford's deregulation plans. Farm groups are especially concerned that greater rate freedom will mean higher prices for rail transport of grain; the Administration has therefore backed away from proposals to exempt railroads totally from regulation when they carry farm goods. "We'd like to, but it's political dynamite," admits Jack Snow, a top Coleman aide. But he concedes that the rate freedom proposed for railroads, giving them a range of uncontrolled price flexibility, will help them attract more farm business or carry existing business at more economic rates.

Truckers are especially upset at the deregulation plan, and they are particularly critical of the Administration's move to open up entry. "In the minds of many economists, and some government officials, there seems to be a belief that if the supply of transportation services is increased, the demand for service will also increase. This misconception is obvious," asserts Edward V. Kiley, vice-president of the American Trucking Assns., who argues that it would simply mean more people getting a smaller slice of the pie.

Airlines, too, are opposed to many deregulation arguments. "Would deregulation lead to lower labor and fuel costs?" asks Paul R. Ignatius, president of the Air Transport Assn. of America. He adds: "If it doesn't, how would it lead to lower fares?" He also questions the need for freer entry and exit. He believes that it would lead to instability and the loss of service to many communities that have made heavy investments in air terminal facilities.

But the issue has been joined once again—and this time with more momentum behind it because of the sad state of rail transport. With a large number of freshmen Congressmen sympathetic to knocking down institutional icons such as the ICC and CAB, the Administration may find some legislative allies willing to push its program through.

Understandably, when they first became aware of this phenomenon, transportation company executives were badly frightened. To a man, they retreated behind such bromides as, "Let's not throw out the baby with the bathwater," or "Let's not pull down the building until we have something to take its place." John L. Weller, who has had a long career in transportation as both an executive of operating companies and an investment banker specializing in transportation securities, calls the proposal to cure transportation's ills by bleeding "silly".

But lately transportation executives have gained confidence that they can win in a showdown fight over deregulation, and some of them are even anxious to get on with it. While there is widespread support for freedom of entry, there is virtually no enthusiasm among politicians for freedom of exit. Governor Milton J. Shapp of Pennsylvania, for example, has bitterly opposed virtually every attempt to drop railroad routes in his state. The transportation establishment cannot believe there could be freedom of entry without freedom of exit.

What is really at issue in the fight over regulation, particularly now, is how much waste it causes. But some of what deregulators think of as waste is actually the result of an unarticulated but age-old federal philosophy that transportation is an instrument of social policy. If many freight rates and passenger fares are higher than they would be without regulation, it is because the excess is used to cross subsidize high-cost transportation services elsewhere that are deemed by some governmental body or other to be socially important. These are the services that regulators mostly will not let transportation companies abandon.

WHAT KIND OF SUBSIDIES?

One reason that the established transportation companies are not so frightened as they were at first is that the political clout in Congress may be swinging toward their side. For instance, consumers who must pay $182 to fly from New York to Los Angeles may find the recent World Airways, Inc., proposal for an $87-fare based on a lack of cross subsidization attractive, but they do not have the financial backing or staying power of business and labor—the two groups that benefit the most from the present system.

There is talk that direct subsidies would be a cheaper and more efficient way to meet the needs of social policy. This is exactly what the National Railroad Passenger Corp. (Amtrak) and several railroad commuter operating agencies are designed to do.

"If cross subsidies are out, how about direct subsidies?" asks the ICC's O'Neal. "Advocates of free entry believe them to be more honest because they can be measured in dollars and cents. But can they assure you that Congress thinks it will be 'more honest' to appropriate increasingly harder-to-obtain tax funds to subsidize the transportation industry, parts of it, or factories or communities abandoned by that industry? I wonder whether the ultimate in direct subsidies—nationalization—wouldn't look better to a Congress besieged by demands for better transportation than would direct subsidies to private business."

WHICH FREEDOMS?

This gets down to the nitty-gritty of the problem. If transportation executives thought for one minute that Congress would excuse them from money-losing social responsibilities, the prospect of deregulation would not worry them. Political realities and past experience, however, have given them good cause for concern.

The fundamental reason the New York Central and Pennsylvania RRs fought for a merger—and the reason the ICC bought it—was to eliminate waste trackage and cut costs. To this day, local, state, and federal politicians have successfully kept the Penn Central from abandoning any but an insignificant amount of lightly used track.

For a time, the CAB attempted to rationalize the air transport industry, particularly the subsidized regional segment of it. There are scores of infrequently used commercial airports, many of which are not far, in driving time on interstate highways, from another airfield, so the CAB tried to increase the quantity of service at hub airports and close other fields nearby. It adopted a use-it-or-lose-it policy under which the board would give an airline permission to stop serving any airport at which enplanements dropped below a set rate. But political pressures quickly forced the board to abandon the policy.

"The first places we'd take a look at leaving if we had freedom of exit would be Ely and Elko, Nev.," says an official of United Air Lines, Inc. "Can you imagine us doing so and waving goodbye to Senator Howard Cannon of Nevada, head of the aviation subcommittee?" During March, just over 1,300 passengers got on or off United's two flights a day at Ely and less than 800 passengers traveled through Elko.

Deregulation purists who believe in free-market fares argue that transportation should not be made an instrument of social policy. Communities, factories, and shippers will be served at a price, say these deregulators, and if these users are too small or too far off the main line, the price will go up. If the price is too high to be competitive, the community, factory, or shipper will move elsewhere

In the worst possible world for existing transportation companies, one in which freedom of entry was permitted but freedom of exit was not, the airlines see the most frightening consequences. They foresee "sharpshooters" with second-hand jets and non-union labor converging on the heavy-traffic city pairs and "cream skimming" with rock-bottom prices. This will inevitably lead to corner cutting, which raises serious questions about safety.

Today, with the present price structure and CAB regulation, airlines generally police their own safety standards. (The CAB does not regulate safety per se.) In an unregulated world, the size of the Federal Aviation Administration would have to be enormously increased to do it for them—and the public. Increasing the size of one regulatory body in order to eliminate another is not generally considered progress in the industry.

Actually, however, other constraints would probably be put on airlines. It would be relatively easy to abolish the CAB, but it would be hard to abolish airline regulation. With existing and new airlines all trying to serve the densest markets at peak travel times, airports like New York, Chicago, Los Angeles, Miami, and so on would quickly run out of landing and take-off slots, ramp space, baggage-handling facilities, and fueling facilities. Quasi-governmental bodies like the Port Authority of New York and New Jersey would have to begin regulating aviation.

If the CAB were abolished, as consumer advocate Ralph Nader demands, and if airlines set fares under Robinson-Patman and various other anti-trust laws, regulation to prevent economic damage would be replaced by litigation after it had occurred. Within five years, a huge cadre of lawyers would develop in the Justice Dept. to specialize in aviation cases. "And that," says a long-time transportation observer in Washington, "is essentially what we've already got in the CAB."

Finally, assuming that the energy crisis persists, the Federal Energy Administration would eventually have to impose controls.

EFFECTS OF COMPETITION

Over airline objections, the Transportation Dept. is going to seek pricing zones and freedom of entry for the industry. "We recognize that pricing flexibility is criticized on the assertion that only the strong firms will take advantage of it," says Robert H. Binder, Assistant Secretary of Transportation for policy, plans, and international affairs. He characterizes the opposition view this way: "They will either drive prices up or, in the alternative, drive the prices down temporarily to destroy competition and then increase prices when the competition is gone."

He adds: "Liberalized entry and the threat of potential entry is the enforcer that assures that pricing flexibility will not be misused. With liberalized entry, the strong firms will not be able to drive the price up because of the threat of competition. And they will have little incentive to underprice their services to drive out old competitors because there is always the threat of new competitors. Instead, we think that existing firms will improve their efficiency and keep their prices low enough to keep the new firms out."

Not all "wastes" from regulation is caused by social policies, of course, and the need for cross subsidies. There is some inefficiency simply from the fact that transportation companies are protected from competition and are not slugging it out for business like everyone else. How much waste comes from this, not even the academic economists can agree on.

Professor Thomas G. Moore, now at Stanford University, has come up with the most dramatic numbers. And because of their size, they are quoted so many times and in such high places, including by the Council of Economic Advisers and by Senator Taft, that they have gained much credence. What Moore did was to estimate the various losses incurred from ICC regulation through inefficient use of common carrier trucks, private trucks, rails, and water carriers and through the inefficiencies that arose because a higher-cost carrier carried volumes he believes should have gone to the low-cost carrier. The year he choose for this study was 1968. His low estimate was approximately $4-billion; the high was almost $9-billion. Since then, with inflation and growing inefficiencies, he has increased the high side to $16-billion.

Professor John R. Meyer of the Harvard Business School, himself an eminent transportation economist and a sincere deregulator ("Not that it would make much economic difference, but it would get rid of a lot of underbrush," he says), laughs at these numbers. "I have to hand it to Tommy; he keeps his name in the headlines," says Meyer. "But I really can't see where he comes up with that much waste. I don't think there's anything like it. Given the deterioration of the rail plant, the excellence of the highway network, and the specialization of truckers, I am very dubious that over the short run there would be savings of more than $3-billion." However, Meyer is a firm believer in deregulation because it would eventually force a more efficient reallocation of capital.

There are several apparent flaws in Moore's assumptions. John A. Creedy, a widely respected transportation thinker who is also the president of the Water Transport Assn., which represents the common carrier inland and coastal waterway industry, gets indignant at several of them. Some 15 years ago, he claims, the courts ruled that frozen chickens traveling in truckload lots were an exempt agricultural commodity and therefore freed from regulation. Thus segregated from general freight, which often does not travel in truckload lots and which consequently undergoes repeated and costly terminal handling, the transportation charges on frozen chickens went down an average of 20%. "To extrapolate from that single, 15-year-old incident involving frozen chickens to a sweeping assumption that the ICC regulation causes 20% waste in the whole transportation industry is absurd," says Creedy.

He also cites in his own industry something called the mixing rule. This says that if barges carrying exempt commodities are combined with those carrying regulated commodities in a river tow, everything comes under regulation. As the power of towboats has increased, and with it the efficiencies of the inland waterway industry, operators have found it increasingly difficult to assemble a tow that is all one or all the other. Sympathetic to their plight, the ICC has never imposed the mixing rule. But Stanford's Moore calculates an estimated waste into his over-all number as though the commission had. "It isn't much, but it's there," says Creedy.

Creedy believes strongly that there is nothing the matter with transportation regulation that more penalties would not fix. He proposes to keep the Interstate Commerce Act intact but wants to assess triple-damages against anyone who violates its provisions. This, he believes, would make the transportation industry self-regulating.

SOURCES OF WASTE

In December, 1970, Dr. Hendrik S. Houthakker, then with the Council of Economic Advisers, sent key Congressmen a memo from the CEA "suitable for discussion with interested parties." It was not, he took pains to emphasize, an Administration call for deregulation. In it he proposed that ICC control over rates, entry, and exit be terminated, that rate bureaus be outlawed, and that rates for all modes of transportation be encouraged to descend to a floor of marginal cost.

Since the proportion of marginal or "out-of-pocket" costs for the motor carrier industry is far higher than it is for railroads, this would have tended to raise truck rates and lower rail rates. Supposedly, a lot of traffic would have been captured by the railroads, benefitting both them and the public through lower rates. The fact that this did not happen is also factored into Moore's total as a loss from traffic carried by truck instead of rails. But it overlooks the fact that price is not the shipper's only consideration. Many prefer trucks because of their greater reliability, dependability, flexibility, and so on. Furthermore, Moore apparently assumes that rail rates would not go back up on the traffic railroads lost to truckers—if they got it back.

The empty backhaul problem in the motor carrier industry is cited as another huge area of waste that would disappear under deregulation. Depending on who you talk to,

the total mileage driven by empty trucks in the U.S. varies from 5% to 40%. The high figure is cited by the deregulators and by Agriculture Secretary Earl L. Butz. According to the American Trucking Assn., it includes pickups driven for personal transportation, trucks that specialize in commodities like automobiles, which can very rarely find a return load, and trucks that are empty because there is simply an imbalance of freight to be transported. "To contend that such vehicles operate empty because of federal regulation is the height of irresponsibility," says the ATA.

Where there is an empty backhaul problem is with exempt agricultural truckers and with private carriers. An owner-operator trucker who carries produce to a big-city market cannot legally carry regulated traffic back even though he makes a persuasive argument that the cost of the produce delivered to market might be less and the wastage of diesel fuel would be eliminated.

The regulated truckers point out, however, that they, not he, have a statutory requirement to serve the public and that their ability to do so depends on a large traffic base in both directions. Giving an exempt carrier a full backhaul, they insist, only deprives a regulated carrier of his full fronthaul. It shifts the costs and waste from one truck to another; it neither eliminates them nor adds to the total amount of freight being carried.

Similarly, men like Sam H. Flint of Quaker Oats Co. and Levon Soorikian of International Telephone & Telegraph Corp. complain of waste in transportation. Flint would like the trucks that bring in the raw materials for Quaker Oats' pet food subsidiary to be allowed to take out the canned pet food. Soorikian complains that corporate trucks carrying products of one ITT subsidiary in interstate commerce cannot pick up a cargo from another subsidiary for the return trip. Again, the regulated carriers argue that to do so would shift loads and costs unfairly. If the corporations really wanted to eliminate waste, says one, they should use common carrier, regulated trucks for both directions.

Out of all these impassioned arguments, it seems evident that total deregulation is not in the cards but that there will be changes. Sums up Congressman Adams: "I am willing to accept the fact that the regulatory system is not working well. But I do not believe that total deregulation will solve the problem. The abolition of the ICC tomorrow would not produce a deluge of money into the coffers of the railroads. It would probably mean rate wars, loss of essential service, and higher freight rates with further diversion of traffic to other modes. However, the problem of regulatory lag, of inflexible rate-making procedures, of across-the-board general rate increases can be addressed within the framework of the Commerce Act. I think we ought to try to tune the engine before we junk the car."

COLEMAN: HE RUNS AN OPEN SHOP

William T. Coleman, Jr., 55, picked by President Ford last February to serve as Transportation Secretary, is the Administration's "point man" in pushing its regulatory reforms through Congress. No stranger to Washington's ways, Coleman has served in federal hot spots before: He was one of the original members of the Federal Price Commission in 1971. Immediately prior to his current stint in Washington, he was a partner in the prestigious law firm of Dilworth, Paxson, Kalish, Levy & Coleman in Philadelphia.

Although a former director of Pan American World Airways, Inc., and a labor negotiator for the Philadelphia area transit system, Coleman admits that he needs to brush up on regulatory issues. Last week, for example, after reviewing Administration plans with BUSINESS WEEK staffers, he hurried up to Harvard University, where he obtained his law degree, for a crash course on various aspects of transportation economics. Although he is committed to reducing federal regulation, he remarked last week that the mind-boggling amount of federal administrative law was a significant factor in contributing to his own financial success.

An open shop. A distinguished civil rights attorney, the diminutive Coleman was the first black law clerk of Supreme Court Justice Felix Frankfurter and has been active in the National Assn. for the Advancement of Colored People. He is running a generally open shop at the Transportation Dept. and has made contact with almost every special-interest group in transportation. His job ranges from supervising the development of regulatory legislation to providing transit subsidies to assuring the safety of aircraft and autos. He emphasizes his freedom from White House meddling—a problem of his predecessors—and says: "No one over there tells me who to hire or fire."

To prepare himself for the Transportation job, he consulted with present U.S. Ambassador to Britain, Elliot L. Richardson, who held three Cabinet posts in the Nixon Administration, at Richardson's home in suburban Washington, where Coleman now plans to live. "He gave me seven secret rules for running a bureaucracy," said Coleman recently, "and they're staying secret."

THE MAZE OF TRANSPORTATION AGENCIES

RAIL

Federal

Interstate Commerce Commission (1887)[1]—Rates, routes, service, entry/abandonment, mergers for 450 railroads.

Federal Railroad Administration (1967)—Research and development for improving rail systems, safety standards.

National Transportation Safety Board (1967)—Investigates probable cause of major accidents and recommends corrective action for rails, airlines, trucks.

State

Each of the 48 contiguous states has a commission, with much the same powers as the ICC, for intrastate operations.

AIR

Federal

Civil Aeronautics Board (1938)[2]—Rates, routes, service, entry/abandonment, mergers for 36 scheduled and nonscheduled interstate airlines.

Note: Dates in parentheses are when authority first assumed.

Federal Aviation Administration (1958)—U.S. airways, airport development, pilots and aircraft, safety standards, research and development.

State

Aeronautics boards in Texas and California regulate intrastate airlines; some others regulate intrastate commuter operations.

HIGHWAY

Federal

Interstate Commerce Commission (1935)—Rates, routes, service, entry/abandonment, mergers for 15,000 common carriers, but not agricultural carriers or private trucking operations.

Federal Highway Administration (1967)—systems, highway safety standards.

National Highway Traffic Safety Administration (1967)—Motor vehicle safety standards.

State

Highway or transportation departments responsible for roads.

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[1] The ICC also regulates some commodities for common carrier barge lines, bus operators, surface freight forwarders, and oil pipelines.

[2] The CAB also regulates air freight forwarders and U.S. operations of international airlines.

WASHINGTON, D.C., *May 13, 1975.*

EDITOR,
Business Weeks,
New York, N.Y.

I found "Transportation: Freedom from Regulation" one of the more comprehensive articles to appear on the subject for some time. I recently chaired an extensive series of Senate subcommittee hearings on airline regulation and would like to share with your readers three points that might supplement some of the issues raised in your article.

First, the somewhat rhetorical question of how deregulation can bring lower air fares to an industry showing little profit today and no excess profits historically deserves a straight answer. The fact is that Civil Aeronautics Board regulation of prices tends to cause this structurally competitive industry to compete away its high-fare revenues with high-cost excess capacity. Rigid CAB price control affords the airlines no substantial competitive outlet except increasing capacity, which in turn burns up potential profits faster than jet engines burn precious fuel. It may be good advertising, but it is bad regulation, when multi-million dollar aircraft leave so frequently and fly half-empty.

Second, the 26 years of air transportation in California and the more recent experience in Texas provide some empirical indication of what air fares would be with less CAB price and entry control. *Intra*state airlines in those states offer air fares that are much less—often 50% less—than those charged by *inter*state CAB-regulated carriers. These low fares are offered along with perfect safety records, timely and convenient jet service to large and small communities, fuller airplanes, and reasonable profits for the carriers.

Third, your article accepted as fact the cross-subsidy notion that high passenger fares produce excess revenues that pay for air service to small communities. Thus, the cross-subsidy argument claims, if less regulation—including relaxation of entry and exit barriers—produces meaningful price competition and lower fares, there will be no excess revenues to pay for small town service and airlines will abandon flights to those communities. This "cross-subsidy" argument is the most cherished shibboleth of some segments of the regulated air industry, and it has frightened away many well-meaning reformers. It is also unsupported and probably unsupportable.

On lucrative routes, capacity competition already eats up potential excess revenue that the cross-subsidy myth claims is paying for small town flights. The CAB itself recently confirmed the conclusions of others on this point when, after a four year investigation, it found that where fares exceed costs the excess revenues merely subsidize wasteful capacity competition, not air service.

Less regulation—including the removal of artificial exit and entry barriers—will not result in a wholesale abandonment of routes by airlines. The fact is that current CAB regulation imposes very minimal service obligations on the trunk airlines. In addition a recent study by United Airlines—which controls 20% of the domestic passenger market—indicated that most "unprofitable" routes are in reality small segments of longer flights, and that with no exit barriers many would continue to receive non-stop service for competitive, promotional and other profit-related reasons. Finally, the federal government directly subsidizes air service to the tune of 70 million dollars a year. If some essential routes are endangered by regulatory reform, a refining of the direct subsidy program would be the better and cheaper solution than perpetuating a system that inflates most air fares by 15 to 50 percent.

I agree with your assessment that there will be reform without immediate and total deregulation. The hard question for the Congress and air transportaton policymakers is how much and how soon. It is a question

many would like to see faced and answered during this Congress.

Sincerely,

EDWARD M. KENNEDY.

THE ERADICATION OF FIRE ANTS

Mr. HOLLINGS. Mr. President, I would like to bring to the attention of my colleagues in the Senate a concurrent resolution adopted by the State of South Carolina memorializing Congress to take the required measures to implement a program for the eradication of fire ants.

The Department of Agriculture has recently announced its decision to suspend the fire ant control program as of June 30 of this year. Such a move would have a disastrous effect on those Southeastern States plagued by this dangerous and burdensome pest, and Senator THURMOND and myself have contacted President Ford about this decision. We must continue to have an effective fire ant control program so long as this particular pest is a problem.

On behalf of Senator THURMOND and myself, I ask unanimous consent that this resolution be printed in the RECORD.

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

A CONCURRENT RESOLUTION TO MEMORIALIZE CONGRESS TO TAKE SUCH MEASURES THAT MAY BE REQUIRED TO INSURE THAT SUFFICIENT FUNDS ARE PROVIDED TO SUCCESSFULLY IMPLEMENT THE PROGRAM FOR THE ERADICATION OF THE FIRE ANT IN SOUTH CAROLINA

Whereas, the fire ant (Solenposis Salvisima Richteri Forel) again threatens many acres of land in South Carolina; and

Whereas, reports from many counties in South Carolina reveal that increasing numbers of fire ants have infested an inordinate amount of land in the State; and

Whereas, fire ants cause extreme hardship in the harvesting of crops, thereby increasing agricultural costs which are passed to the consumer; and

Whereas, it has been established that unless controlled the fire ant will multiply and will occupy more and more land area and as a result jeopardize land area beyond the boundary of South Carolina; and

Whereas, the fight to control and eradicate this persistent and treacherous fire ant will require federal assistance for any state eradication program to be effective. Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

That Congress be memorialized to take such measures as may be required to assure that sufficient funds are included in the budget of the United States Department of Agriculture to permit the allocation of enough funds to the State of South Carolina to successfully implement a program for the eradication of the fire ant.

Be it further resolved that copies of this resolution be forwarded to the Chairman of the Agriculture Committees of the House and Senate of Congress, each United States Senator from South Carolina and each member of the House of Representatives of Congress from South Carolina.

THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, a wise 18th century philosopher once wrote:

We owe it to our ancestors to preserve entire those rights which they have delivered to our care: we owe it to our posterity not to suffer their dearest inheritance to be destroyed.

This is the spirit of the United Nations Genocide Convention.

After the ravages and terror of the Second World War, the nations of the world banded together to create an institution designed to protect the rights of man and preserve the peace. The United Nations has become the conscience of mankind. It is that organization charged with protecting the rights of all humanity.

The human rights conventions adopted by the United Nations are an expression of those rights. They represent the wisdom of mankind on the evils which are to be avoided and the rights which must be preserved for men to live free and happy lives. The fundamental purpose of the human rights conventions is to seek to preserve these human rights and pass them on intact to generations not yet born.

Mr. President, millions of Americans have died to preserve freedom and liberty both here and abroad. They have left us a glorious heritage.

We must do all we can to preserve that heritage. Once again I urge the Senate to ratify the United Nations Genocide Convention.

MISS ROBIN HUEBNER

Mr. BURDICK. Mr. President, my State of North Dakota claims as its own a number of famous and outstanding people, from Eric Sevareid to Peggy Lee. According to Sunday's Washington Post, we will soon be able to claim one more, Miss Robin Huebner of Dickinson, N. Dak.

At the age of 13 and with no dance instructor to train her, Robin won acclaim and high honors at the Women's Junior National Gymnastics Championships held in Virginia last weekend.

I am very pleased that this young North Dakotan won such outstanding recognition.

I ask unanimous consent that the Washington Post article describing her success in the women's junior championships be printed in the RECORD.

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

REMEMBER ROBIN HUEBNER: SHE JUST MIGHT BE GREAT

(By Paul Attner)

Remember the name: Robin Huebner. She just might be America's next great women's gymnastics star.

Huebner, only 13, captured the hearts of the fans at the women's junior national gymnastics championships last night at George Mason University and walked away with a surprising number of medals, considering her limited background in the sport. In the process, she also impressed many of the gymnastics experts at the meet.

"She is going to be a really good one," said Ruth Ann McBride, coach of the local MarVaTeens club and the former coach of Olympian Roxanne Pierce. "She's got everything it takes to go somewhere."

Huebner is from Dickinson, N.D., hardly a booming center of gymnastics. There is no dance teacher in Dickinson (population 13,000) so Huebner has learned floor exercise routines and techniques from film. She has been in gymnastics less than four years, yet develops her own floor exercise and balance beam routines.

Only her limited experience in floor exercise prevented her from winning the all-around title at this meet. She finished second to Donna Turnbow of the Kips team from Long Beach, Calif., a far more experienced performer in a well-developed program.

"She (Huebner) practices maybe three or four hours a day in her high school program," said her coach, Les Fischer. "She really doesn't work nearly as much as many of the girls in this meet. But she works hard. We have to get help for her on floor exercise. If we do, she'll be in good shape."

To get her to the meet, the citizens of Dickinson contributed money to a travel fund. She rewarded them with second places in both the uneven bars and the balance beam. In competition last night in the four individual events she scored 8.95 in beam and a sparkling 9.1 in uneven bars.

But beyond her scores is that immeasurable factor: charisma. With a pixie haircut, a dazzling smile a lot of poise and grace she attracts the attention of fans and judges alike. This same type of appeal is what has made Olga Korbut a household name to many American families.

While Huebner enjoyed the plaudits, 12-year-old Jenniffer Huff of the MarVaTeens and Winchester Va., learned something about the heartaches of sport. In her first major national championship Huff was unable to hold onto first place in the free exercise after an 8.3 routine and finished last. After her performance she sat behind the stands and cried.

She did better in the vaulting, scoring 8.9 to finish sixth. "I think the pressure got to her a little," said McBride, who had hoped Huff would win the all-around. "She'll know better, next time what it takes to win a meet like this."

McBride might have another future champion in 9-year-old Barbara Sachs, daughter of Jerry Sachs, president of Capital Centre. She put on a floor exercise exhibition last night, and then her father helped lug around mats and handed out awards.

The two best individual performances last night were turned in by Turnbow, who had a 9.3 routine on the uneven bars, and Christa Canary of Chicago, who had a spectacular vault that earned her a 9.15 mark.

S. 1216—EPA CONSTRUCTION GRANT FUNDS

Mr. HUDDLESTON. Mr. President, last month I was pleased to join with the distinguished Senators from Georgia, Mr. TALMADGE and Mr. NUNN, as a cosponsor of S. 1216. This bill would revise the formula for the allocation of the $9 billion in EPA construction grant funds which the Supreme Court recently ordered spent. The formula would be revised in such a way as to base the allocation of the $9 billion in fiscal year 1976 to the States one-half on the basis of population and one-half on the basis of the most recent "needs" survey. This "needs" survey was conducted under authority granted under Public Law 93-243, which was an amendment to the 1972 Water Pollution and Control Act—Public Law 92-500.

The revisions in the distribution formula called for in S. 1216 would be of substantial benefit to numerous localities. In my home State of Kentucky alone, the following projects would be in a better position to receive assistance from EPA should S. 1216 become law: Winchester, Augusta, Bowling Green, Somerset, Campbellsville, Jeffersontown, Mount Sterling, Greenup County Environmental Commission, Richmond, Shelbyville, Corbin, London, Berea,

Millersburg, and Grayson. My colleagues may want to check back home with their respective environmental bureaus or departments to determine the potential benefits for their States.

As it now stands, EPA intends to allocate the $9 billion in accordance with the formula in effect for the years in which the money had been impounded. This distribution formula was devised in 1972 and certainly does not reflect the conditions that exist today. If it did reflect today's needs, one would wonder to what use EPA intends to put the most recent "needs" survey, a survey conducted at great expense of time and money.

Why EPA would not want to allocate fiscal year 1976 funding for its construction grant program in a manner consistent with its own recommendations for future funding as contained in its February 10, 1975, report to Congress, "Cost Estimates for Construction of Publicly Owned Wastewater Treatment Facilities," is indeed baffling. It is particularly baffling in light of Administrator Train's February 4, 1975, testimony before the Senate Public Works Committee's Environmental Subcommittee. Mr. Train stated that " 'needs' is the most rapidly growing aspect" of the construction grant program. He went on to say that as a result of insufficient funds, "we must identify needs carefully and fund them on the basis of intelligently selected priorities." I firmly believe that S. 1216 establishes just such a basis.

Yesterday's goals are not necessarily in line with the realities of today. Accordingly, I urge that S. 1216 be expeditiously and favorably reported by the Public Works Committee in order that EPA's construction grant might be brought in line with the wastewater treatment needs of today.

THE NATION'S WATER RESOURCES

Mr. BURDICK. Mr. President, recently citizens concerned for and involved in the management of our Nation's water resources came to Washington to participate in the 1975 National Conference on Water. The conference focused on important water policy issues such as water and energy, water and food and fiber, flood damage reduction, and Federal-State relations.

A participant in a panel chosen to discuss Federal-State interplay was Vernon Fahy, engineer-secretary of the North Dakota State Water Commission. Mr. Fahy is recognized as a leader in Midwest natural resource circles. His views reflect the feelings of many Midwesterners and merit the consideration of all of us. Talking about Federal-State water management relations, for example, Mr. Fahy said,

> "I am convinced that we must return to the situation in which states exercise the powers with the Federal government acting as coordinator. Continuation of Federal encroachments into states rights can only bring chaos to the field of water resource management.

These may come to be prophetic words—especially so if Federal policymakers are not sensitive to valuable State and local contributions to the formation of water policy. For the benefit of my colleagues, I ask unanimous consent that Mr. Fahy's remarks to the National Conference on Water be printed in the RECORD.

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

REMARKS OF VERN FAHY

Mr. Chairman, Fellow Panelists, Participants, Ladies and Gentlemen:

I am honored that I have been invited to participate with people such as you who have developed positions of leadership in various facets of the nation's natural resource activities.

It is most appropriate that our discussions center around governmental policies and programs for the next decade. I believe that the next five to ten years will be the most critical in the nation's history insofar as water resource development is concerned. The national energy crisis and its attendant problems have triggered an awareness of the need to revise much of our thinking with respect to the vast resources of this country. No longer can we assume that Americans have everything in abundance and that there are no limits to the availability of the resources necessary to maintain our present way of living.

The energy crisis has focused particular attention upon the water resources of this nation, for without water, energy independence is impossible to attain. Because of the limitations of present energy development technology, it appears that the western states will once again be the scene of the opening of a new frontier—a western states energy frontier. The success that we have in developing this frontier hinges to a great extent upon how well and how wisely we handle the limited water resources of the region.

At this point, I should make it clear to you that my remarks are based entirely upon my experience in local and state government. This may help to explain to you why I seem to have difficulty in understanding a good many of the policies and administrative practices of federal boards and agencies. My state is one of the most highly agricultural states in the union and its people are eager to do everything possible to preserve the agricultural productivity of the land and the way of life of its people. Among the coal producing states, we are somewhat unique in that we have large amounts of water and coal side by side.

It is estimated that 40 percent of the nation's lignite reserves lie in western North Dakota in relatively close proximity to the great Missouri River which, in this area, has a long-time average annual flow of 18 million acre-feet. Garrison Dam impounds approximately 24 million acre-feet of water with vast quantities of coal lying adjacent to this reservoir on either side.

Although this seems to create a rather bright picture as to the availability of water, it must be remembered that the remainder of our state including the tributary areas to the Missouri River is extremely deficient in the availability of water for all uses. This means that our state must plan very carefully to assure that its share of the waters of the Missouri River are put to beneficial use in other areas of our great state.

Our Governor, our Legislative Leaders, and our people recognize the need for this state to make a meaningful contribution to the solution of the nation's energy problems, however, they are also keenly aware that our principle role may one day be in contributing to the solution of a serious food and fiber crisis. It is for this reason that the Garrison Diversion Project is supported so strongly in our state. Although we are having some difficulties with this project at the present time, we have every reason to believe that it will one day produce the benefits that have been promised for so long.

North Dakota is a strong supporter of the Missouri River Basin Commission, an agency which was created at the insistence of the ten states through which the Missouri River flows. North Dakota and other member states have been of the opinion that planning on a basin-wide basis will solve many of the problems which confront us as we attempt to meet state objectives. Unfortunately, the Basin Commission concept is not living up to its great potential. This is not the fault of the chairman and his staff, nor of the state and federal members who serve as its policy makers. If, as I believe, there is a weakness in the Missouri River Basin, it stems from the fact that there appears to be no commitment to the Basin concept at higher Washington, D.C. levels. Time and again we have seen programs or policies or actions initiated which will affect the basin states and these have been initiated outside the framework of the River Basin Commission. We find now that states who have joined together in order to more effectively program and coordinate activities which overlap state boundaries are becoming disillusioned by federal programs which are being imposed without reference to the Basin Commission.

Slightly more than a year ago, the Secretary of the Army and the Secretary of the Interior created an Ad Hoc Committee composed of federal officials to develop water marketing policies dealing with the upper Missouri River reservoirs.

At that point, the only concession to the River Basin Commission was in the naming of its chairman as a coordinator of the Ad Hoc Marketing Committee. When some of the state members became aware of this federal committee, they insisted that the states involved be given some role in the making of this policy. Although, the entire matter did not become a Basin Commission assignment, the states were successful in having some input to the decision making. Now after more than a year of deliberations, the argument between the Corps of Engineers and the Bureau of Reclamation concerning which agency should be the lead agency, has been settled in favor of the Bureau of Reclamation. The agreement which designates the Bureau of Reclamation as the lead agency in the sale of industrial water supplies from the mainstem reservoirs, indicates that the states would be allowed first right of approval for such sales. It is ironic that states that have contributed so great a cost to the development of large impoundments to serve river basin needs are now told that the Federal Government has assumed ownership of stored waters.

In recent months, we have learned that the Corps of Engineers has dredged up a provision of the Rivers and Harbors of 1899 which allow it to assume control of additional state waters by a declaration of navigability which, in North Dakota, borders upon the ridiculous with respect to a great majority of our water courses.

The criteria for determining the navigability of a stream appears to be so broad that the Corps could assume control over any water course in a state.

This control would not only affect the construction of roadways, bridges, irrigation structures, boat landings, docks and levees, but it would also affect the state's rights to allow withdrawals from those streams so designated. Also, the Corps could control drainage projects that would discharge waters into a water course or impoundment. In addition to the Corps control, the governmental agreements that exist among many agencies would bring the Environmental Protection Agency, the Fish and Wildlife Service and other federal agencies into the determination of the use of the states' waters. This federal encroachment is entirely unacceptable to the states and steps must be taken to have Congress write a definition of navigability that would pertain

to only those water courses which can be used for commercial navigation purposes. The involvement of the River Basin Commissions in the determination of navigability is essential to the protection of states rights.

The Justice Department has also proposed another method of encroachment upon the rights of states to control their water resources. The move by the Justice Department is included in a bill that has been prepared for introduction that would attempt to identify and quantify the reserved, appropriative, and other right to the use of water by the United States. The Interstate Conference on Water Problems has taken the lead in analyzing this threat to water resource management among the states. This is being discussed by another panel and I will not go into any further detail except to say that the River Basin Commissions were not asked by the Justice Department to provide a state viewpoint on the preparation of this proposed legislation.

It certainly is not proper for me to be so critical without offering some suggestions for improvement in water resource management besides the general statement that "we need less federal intervention".

I believe that the River Basin Commission can and should play a stronger role in the coordination of water resource management programs among the states. I believe that this was the original premise upon which the Basin Commission concept was established and I think that it can be workable if the Federal Government will develop a commitment to that concept.

States that form a unique part of a River Basin or who have problems which are unique to only a few states should join together to develop sophisticated regional management programs. In North Dakota, we are expending up to $2 million to develop a planning and research program which will be a complete indepth management information system utilizing computer technology to measure alternatives, impacts and results of various water and energy related programs upon the people and their communities. The system is designed so that results and changes in impacts of each major water or energy development can be reliably predicted in advance. These predictions will cover such things as impacts upon air and water quality, population, wildlife, agriculture, local government and the overall effects of programs on the state's ability to manage growth. From this, we hope to be able to make intelligent judgments concerning developments in our state and to devise methods to handle the impacts caused by those developments.

I believe that the states of North and South Dakota, Montana and Wyoming could join together in the development of this kind of a management pool in order to manage the tremendous impact of energy development upon the people of the four states.

The Federal Government through the Water Resources Council could be of tremendous help in a regional planning effort such as this by making Title III funds available in amounts adequate to assist in the planning effort. The developments in this four-state region could then be coordinated with the other states in the Missouri River Basin, and ultimately, we would have a total basin management concept.

A planning concept which includes long-range guidelines for energy conservation measures should be developed by an appropriate federal agency. These federal guidelines should recognize that there are regional differences in uses of energy and that a conservation measure for the highly populated areas may not be appropriate for rural regions.

Perhaps the greatest potential for conservation of our water resources will be realized in the development of alternative sources of energy. Adequate federal funding should be made available for this effort which may entail the construction of demonstration projects and grants for energy conservation research.

Many of us who work with federal agencies in the planning of water resource projects become highly frustrated when we are confronted with decisions that are based on the benefit-cost ratio. We can see indirect project benefits that are not easily quantifiable in dollars but these are given little, if any, weight in the final determination of project evaluation. Although some effort is being directed toward adjusting the methods for evaluating a project, much more needs to be done.

Here is an example of an indirect benefit which may be equally as important as direct benefits. North Dakota has proposed the construction of a flood control project which provides major benefits to Canada through alleviation of agricultural flooding along the international border. The disputes among local political subdivisions and landowners on either side of the border have reached such a level of intensity that the State Department and the Canadian External Affairs Department have been called upon to work toward a settlement of the problem which currently is threatening to cause an international incident. The cost-benefit ratio on this project is marginal in spite of the international aspects which cannot be measured in dollars.

A number of our western states, like North Dakota, are semiarid with futures irrevocably linked to an agricultural base—a fact which gives meaning to our deep concern that development of our water resources to meet national goals must be done within the legislative and constitutional frameworks of the states.

We are aware of the need for decreasing our dependence on foreign sources for oil and that our rich coal deposits are vital to this effort. We fully intend to participate to a reasonable degree in helping to meet national energy goals, but this participation will be based on the belief that our agricultural base must be preserved.

In committing certain portions of the waters of North Dakota for energy related uses, we shall always be mindful of the need to protect and conserve this valuable resource so that future generations will inherit a quality of life blessed by the availability of ample amounts of waters for all beneficial uses.

I realize that this presentation appears to be extremely simplistic, however, I am convinced that we must return to the situation in which the states exercise their powers with the Federal Government acting as coordinator. Continuation of federal encroachments into states rights can only bring chaos to the field of water resource management.

MUNICIPAL CLERKS WEEK—SENATE JOINT RESOLUTION 45

Mr. INOUYE. Mr. President, the City Council of the City of Manhattan Beach, Calif., has recently proclaimed its support of Senate Joint Resolution 45, which I have introduced to designate the second week in May as Municipal Clerks Week.

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

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

PROCLAMATION

Whereas, it is recognized that the City Clerk performs the highly valued functions of administering the municipal elections and keeping the records of the City; and

Whereas, it is further recognized that the City Clerk maintains records about the community;

Now, therefore, The City Council of the City of Manhattan Beach, California, does hereby resolve, declare, find, determine and order as follows:

Section 1. That the City Council of the City of Manhattan Beach does hereby support the national movement to recognize the importance of the position of City Clerk designating the second week in May as "Municipal Clerks' Week."

Mr. INOUYE. Mr. President, the 15th Annual Conference of the Louisiana Municipal Clerks Association held in St. Francisville has recently passed resolution in support of Senate Joint Resolution 45, which I have introduced to designate the second week in May as Municipal Clerks Week.

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

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

RESOLUTION

Whereas, the International Institute of Municipal Clerks, and the Louisiana Municipal Clerks' Association, are of the opinion that the Clerk of a Municipality performs a vital role in the proper execution of local government, and

Whereas, the International Institute of Municipal Clerks and the Louisiana Municipal Clerks' Association are professional organizations of Municipal Clerks, and have contributed materially to the betterment of communities throughout our State and the United States, and

Whereas, recognition of these stalwart, dedicated public servants, working at the grass root level for better government, has long been overdue,

Now, therefore, be it resolved, that the Louisiana Municipal Clerks' Association cite the Honorable Daniel K. Inouye, United States Senator from the State of Hawaii, for the introduction of S.J. Resolution No. 45, in the United States Senate, authorizing and requesting the President of the United States to issue annually a Proclamation designating the second week in May, of each year, "Municipal Clerks' Week", and that a copy of this Resolution be sent to him as evidence of our appreciation.

Introduced and adopted this 26th day of April, 1975 at the Fifteenth Annual Conference of the Louisiana Municipal Clerks' Association, held in St. Francisville.

Mr. INOUYE. Mr. President, the mayor of the city of Lakeport, Calif., has recently proclaimed the city's support of Senate Joint Resolution 45, which I have introduced to designate the second week in May as Municipal Clerks Week.

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

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

PROCLAMATION

Whereas, municipal government, in order to best serve the needs of the citizenry, must be operated with efficiency and in an orderly manner; and

Whereas, the efficiency and order with which government carries out its public functions is strongly reliant on procedures and records; and

Whereas, the Municipal Clerks administer the procedures and keep the records; and

Whereas, an organized source of knowledge about a community and its government activities is vital to the smooth governing of that municipality; and

Whereas, the Municipal Clerks provide and maintain such a body of knowledge; and

Whereas, municipal government must be

conscientiously represented in affairs of its community; and

Whereas, the Municipal Clerks provide an important part of this representation; and

Whereas, the strength of local government depends upon the citizens' opinion of it, and such opinion is formed largely by the image set forth by the municipal government employees; and

Whereas, the Municipal Clerk is the municipal official most closely in daily contact with the citizenry, and therefore in a key position to mold sound public opinion.

FARM POLICY

Mr. HUDDLESTON. Mr. President, I have criticized President Ford's veto of the emergency farm bill as being "shortsighted." I felt that his action represented a failure to recognize that inflation had hit the farmer just like everyone else. In my opinion there is no question that assuring the farmer a decent income is, in the long run, in the best interest of the consumer because it will stimulate increased production which will hold prices down.

I believe the American farmer is being victimized by increased production costs. Farmers need economic protection if they are going to respond to the Government's appeal to expand food production.

It is my further opinion that Congress must move ahead to enact permanent omnibus agricultural legislation.

Mr. President, the Lexington Herald is the third largest newspaper in Kentucky with circulation of over 55,000. This newspaper has always been a stanch supporter of agriculture and is considered the voice of central Kentucky. On May 5 an editorial appeared in the Herald calling upon Congress to reconstruct a farm policy for America.

Mr. President, I ask unanimous consent that this editorial entitled "Congress Must Make New Farm Policy" be printed in the RECORD.

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

CONGRESS MUST MAKE NEW FARM POLICY

President Gerald Ford's veto of the emergency farm aid bill was motivated, he says, by concern for both farmers and consumers.

By vetoing the bill, Mr. Ford assures us, he is saving money and helping to keep the cost of food and other agricultural products down. To pay more subsidies would, he added, be a return to already discredited policies. But the sad situation most American farmers now face is proof plenty that the policies (or nonpolicies) of Mr. Ford and Agriculture Secretary Earl Butz are themselves discredited.

The American farm economy is rapidly approaching a crisis. Before 1972, when the Nixon administration finished dismantling the old system of agricultural supports and controls, the farm economy at least kept things running. Farmers and consumers grumbled, but there were no actual shortages and productivity increased regularly.

The Nixon-Butz-Ford approach has changed all of this. Butz seems proud of the free-market status of our agricultural markets, but the abilities of foreign nations to buy our essential goods with no apparent restrictions has caused havoc which is apparent to everyone.

The fact is that the risks in farming, which were formerly shared by the federal government, now rest entirely with the farmers and consumers. Mr. Ford seems incapable of grasping the simple fact that Earl Butz and his troglyditic notions about the marketplace are exposing both farmers and consumers to the whims of not only weather and production but also of foreign nations' needs.

It is now up to Congress to reconstruct a farm policy for America. That policy must recognize that the government, as representative of both farmers and consumers, has an obligation to take some of the risk now being borne by those groups.

CHINESE MARKET EXPORT POTENTIAL

Mr. HUMPHREY. Mr. President, I wish to point out a recent article entitled "China Represents Enormous Market Potential," in the May issue of Grain Sorghum News.

This article points out the sharp increases in agricultural exports to the People's Republic of China since trade was renewed with that country in fiscal year 1973. In fiscal year 1974, our exports to that country rose from $200 million to $852 million. In the current fiscal year of agricultural exports have declined because of the improved Chinese harvest.

Nonetheless, prospects for future trade appear promising although the Chinese are making every effort to increase their own production in order to reduce imports.

The article indicates that in the current year our agricultural exports to Asia will exceed those to all of Europe, and that this is the most dynamic sector of our agricultural trade.

Mr. President, I ask unanimous consent that this informative article be printed in the RECORD.

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

DESPITE RECENT SETBACKS—CHINA REPRESENTS ENORMOUS MARKET POTENTIAL

Despite recent setbacks in U.S. farm trade with the People's Republic of China, that country continues to represent an enormous potential market, according to Richard Goodman, associate administrator of the Foreign Agricultural Service.

Goodman pointed out that during the two fiscal years ended last June 30, agricultural products accounted for about 85 percent of total U.S. exports to the PRC. In the first year of renewed trade with that country (fiscal 1973), these farm shipments amounted to $200 million, mostly cotton, corn and wheat. And in the second year (fiscal 1974), they rose to $852 million with substantial increases in cotton, corn and wheat and $142 worth of soybeans.

In the current fiscal year, U.S. exports to China will be below last year's, mainly because of sharp declines in imports of U.S. wheat and cotton.

Nonetheless, prospects for U.S. trade with the PRC in grains, soybeans and cotton look promising.

Since grain exports began in the fall of 1972, the U.S. has shipped to China a little under 8 million metric tons of wheat and corn valued at nearly $828 million. During this period, grain exports accounted for more than 50 percent of total U.S. exports to the PRC.

Prospects for continuation of this grain trade are uncertain, however, in view of recent cancellations by the PRC of sizable imports of U.S. wheat.

The PRC currently has 3-year agreements with Canada, Australia and Argentina to provide a total of 3.4 to 4.0 million tons of wheat and 350,000 tons of corn annually through 1976.

But Goodman explains that until recently, the U.S. was viewed by the Chinese as a residual supplier. It remains to be seen if this country will remain a residual supply source or not.

Goodman pointed out that there are a number of reasons why the PRC may not continue to increase its total imports:

1. The PRC has made considerable progress in expanding its own grain production.

2. Substantial grain reserves are providing insurance against a poor harvest.

3. Prospects are improved for availability of chemical fertilizers and better water control.

4. Birth control measures are helping hold population growth down.

5. An improved transportation network is facilitating internal movement of grain.

In the current year, ending June 30, U.S. agricultural exports to Asia will exceed those to all of Europe. The most dynamic growth in U.S. agricultural trade is with Asia and has been for several years. The opening of the PRC to American trade has been important to that growth, according to Goodman.

By the same token, agricultural trade has been a major lever in opening the PRC once again to American commerce, travel and other exchanges.

"With China having the largest population in the world—a population that continues to expand and seek better living and improved food security—there is every reason to hope that American farm products might continue to find a growing market there," Goodman concluded.

HAS THE DEPARTMENT OF DEFENSE EXCEEDED CONGRESSIONAL AUTHORITY?

Mr. McINTYRE. Mr. President, the Department of Defense has engaged in the practice of managing certain defense research and development contracts in a manner which may be considered either in violation of the law, or in violation of established reprograming procedures as agreed upon with the Congress. This involves either tacit or explicit authority by the Department for contractors, who are developing major weapon systems, to use their own funds to cover costs incurred during the current fiscal year when amounts obligated by the Government within congressional authorizations and appropriations have been exhausted before that year is over.

This matter was brought to the attention of the Secretary of Defense by letter dated January 6, 1975, and the Comptroller General was requested by letter dated January 7, 1975, to provide an opinion regarding the legality of this practice. Copies of these letters appear on pages 579 and 580 of the RECORD for January 16, 1975, when I addressed Senators initially on this issue.

The Secrtary of Defense and Comptroller General both replied by letters dated February 24, 1975. These replies were not considered satisfactory and I requested the Comptroller General by letter dated Feburay 24, 1975, to review the OSD letter and take certain actions. Copies of these three letters were printed on pages 6480 and 6481 of the RECORD for March 13, 1975, the second time that I spoke to this matter on the floor of the Senate.

The Comptroller General conducted a comprehensive review of this matter and reported his detailed findings by letter dated March 17, 1975, which covered

eight major weapon system programs. I ask unanimous consent that a copy of this letter be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. McINTYRE. Mr. President, this is a highly complex and technical matter with potential implications involving interpretations of law, congressional prerogatives, reprograming procedures, and armed services procurement regulations and policies.

The Assistant Secretary of Defense—Comptroller—in his response of February 24, 1975, stated as follows:

We believe that the actions of the Department of Defense in this area have been legal and proper and do not circumvent the reprograming procedures. However, we do not believe that the practice of contractors using their own funds in situations comparable to those indicated above, should be either widespread or encouraged. In this regard, I am advising the services that such practices should be further curtailed and in the future will not be pursued without prior notification to the Secretary of Defense.

These remarks are both responsible and constructive. I have recommended language to be included in the Armed Services Committee report on the pending fiscal year 1976 military procurement authorization bill which encourages the Department of Defense to act expeditiously in advising the services that such practices should be further curtailed and in the future will not be pursued without prior notification to the Secretary of Defense. I am also recommending that copies of such implementing actions be provided to the Congress. The Comptroller General will be required to maintain cognizance over this matter and report to the committee on any significant developments as they occur.

EXHIBIT 1

WASHINGTON, D.C.,
March 17, 1975.

Hon. THOMAS J. McINTYRE,
Chairman, Subcommittee on Research and Development, Committee on Armed Services, U.S. Senate.

DEAR MR. CHAIRMAN: Your letter of January 7, 1975, asked us to review the legal implications of current practices of the Department of Defense (DOD) in tacitly or explicitly authorizing contractors to spend funds in excess of Government contractual liability, with the expectation on the part of the contractors of reimbursement either from subsequent year appropriations or through claims procedures. You further requested that the matter be considered by our staff and field offices, and that our findings be reported to you. By letter dated January 6, 1975, you also requested a report from DOD on this matter.

In an interim reply dated February 24, 1975, we indicated some of the potential legal consequences in a conceptual context, and said that we would reply further when we had accumulated relevant facts for the programs involved. Your subsequent letter, also dated February 24, asked us to conduct a detailed examination of pertinent contractor and DOD records and to report our findings, comments, and recommendations to you by March 14, 1975. For convenience of reference, pertinent portions of our February 24 letter will be repeated herein as appropriate.

The Assistant Secretary of Defense (Comptroller) has furnished us a copy of his February 24, 1975, report to you, which we have reviewed and considered in the preparation of these comments. The programs identified in the Assistant Secretary's report are as follows:

Estimated contractor commitments in excess of Government liability

[Dollars in millions]

(1) Navy/NATO Patrol Hydrofoil Missile Ship (PHM)	None
(2) Air Force B–1 Advanced Strategic Bomber (B–1)	15.2
(3) Army Utility Tactical Transport Aircraft System (UTTAS)	21.6
(4) Army Advanced Attack Helicopter (AAH)	7.9
(5) Air Force A–10 Aircraft (A–10)	1.6
(6) Air Force Advanced Medium STOL Transport (AMST)	29.8
(7) Air Force Airborne Warning and Control System (AWACS)	11.4
(8) Air Force Advanced Airborne Command Post (AABNCP)	8.0

Pursuant to your request, we asked our Regional Offices to review the status of all major weapon systems in development within their respective areas. Our Regional personnel reviewed contract fund status reports, progress billing records, contract allotment histories, and other pertinent documentation available at the System Program Office (SPO) or Project Office for each system. In addition, for each of the eight programs listed above, we instructed the Regional Offices to interview contractor management and financial personnel. The results of our field investigation are summarized in Attachments 1 through 8 which are presented in the sequence of the programs listed above. In a very few cases, it was not possible to schedule interviews within the limited time available. We will proceed to conduct interviews in these cases as rapidly as possible and will issue a supplemental report in the event our findings differ significantly from the information contained herein.

Funds for the programs in question are authorized and appropriated under the heading "Research, Development, Test, and Evaluation" (RDT&E). The governing legislation for Fiscal Year 1975 is Pub. L. No. 93–365, 88 Stat. 399 (DOD Appropriation Authorization Act) and Pub. L. No. 93–437, 88 Stat. 1212 (DOD Appropriation Act). The RDT&E appropriations are lump-sum appropriations for each of the military departments, available for obligation until June 30, 1976. Amounts authorized (title II, Pub. L. No. 93–365) and appropriated (title V, Pub. L. No. 93–437) are set forth below (in millions):

	Authorization	Appropriation
Army	$1,878.397	$1,799.339
Navy	3,153.006	3,006.914
Air Force	3,389.517	3,274.360

Since the RDT&E appropriation is not a line-item appropriation, the amounts appropriated for each department as given above represent the only legally binding limits on RDT&E obligations except as may be otherwise specified in the appropriation act itself.

Amounts recommended for each of the eight programs, taken from the various committee reports, are set forth in the following table (in millions):

Program	Authorization	Appropriation
(1) PHM	$15.7	$15.733
(2) B–1	454.973	444.973
(3) UTTAS	54.06	52.66
(4) AAH	60.8	60.78
(5) A–10	81.405	81.405
(6) AMST	55.8	55.8
(7) AWACS	219.7	210.0
(8) AABNCP	67.7	62.74

With a few exceptions, the contracts involved are cost-reimbursement contracts of the cost-plus-incentive-fee (CPIF) type. In this type of contract, a target cost and target fee are negotiated initially, along with a fee adjustment formula. The actual fee, determined after performance, depends on the relationship of total allowable costs to the target cost. See Armed Services Procurement Regulation (ASPR) § 3–405.4 (1974). The initial target estimates form the basis for recording obligations against the applicable appropriation for purposes of section 1311 of the Supplemental Appropriation Act of 1955, as amended, 31 U.S.C. § 200 (1970), which provides in part—

"(a) * * * no amount shall be recorded as an obligation of the Government of the United States unless it is supported by documentary evidence of—

"(1) a binding agreement in writing between the parties thereto, including Government agencies, in a manner and form and for a purpose authorized by law, executed before the expiration of the period of availability for obligation of the appropriation or fund concerned for specific goods to be delivered, real property to be purchased or leased, or work or services to be performed; * * *."

We approved this method of recording obligations in 34 Comp. Gen. 418, 420–21 (1955).

The contracts are funded "incrementally," that is, appropriations are requested and provided in fiscal year installments based on the estimated needs for a given year. Current policy and guidelines are found in S. Rep. No. 93–385, 93d Cong., 1st Sess. 112–115 (1973). Incremental funding used in RDT&E is to be distinguished from the "full funding" concept used in military procurement programs, wherein funds are requested and provided at the initial stage of procurement actions on the basis of the entire estimated cost of the procurement, regardless of the anticipated fiscal year timing and rate of obligations. See DOD Directive No. 7200.4 (October 30, 1969).

In several cases (e.g., UTTAS, AAH), DOD has awarded competitive contracts to two or more contractors to simultaneously develop prototypes, with the procuring department to ultimately select a single contractor for the award of the production contract.

The legal implications of a contractor's expending or obligating funds in excess of Government contractual liability for a given fiscal year fall generally under two headings: (1) the contractor's position regarding the recovery of such funds through claims procedures, and (2) implications in terms of Federal statutes prohibiting obligations or expenditures in excess or advance of appropriations.

A contractor's ability to present a valid claim in the event of nonreimbursement for company funds expended will depend on the precise terms of the contract and the degree of compliance or noncompliance therewith by both parties. The crucial contract provision is the Limitation of Funds (LOF) or Limitation of Government Obligations (LOGO) clause. ASPR § 7–402 requires a Limitation of Cost/Funds clause to be inserted in all cost-reimbursement research and development contracts. The precise clause in any given contract depends on whether the contract is funded fully or incrementally and whether or not the contract provides for cost-sharing. The clause used in the UTTAS and AAH contracts is the LOF clause set forth in ASPR § 7–402.2(c) (Attachment 9).

The purpose of the LOF clause is to—

"* * * give the Government unilaterally an effective tool to prevent the overexpenditure of appropriated funds by establishing the estimated cost as the limit of the Government's obligation to make payment, but providing a method whereby the Government may at its election increase the estimated cost and authorize the contractor to con-

tinue performance." *Weinschel Engineering Co.*, 1962 BCA para. 3348 (1962).

In brief, under the LOF clause, the contractor must notify the Contracting Officer in writing when he expects to incur costs within the next 60 days in excess of 75 percent of the total amount then allotted to the contract. If the Contracting Officer does not allot additional funds to the contract, the contractor is under no obligation to continue performance, and the Government is under no obligation to reimburse the contractor for costs incurred in excess of the total allotment. When and to the extent that the amount allotted to the contract is increased, any such excess costs shall be allowable "to the same extent as if such costs had been incurred after such increase in the amount allotted."

Cases involving the LOF clause before the Armed Services Board of Contract Appeals and the Court of Claims appear to support DOD's conclusion that, where the Government has strictly adhered to the terms of the contract, the contractor is not entitled to reimbursement for excess costs. Thus, reimbursement has been denied where the contractor failed to give timely notice of the overrun. *General Electric Co.* v. *United States*, 412 F.2d 1215 (Ct. Cl. 1969); *Acme Precision Products, Inc.*, 61–1 BCA para. 3051 (1961). Also, the notice must be given to the person with authority to act on it, i.e., the Contracting Officer. In *Weinschel Engineering Co., supra*, the Board denied recovery where the contractor had continued to perform using its own funds after funds earmarked for the project had been exhausted, but failed to notify the Contracting Officer until after the overrun had been incurred, although other Government officials had knowledge of the overrun. The Board stated:

"* * * A contractor has no right to usurp the Government's prerogative to control the expenditure of public funds by violating the Limitation of Cost clause and continuing to incur costs after the funds 'earmarked' for the project have been exhausted." *Id.*, at p. 17,236.

There are situations, however, where the contractor may be able to recover despite failure to comply with the LOF clause, for example, if the overrun was reasonably unforeseeable, *General Electric Co.* v. *United States*, 440 F.2d 420 (Ct. Cl. 1971), *Magnavox Company*, 74–1 BCA para. 10495 (1974); or if the Government urged continuation of performance, *Consolidated Electrodynamics Corp.*, 1963 BCA para. 3806 (1963). In *Thiokol Chemical Corp.*, 60–2 BCA para. 2852 (1960), overrun costs were allowed despite noncompliance with the Limitation clause where the Government had accepted and used the items involved (docket motors) and where the Board found that the "Government here would never have permitted appellant to discontinue performance of the contract."

The fact that the Government has funded prior overruns will not alone be sufficient to override the Limitation clause. *United Shoe Machinery Corp.*, 68–2 BCA para. 7328 (1968). But prior funding was relevant in *Clevite Ordnance, Division of Clevite Corp.*, 1962 BCA para. 3330 (1962), and the contractor recovered where he had been assured by the Government that the overrun would be funded when new appropriations became available, the Board finding that the Government's actions constituted "constructive authorization" to proceed.

Our investigation indicated that contractors operating under the LOF clause had given timely notice of projected FY 1975 overruns. It further appears that the military department in each case has instructed the appropriate contractor that costs incurred in excess of the amounts allotted are incurred at the contractor's risk. The military departments have generally indicated to the contractors that sufficient funds would be requested in FY 1976 to provide reimbursement of any contractor-funded overruns, but that there can be no assurance that Congress will appropriate such funds. All contractors said they were aware of the risks involved in proceeding with company funds.

Our review of correspondence and interviews with contractor personnel revealed no instance of overt pressure by the Government to continue performance with company funds.

It should be noted however that all contractors emphasized that a consequence of interrupting performance for 2 or 3 months at the end of a fiscal year would be to increase the total cost of the contract. In one case, a Contracting Officer, in denying additional funds, pointed out that cost management would be "a most important factor" in evaluating contractor performance to determine the award of the production contract. Thus, while that Contracting Officer's statement is not incorrect, it could be construed, in the context in which it was made, as a subtle inducement to the contractor to continue performance with company money.

It is apparent from the foregoing that a contractor's claim will depend on a series of complex factual interrelationships, to be developed through testimony at an adversary proceeding. The outcome of litigation, as DOD points out, is unpredictable. Based on the facts we have been able to develop, however, with the possible exception noted above, available precedent would not appear to support recovery.

An additional possibility for the contractor would be to attempt to develop some form of *quantum meruit* claim (fair value of services rendered). We denied such a claim in B–176498, October 2, 1973, because the claim presented no basis for finding a contract "implied in fact" for the contractor-funded performance, and we pointed out that grounds for recovery did not exist where the contractor appeared to be acting as a "pure volunteer." A further problem in supporting such a claim would be to establish that the Government has benefitted as a result of the contractor-funded performance. Contractor opinions in this respect were extremely varied and do not enable us to form a meaningful conclusion. The question of the existence and nature of such benefit in any given contract would probably be resolved only through litigation.

The LOGO clause (Attachment 10), used in most of the Air Force contracts under consideration, presents more difficulties. The clause, developed by the Air Force and not used to our knowledge by any other department, is designed to impose cost discipline on the contractor and to protect the Air Force against a contractor's being able to stop work on short notice.

Under LOGO, a schedule of planned fiscal year allotments covering the period of performance is agreed upon at the outset of the contract. The allotment for each fiscal year is specifically made subject to the availability of funds. If the contractor believes that his total costs through any fiscal year will exceed the cumulative obligations through that fiscal year, he must notify the Contracting Officer in writing 16 months prior to the beginning of the fiscal year in which he expects to incur such costs. A significant difference between LOF and LOGO is that, under LOGO, unless the Government fails to timely allot an initial increment of a planned fiscal year allotment, or prospectively revises the funding plan downward, the limitation of Government liability "shall not be authority for the Contractor to cease or slow the performance of work" under the contract and "may not be used as the basis for extending schedules or otherwise altering performance" (para. (g)). DOD apparently believes that this clause would protect the Government against having to reimburse the contractor for excess expenditures.

In a report to the Chairman, Preparedness Investigating Subcommittee, Senate Committee on Armed Services, entitled "Contractual Features and Related Matters in the AWACS Aircraft Program," B–163058, June 30, 1971, we cautioned that, if the parties are unsuccessful in accurately forecasting funding requirements, "the provisions of the [LOGO] clause could prove so financially burdensome on the contractor that they could constitute the seed for contract disputes."

To our knowledge, the LOGO clause has never been interpreted or discussed in a reported decision of any court or administrative body. Thus, there is no guidance to support definitive conclusions regarding a contractor's rights thereunder. We believe, however, that there is a substantial likelihood that the clause would not be interpreted as obligating the contractor to perform in any and all events.

There is ample precedent for a court's refusal to enforce a contract provision it deems "unreasonable" under a particular set of circumstances. As one example, under construction contracts, the Government frequently furnished the contractor with boring logs intended to indicate the presence or absence of subsurface water. Through the fault of no one, the logs are occasionally incorrect and the contractor incurs additional expenses in pumping and "dewatering" operations. The Court of Claims has consistently allowed claims for additional compensation in these circumstances, despite an express provision in the contract stating that the Government does not guarantee the accuracy of the boring logs. It has been held in a long line of cases that the exculpatory clause cannot be given its "full literal reach" and does not relieve the Government of liability for changed conditions "as the broad language thereof would seem to indicate." *United Contractors* v. *United States*, 368 F.2d 585, 598 (Ct. Cl. 1966); *Woodcrest Construction Company* v. *United States*, 408 F.2d 406, 410 (ct. Cl. 1969); *Foster Construction C.A. & Williams Brothers Company* v. *United States*, 435 F.2d 873, 888 (Ct. Cl. 1970); *Fattore Company* v. *Metropolitan Sewerage Commission of the County of Milwaukee*, 454 F.2d 537, 542 (7th Cir. 1971). Thus, the mere fact that the contract places a risk on the contractor is not necessarily dispositive.

It is not inconceivable that the notification period (17 months) might be deemed unreasonable in certain cases, for example, where a contractor could establish that its accounting system precluded timely discovery of the overrun. There is also, in our opinion, considerable doubt over the contractor's obligation to continue performance if the Contracting Officer denies additional funds after timely notice. To obligate the contractor to perform in this situation would, in effect, give the character of a fixed-price contract. As with the LOF situation, we discovered no instance of overt pressure to use or obligate company funds in excess of amounts allotted, but if DOD is interpreting LOGO to require performance even after funds have been denied, the concept would arguably be inapplicable since the "obligation" to perform would presumably arise under the contract.

In sum, there are many questions under LOGO still to be resolved, and it is impossible to predict the outcome of a claim in the absence of precedent. At the very least, however, we believe that recovery for excess expenditures where the Government, after timely notice, has refused to allot additional funds to the contract, cannot be categorically foreclosed.

As pointed out earlier, a primary goal of contract funding procedures is to prevent the overobligation of appropriated funds. The statutory restraints in this respect are

Revised Statutes § 3679, as amended, 31 U.S.C. § 665 (1970) (the "Antideficiency Act"), and Revised Statutes § 3732, as amended, 41 U.S.C. § 11 (1970), set forth in part below:

"31 U.S.C. § 665(a):

"No officer or employee of the United States shall make or authorize an expenditure from or create or authorize an obligation under any appropriation or fund in excess of the amount available therein; nor shall any such officer or employee involve the Government in any contract or other obligation, for the payment of money for any purpose, in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law."

"41 U.S.C. § 11(a):

"No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the Departments of the Army, Navy, and Air Force, for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies, which, however, shall not exceed the necessities of the current year."

Under DOD's approach of recording obligations for the instant contracts on a target price basis for purposes of 31 U.S.C. § 200, described herein-above, the obligations so recorded would not exceed amounts made available for the contracts during FY 1975, and thus would not violate the above statutes. However, we do not believe that the recording of obligations is the sole factor relevant in assessing possible violations of 31 U.S.C. § 665 and 41 U.S.C. § 11. Thus, in 42 Comp. Gen. 272, 275 (1962), we stated with regard to the generally accepted purport of these prohibitions:

"These statutes evidence a plain intent on the part of the Congress to prohibit executive officers, unless otherwise authorized by law, from making contracts involving the Government in obligations for expenditures or liabilities beyond those contemplated and authorized for the period of availability of and within the amount of the appropriation under which they are made; to keep all the departments of the Government, in the matter of incurring obligations for expenditures, within the limits and purposes of appropriations annually provided for conducting their lawful functions, and to prohibit any officer or employee of the Government from involving the Government in *any contract or other obligation for the payment of money for any purpose, in advance of appropriations made for such purpose;* * * *." (Emphasis added.)

The question arises, therefore, whether a Contracting Officer may "commit" the Government to reimburse a contractor in advance of appropriations becoming available in the next fiscal year. We have not objected to contracts entered into subject to the availability of appropriations in certain circumstances, as long as the contract made it unequivocally clear that no Government liability could arise until the appropriations became available. 21 Comp. Gen. 864 (1942); 39 Comp. Gen. 776 (1960); B–171798, August 18, 1971. In the present context, if it were clear through judicial precedent that a given course of conduct by the Government would give rise to a valid claim for reimbursement, we might conclude that such conduct constituted involvement of the Government in an obligation (although not in the "§ 200" sense) for the payment of money within the scope of the Antideficiency Act and hence would constitute a violation thereof. As indicated, we would require a clear line of judicial or quasi-judicial precedent to support such a finding. Since such precedent at present does not exist, we cannot conclude that the actions of the military departments with respect to the contracts here under consideration constitute a violation of the Antideficiency Act.

It appears that contractor funding in excess of contract allotments, or at least the potential exposure to such liability, is a problem inherent in the nature of research and development contracting in the framework of an inflationary economy. As long as these contracts are incrementally funded, there may be a point beyond which money to fund overruns is simply not available, so as not to lose the company's competitive position, there is considerable impetus on the contractor to continue performance, even if it means assuming the risk of loss. Since all contractors agreed that interruption of performance would increase total cost, and since the projects involved are of major importance, the outright prohibition of contractor funding may not necessarily be desirable or feasible. Nevertheless, the practice obviously has an impact on congressional prerogatives, and we concur with the Assistant Secretary of Defense that it should not be encouraged.

In reviewing the Attachments to this letter, it must be noted that, where the "contractor funding" figures include noncancellable commitments, this indicates contractor exposure and not actual cash flow or contractor billings to the Government. This exposure is a potential liability that would be realized in the event the contract were terminated at the end of the fiscal year without additional funding. Even in such a case, the liability would be offset, at least in part, by termination costs, and would therefore not necessarily represent out-of-pocket expenditures on the part of the contractor.

Some of the attachments hereto contain business privileged information within the purview of 18 U.S.C. § 1905 and are marked "Competition Sensitive." Such information should be safeguarded to prevent release as public information.

Pursuant to the consent of Mr. Fine of your staff, we are furnishing a copy of this report to the Committee on Armed Services, House of Representatives. We plan to make no further distribution of this report unless you consent or publicly release its contents.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

RAISE SOCIAL SECURITY EARNINGS LIMITATION

Mr. HUDDLESTON. Mr. President, I have asked to be included as a cosponsor of S. 560, introduced by Senator CHURCH to amend title II of the Social Security Act to increase by almost 20 percent the amount of outside earnings permitted each year without deductions from benefits. At the present time an individual may earn only up to $2,520 a year. Above that amount, earnings are reduced $1 for every $2 earned, until the worker reaches age 72. This bill would increase that limit to $3,000.

An earnings limitation of $2,520 causes hardship for those individuals who must work to supplement their benefits. Our retired citizens living on fixed incomes and facing ever increasing price rises are having an increasingly difficult time making ends meet. It is our older Americans who suffer most from the effects of inflation, particularly in the areas of nutrition, health, housing, and transportation. More and more we are seeing that an average social security benefit of $184 per month—or about $2,208 per year—for retired workers is not enough to meet ordinary financial obligations, and that they must turn to some other employment or continue their present employment.

Additionally, the person who is hurt most is the one with the greatest need for more income than his benefits can provide. An individual with a yearly average benefit of $1,500 in social security benefits is going to have to earn a good deal more in order to earn a decent standard of living than one who is receiving benefits of $3,500 per year. However, both may earn only up to $2,520 a year or they suffer a $1 or $2 reduction in benefits.

Furthermore, it is only the individual who continues to work who is penalized. A wealthy person who draws tens of thousands of dollars a year from investments, pensions, or annuities may still draw a social security check. At the same time the retiree who has worked for a salary all his life and who might need to continue working as a matter of economic survival cannot do so without a penalty.

Finally, those who are able to work and want to work in their later years must be respected for their ambition and interest in adding to productivity. Many older workers can contribute the benefits of the skills they have accumulated in a lifetime of work. By working they gain the advantage of much needed extra income and the knowledge that they still have an important role in society and are capable of contributing to the community in which they live. These individuals who are able to work and want to work should not be unduly penalized for doing so.

THE SEIZURE OF THE "MAYAGUEZ"

Mr. HATHAWAY. Mr. President, earlier today I heard that U.S. military aircraft, while inspecting the vessel seized illegally by Cambodia, were fired upon, after which they attacked and sank three Cambodian vessels.

The Cambodians acted wrongly in taking this ship.

The President's reaction of seeking, through diplomatic channels, the restoration of this property, was right.

My question to this body, and to the President is, On whose orders did our war planes visit this site? And on whose orders did they respond to the firing, and sink three of the Cambodian ships?

The lessons of the past 13 years were numerous and difficult ones for Americans. It was not too long ago that similar activities took place in the Gulf of Tonkin, and reaction and overreaction escalated us into war in Vietnam. We must not repeat this error. We should not brook any interference from any nation with regard to our ships on the high seas, but neither should we enter into another armed conflict with any nation until such time as all diplomatic efforts have been made to regain our property.

There are serious questions to be asked the Department of Defense with regard to what appears to be a unilateral decision to enter into armed conflict with Cambodia.

If the President has ordered the Department of Defense to take this action,

pending any reaction to our efforts to regain the ship through diplomatic channels, then he has made an error in judgment, but one that he will be held accountable for by the Congress and the people of the United States.

In the event the Department of Defense sent its scouts abroad without expressed permission from the Commander in Chief, it must be held accountable for its unilateral decisions by the President, the Congress, and the people.

Either way, Mr. President, I anticipate some very fast answers from the White House regarding this serious breach to the peace that, apparently, was so short lived in Indochina.

INDOCHINA WAR STATISTICS—DOLLARS AND DEATHS

Mr. ABOUREZK. Mr. President, the Indochina Resource Center has just compiled a complete set of statistics on various aspects of the war in South Vietnam, Cambodia, and Laos. These include U.S. aid to Indochina and all other external financing, the costs incurred by the United States since the Paris peace agreement, the total U.S. bombing tonnage in Indochina, and most importantly, the total number of casualties.

It is a gruesome compilation. According to their report, a total of 5,732,100 casualties were suffered between January 1961 and January 1973. Of this, almost two million were deaths. The costs of this war in terms of lives and economics are certainly some of the worst ever experienced by man. Let us hope and pray that the Indochinese people can now experience a lifetime of peace and tranquility in spite of their governments and outside influences. They, perhaps more than any other peoples in the world, deserve at least this.

Mr. President, I ask unanimous consent that the text of the report compiled by the Indochina Resource Center be printed in the RECORD.

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

INDOCHINA BALANCE SHEET—DOLLARS: DEATHS

1.—EXTERNAL FINANCING OF THE WAR IN VIETNAM

[In millions of dollars]

	[1] 1966	1967	[2] 1968	1969	1970	1971	1972	1973	1974	Total 1966–74
e. Sino-Soviet expenditures:										
Economic:										
People's Republic of China	75.0	80.0	120.0	90.0	60.0	105.0	90.0	NA	NA	
Soviet Union	150.0	200.0	305.0	385.0	345.0	320.0	210.0	NA	NA	
Total	225.0	280.0	425.0	475.0	405.0	425.0	300.0			
Most recent CIA estimates [3]					735.0	755.0	465.0	[4] 670.0	1,295.0	5,325.0
a. Military:										
People's Republic of China	95.0	145.0	115.0	140.0	100.0	115.0	230.0	NA	NA	
Soviet Union	360.0	505.0	415.0	175.0	90.0	165.0	375.0	NA	NA	
Total	455.0	650.0	530.0	315.0	190.0	280.0	605.0			
Most recent CIA estimates [3]					205.0	315.0	750.0	330.0	400.0	3,950.0
U.S. expenditures:										
Economic (fiscal years):										
Economic [5]	593.5	494.4	398.2	314.1	365.9	387.7	386.8	313.4	[8] 389.9	
Food for Peace [5]	143.0	73.7	138.5	99.4	110.8	188.0	67.8	188.3	[7] 230.1	
Total	736.5	568.1	536.7	413.5	467.7	575.7	454.6	[4] 501.7	620.0	4,883.5
Military (fiscal years):										
Military aid	875.1	1,208.51	1,153.2	1,710.8	1,727.6	1,895.0	2,348.5	2,270.5	1,010.0	14,249.2
U.S. operations [10]	4,924.9	18,891.5	25,346.8	26,089.2	21,372.4	12,805.0	7,001.5	3,029.5	691.0	121,151.8
Total	5,800.0	20,100.0	26,500.0	28,800.0	23,100.0	14,700.0	9,400.0	5,300.0	1,701.0	135,401.0

Note: Totals (in billions of dollars): Sino-Soviet economic aid, 5.325; Sino-Soviet military aid, 3.950; Sino-Soviet aid, 9.275; U.S. economic aid, 4.8835; U.S. military aid, 14.2492; U.S. aid, 19.1327; U.S. military expenditures, 135.401; U.S. expenditures, 140.2845; Foreign economic aid, 10.2085; Foreign military aid, 18.4993; Foreign aid, 28.4077; Foreign military aid, 139.3510; Foreign expenditure, 149.5595.

NOTES

Figures used in this survey represent the *highest* estimates for Sino-Soviet aid to North Vietnam. For example, the March 5, 1975 CIA estimates for Sino-Soviet aid during 1970–1974 have been used. These figures total more than $1 billion more than the previous estimates for those years.

Lowest possible figures were used in calculating U.S. military aid. For instance, until FY 75 some 80 per cent of PL 480 Food for Peace aid was used to generate counterpart funds that in turn were used to purchase U.S. military supplies. Thus, Food for Peace in fact constituted a source of additional military aid for the Saigon government during the period in question. For the purposes of this survey, however, Food for Peace aid was treated as economic aid, reducing total U.S. military aid by nearly $1 billion.

No attempt has been made to calculate undervaluations of U.S. equipment and materiel delivered to the Saigon government. Journalist Tad Szulc has cited (*Rolling Stone*, October 1974) Pentagon undervaluations of 50 to 90 per cent.

The figure $140.2845 billion for total U.S. expenditures on the war should not be taken as representing the full cost of the war. Senator Mansfield recently cited the *Statistical Abstract of the U.S.* figure of $352 billion (*Congressional Record*, March 21, 1975, 7983). Economist Tom Riddell, writing in the October, 1973 *Progressive*, sets total war costs at $676 billion.

SUMMARY

By U.S. government figures:

The U.S. spent and the Saigon government benefited from:

97.1 per cent of all foreign military expenditures in Vietnam

93.8 per cent of all foreign expenditures in Vietnam .

78.3 per cent of all foreign military aid to Vietnam.

67.4 per cent of all foreign aid to Vietnam

48.7 per cent of all foreign economic aid to Vietnam.

U.S. aid to Saigon represented:

92 per cent of Sino-Soviet economic aid to North Vietnam and the Provisional Revolutionary Government

3.6 times Sino-Soviet military aid

2.1 times total Sino-Soviet aid

Altogether, the U.S. spent:

15.1 times total Sino-Soviet expenditures on Vietnam

34.3 times total Sino-Soviet military expenditures on Vietnam.

Furthermore:

96.5 per cent of U.S. expenditures went directly for military purposes

74.5 per cent of U.S. aid went directly for military purposes.

42.6 per cent of Sino-Soviet aid went directly for military purposes.

FOOTNOTES

[1] National Security Study Memorandum No. 1, in Congressional Record, May 10, 1972.

[2] Report of Vice-Admiral de Poix, Director, Defense Intelligence Agency, transmitted to Congressman Les Aspin, May 18, 1974.

[3] Central Intelligence Agency, Defense Intelligence Agency, and Bureau of Intelligence and Research (Department of State), estimates of March 5, 1975.

[4] Report of Congressman Paul N. McCloskey, Congressional Record, March 14, 1974, 6776.

[5] U.S. Agency for International Development, Fiscal Year 1975 Submission to the Congress, "Indochina Postwar Reconstruction Programs," p. 49.

[6] Ibid., annual economic aid totals less Food for Peace totals.

[7] U.S. Department of Agriculture, Commodity Credit Corporation, telephone interview, January 1975.

[8] 1974 economic aid total in 3, less 7.

[9] Congressional Research Service, February 1974 Update of Total War Cost Figures.

[10] 9, less annual military aid figures from 5.

2. U.S. AID TO INDOCHINA (SINCE FISCAL YEAR 1949)

a. The past (1) Under Truman: $1,300[1]; (2) 1953–75, country breakdown

[In millions of dollars]

President and fiscal year	Military	Economic	Food for Peace	Total
VIETNAM[2]				
Eisenhower: 1953–61	526.3	1,466.6	78.3	2,071.2
Kennedy: 1962–63	955.4	658.1	193.5	1,807.0
Johnson: 1964–65				
1966	875.1	593.5	143.0	1,611.6
1967	1,208.5	494.4	73.7	1,776.6
1968	1,153.2	398.2	138.5	1,689.9
Nixon:				
1969	1,710.8	314.1	49.4	2,124.3
1970	1,727.6	365.9	110.8	2,204.3
1971	1,895.0	387.7	188.0	2,470.7
1972	2,398.5	386.8	67.8	2,853.1
1973	2,270.0	313.4	188.3	2,771.7
1974[3]	1,010.0	[4] 389.9	[5] 230.5	1,630.0
Ford: 1975	700.0	[6] 282.0	[7] 54.0	5,036.0
Total	6,430.4	6,050.6	1,565.4	24,046.4
LAOS				
1953–61	98.4	266.0	1.1	365.5
1962–65	142.8	159.2	2.6	304.6
1966	54.3	57.[?]	.4	111.9
1967	56.0	56.1	1.3	113.8
1968	81.7	62.9	1.5	146.1
1969	79.8	52.0	.2	132.0
1970	77.9	51.4	1.9	131.7
1971	163.9	48.9	.6	213.4
1972	220.7	48.9	3.3	272.9
1973	334.4	48.0	2.3	384.7
1974	[8] 108.0	[8] 40.6	[8] 3.6	152.2
1975	[10] 30.0	56.0	NA	86.0
Total	1,447.9	948.1	18.8	2,414.8
CAMBODIA				
1953–61	[2] 67.6	217.6	2.3	287.5
1962–65	23.6	7.5	4.6	35.7
1966–69				
1970	8.3			8.3
1971	184.0	70.0	6.8	260.8
1972	187.2	37.1	20.5	249.8
1973	140.8	67.5	29.1	237.4
1974	[11] 419.1	[12] 95.0	168.3	682.4
1975	[10] 275.0	110.0	[13] 81.0	466.0
Total	1,305.6	609.7	312.6	2,222.9

TOTAL INDOCHINA

Pre-1953	1,300.0	1971	2,944.9
Fiscal year 1953–61	2,724.2	1972	3,370.8
1962–65	2,147.3	1973	3,393.8
1966	1,723.5	1974	2,464.6
1967	1,890.4	1975	1,588.0
1968	1,836.0	Total	29,984.1
1969	2,256.3		
1970	2,344.3		

B. THE FUTURE—PENDING ADMINISTRATION REQUESTS, APRIL 1975

[In millions of dollars]

Fiscal year	Military	Economic	Food for Peace
VIETNAM			
1975 supplemental	722	507	
1976	1,293	A	
197T	355		
1977	1,000		
CAMBODIA			
1975 supplemental	222		73–100
1976	425	B	
LAOS			
1976		C	
Southeast Asia Incremental	124		
Total A+B+C=		959	
Total military	4,141		
Total requests[1]			

[1] Total requested $5,680,000,000.

U.S. AID TO INDOCHINA COMPARED WITH U.S. AID TO 131 OTHER NATIONS AND TERRITORIES, 1945–1974

Since 1945 the U.S. has given $128.534 billion in aid grants;

Of this sum: $26.491 billion has gone to South Vietnam, Laos, and Cambodia since the French left;

$28.033 billion has gone to Indochina counting aid sent to the French before 1954.

Of the aid grants since the French left:

$22.505 billion went to South Vietnam

$2.282 billion went to Laos

$1.204 billion went to Cambodia

The U.S. has therefore sent:

20.6% of all post World War II aid grants to Indochina;

21.8% of all post-World War II aid grant to Indochina counting aid to the French; and

17.5% of all post-World War II aid grants to South Vietnam.

The government of South Vietnam has therefore received more U.S. aid funds—not loans—than any other government or administration in the world:

17.5% of all U.S. aid grants since World War II have gone to a country with 0.8% of the population of U.S. aid recipients.

Sources

Foreign Assistance and Related Programs Appropriation Bill, 1975, Report, March 10, 1975.

1974 Information Please Almanac, Atlas, and Yearbook, Dan Golenpaul and Associates, USA, 1973.

Note

In computing the total U.S. foreign assistance since World War II, aid to the Soviet Union has been admitted, as well as any loan aid. Loans to the governments of South Vietnam, Laos, and Cambodia amount to less than $200 million of the total and have not been deducted.

U.S. AID TO INDOCHINA—SUMMARY

In the period since South Vietnam, Laos and Cambodia ceased to be outright French colonies, the United States has sent $28.684 billion in aid.

Including aid sent under the Truman administration during the first Indochina war, the United States has sent a total of $29.984 billion in aid.

Of the aid sent since 1953, 66.9 per cent has been direct military aid, 83.3 per cent of total Indochina aid has gone to Saigon, and 57.4 per cent of total Indochina aid has been direct military aid to Saigon.

For the rest of FY 1975, FY 1976, FY 197T ("Transition") and FY 1977 the Ford administration is requesting $5.312 billion in aid which is equivalent to 17.7 per cent of all U.S. aid to Indochina.

FOOTNOTES

[1] Foreign Assistance and Related Programs Appropriations Bill, 1975, Report (No. 94), March 11, 1975, p. 5.

[2] U.S. Agency for International Development, Fiscal Year 1975 Submission to the Congress, "Indochina Postwar Reconstruction Programs," pp. 49, 57, 76.

[3] Congressman Paul N. McCloskey, Report, Congressional Record, March 14, 1975, 6776

[4] 3, less 5.

[5] U.S. Department of Agriculture, Commodity Credit Corporation, telephone interview, January, 1975.

[6] U.S. Agency for International Development, Economic Assistance, Vietnam desk, telephone interview, April 1975.

[7] Congressional Record, Fiscal Year 1975 Concessional Food Aid Allocations, March 13, 1975, 6584.

[8] House Report 93–1255, August 1974.

[9] Foreign Assistance and Related Programs Appropriations, Fiscal Year 1975, Senate Hearings, p. 1450.

[10] PL 93–559, Foreign Assistance Appropriations Act, Fiscal Year 1975, authorized figure.

[11] Foreign Assistance and Related Agencies Appropriations for 1975 Hearings, House of Representatives, Part 1, p. 1068.

[12] Foreign Assistance and Related Programs Appropriations, Fiscal Year 1975, Senate Hearings, p. 1449.

[13] Congressional Record, March 13, 1975, 6584; and additional $50 million is available under "Cambodian Reserve."

3. WAR COSTS FROM JAN. 27, 1973 (PARIS AGREEMENT) TO JUNE 1975

[In millions of dollars]

	Fiscal year—			
	1973 (February–June)	1974	1975	Total
Vietnam:				
Military	675.0	1,010.0	700.0	2,385.0
Economic	176.0	389.9	282.0	847.9
Public Law 480 [1]	80.7	230.1	54.0	364.8
Total	931.7	1,630.0	1,036.0	3,597.7
Cambodia:				
Military	64.5	419.1	275.0	758.6
Economic	27.8	95.0	110.0	232.8
Public Law 480	6.5	168.3	81.0	255.8
Total	98.8	682.4	466.0	1,247.2
Laos:				
Military	79.9	108.0	30.0	217.9
Economic	19.4	40.6	56.0	116.0
Public Law 480	1.4	3.6	7	5.0
Total	100.7	152.2	86.0	338.9
SEA incremental [2]	416.0	691.0	281.0	1,388.0
Grand total	1,547.2	3,155.6	1,869.0	6,571.8

[1] Public Law 480. Food-for-peace.
[2] Southeast Asia incremental DOD costs related to the phasedown of the Indochina conflict (mainly bases in Thailand)

Note: $6,571,800,000,000 equals 23 percent of all U.S. aid since 1953.

SOURCES

Fiscal year 1973. Five-sixths of fiscal year 1973 totals, contained in information furnished by the Committee on Government Operations Subcommittee on Foreign Operations and Government Information to Congresswoman Bella S. Abzug, Feb. 20, 1974.

Vietnam military. Congressman Paul N. McCloskey, Report, Congressional Record, Mar. 14, 1975, 6776.

Vietnam fiscal year 1974 economic. Ibid., less Public Law 480.

Fiscal year 1974 Public Law 480. U.S. Department of Agriculture, Commodity Credit Corporation, telephone interview, January 1975.

Fiscal year 1975 economic. Agency for International Development, Economic Assistance, Vietnam desk, telephone interview, April 1975.

Vietnam fiscal year 1975 Public Law 480. "Fiscal Year 1975 Concessional Food Allocations," Congressional Record, Mar. 13, 1975, 6584.

Laos fiscal year 1974 military. House Report 93–1255, Aug. 1, 1974.

Laos fiscal year 1974 economic. Foreign assistance and related programs appropriations, fiscal year 1975, Senate hearings, p. 1450.

Fiscal year 1975 Laos and Cambodia. Public Law 93–559, Foreign Assistance Appropriations Act, fiscal year 1975, authorized figure.

Fiscal year 1974 Cambodia military. Foreign assistance and related programs appropriations, fiscal year 1975, House hearings pt. I, p. 1068.

Fiscal year 1974 Cambodia economic. Ibid., 1449.

Fiscal year 1975 Cambodia Public Law 480. Congressional Record, Mar. 13, 1975, 6584.

Fiscal year 1973 S.E.A. Incremental. Prorated, from "Budget of the Government of the United States."

Fiscal year 1974–75 SEA incremental. U.S. Department of Defense, Comptroller's Office, telephone interview, February 1975.

4. U.S. EXPENDITURE BY COUNTRY

[In millions of dollars]

Country	U.S. aid	U.S. military operations	Total
Vietnam	24,046.4	112,833.6	136,880.0
Cambodia	2,222.9	1,508.1	3,737.0
Laos	2,414.8	6,810.1	9,224.9
Total since 1953			149,835.9

SOURCES

U.S. aid. From "U.S. ai to Indochina" table.

U.S. military operations. Taking Congressional Research Service total war cost figures (from DOD) for annual incremental costs, less 1965 $100,000,000 incremental, less military aid allotments for Indochina, less Laos (3) plus Cambodia (3).

Military operations, Cambodia and Laos. Senator Stuart Symington, "Cambodia Bombing," Congressional Record, July 13, 1973, 24519; "Air War in Indochina," (revised edition, Beacon Press: Boston, 1972) for cost of bombing of Laos and Cambodia, which constitute the greatest part of U.S. military operations in the 2 countries.

5. COSTS OF THE AIR WAR IN INDOCHINA

[In millions of dollars]

Fiscal year	Fighter-bomber sorties	Cost of fighter-bomber sorties	B–52 sorties	Cost of B–52 sorties	Value of aircraft lost	Total cost
1966	184,000	1,550	3,700	120	840	2,510
1967	328,000	2,690	7,400	270	1,100	4,060
1968	366,000	3,260	15,300	580	1,460	5,300
1969	375,000	3,640	20,500	850	950	5,440
1970	268,000	2,810	19,800	840	1,020	4,670
1971	153,000	1,780	12,400	550	600	2,930
1972	117,000	1,444	16,700	750	1,000	3,190
1973 [1]	96,000	1,260	20,500	990	590	2,840
1973 [2]	28,000	360	7,800	380	30	770
Total	1,915,000	18,790	124,100	5,330	7,590	31,710

[1] One-half 1973.
[2] Cambodia, Jan. 1–Aug. 11, 1973.

Sources: "The Air War in Indochina," p. 101.

"FY 72 Fighter-bomber sorties, and B–52 sorties." Senator Stuart Symington, "Cambodian Bombing," Cong. Record, July 18, 1973, 24520 "FY 72–73 sortie costs." Extrapolation from "The Air War in Indochina." "Cambodia FY 73 sorties." UPI dispatch, Aug. 14, 1973.

6. If Americans had suffered from the war on the same scale as the people of Indochina . . .

1. Vietnam:

Vietnam is about the size of New Mexico. South Vietnam is about the size of Florida. The population of South Vietnam is roughly 20 million. 1,710,000 Vietnamese killed since 1960=17,955,000 Americans or everyone living in New York State.

3,098,000 Vietnamese wounded since 1960=32,550,000 Americans, or the entire populations of South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Tennessee, Arkansas, and Kentucky.

2. In the two years since the signing of the Paris Agreement on Ending the War and Restoring Peace in Vietnam (January 27, 1973 to January 27, 1975).

150,000 Vietnamese soldiers have been killed=1,575,000 Americans, or the population of *Detroit*.

290,000 Vietnamese soldiers have been wounded=3,045,000 Americans, or almost everyone in *Chicago*.

15,000 Vietnamese civilians were killed in 1973 alone=157,000 Americans, or most of Pres. Ford's home town, Grand Rapids, Michigan.

70,000 Vietnamese civilians were wounded in 1973 alone=735,000 Americans, the population of Cleveland.

1,413,000 Vietnamese became refugees in that two-year period=13,850,000 Americans, equivalent to forcing all the people in *Texas, Oklahoma,* and *Washington, D.C. to leave their homes.*

3. Cambodia:

Cambodia is about the size of Missouri. The population is over 7 million. 600,000 Khmers have been killed or wounded =18,254,000 Americans, or the entire population of Maine, New Hampshire, Vermont, Connecticut, Rhode Island, Massachusetts, and New Jersey. 3,390,000 Khmers have become refugees=103,092,000 Americans, or almost everyone in the United States living west of the Mississippi and north of Ohio.

4. Laos:

Laos is the size of North Carolina and Virginia combined. The population is 3 million (no U.S. government figures for killed and wounded) 700,000 refugees=49,693,000 Americans, or all the people in the three most populous states, California, New York, and Illinois.

Sources:

Vietnam. Cumulative statistics from Department of Defense:

States. 1974 Information Please Almanac.

Refugees. Senate subcommittee on refugees, Study Mission Report for the Subcommittee to Investigate Problems Connected with Refugees and Escapees, "Human Problems in South Viet Nam and Cambodia: Two Years after the Cease-Fire," January 27, 1975.

Cambodia. Sydney Schanberg, *New York Times,* September 8, 1974.

Laos. Senate subcommittee on refugees, "War-Related Civilian Problems in Indochina," Part II, 21–22, April 1971.

7. TOTAL CASUALTIES

January 1961–Jan. 27, 1973

	Killed	Wounded	Total
Americans	56,226	153,654	209,880
South Vietnamese:			
Military	1,135,557	1,911,043	3,046,600
Civilian	415,000	935,000	1,350,000
Subtotal	1,550,557	2,846,043	4,396,600
Indochinese: (Cambodia, Laos, North Vietnam)	200,000	300,000	500,000
Total	1,806,783	3,299,697	5,106,480
Since the Ceasefire: Jan. 27, 1973–Jan. 27, 1975:			
Americans			
South Vietnamese:			
Military	150,140	290,480	440,620
Civilian	15,000	70,000	85,000
Subtotal	165,140	360,480	525,620
Cambodians	(1)	(1)	(1)
Grand total	1,971,923	2,660,177	5,732,100

[1] Over 100,000 killed and wounded.

U.S. DEATHS, HOSTILE AND NON-HOSTILE CAUSES AND WOUNDED

Year	Deaths in hostile action	Deaths in non-hostile action	Wounded	Total
1961	11	2	2	15
1962	31	21	41	93
1963	78	36	218	332
1964	147	48	522	717
1965	1,369	358	3,308	5,035
1966	5,008	1,045	16,526	22,579
1967	9,378	1,680	32,371	43,429
1968	14,592	1,919	46,799	63,310
1969	9,414	2,113	32,940	44,467
1970	4,221	1,844	15,511	21,567
1971	1,380	968	4,817	7,165
1972	300	251	587	1,138
1973 [1]	[2] 12		12	24
Total	45,941	10,285	153,654	209,880

[1] January 1–27.
[2] Includes both killed in action and status changes.

Source. Pentagon Information Office.

VIETNAMESE CASUALTIES BY YEAR

	Johnson years—1964–68			Nixon years—1969–73		
	ARVN killed	PRG/DRV killed	Civilians killed	ARVN killed	PRG/DRV killed	Civilians killed
1964	7,457	16,785				
1965	11,243	35,436	25,000			
1966	11,953	55,524	50,000			
1967	12,176	88,104	60,000			
1968	27,915	181,149	100,000			
1969				21,833	156,954	60,000
1970				23,346	103,638	30,000
1971				22,069	98,094	25,000
1972				39,587	131,949	65,000
1973 [1]				1,726	5,625	
1973 [2]				13,778	45,057	15,000
Total	70,744	376,998	235,000	122,339	541,317	195,000
Total, Johnson years		682,742				
Total, Nixon years					1,541,398	
Total, Johnson/Nixon years					1,541,398	

Year	ARVN killed	Wounded	PRG/DRV killed	Wounded	Civilians killed	Wounded	Refugees	Total war victims
1960	2,223	2,788	5,669	8,503				19,183
1961	4,004	5,449	12,133	18,199				39,785
1962	4,575	7,195	25,148	37,737				74,467
1963	5,665	11,488	23,575	35,362				76,090
1964	7,467	17,017	16,785	25,177				66,446
1965	11,243	23,118	35,436	53,154	25,000	75,000	772,000	994,951
1966	11,953	20,975	55,524	83,286	50,000	100,000	906,000	1,227,738
1967	12,176	29,448	88,104	132,156	60,000	115,000	436,000	872,884
1968	27,915	70,696	181,149	271,723	100,000	200,000	2,522,000	3,373,483
1969	21,833	65,276	156,954	235,431	60,000	140,000	590,000	1,269,494
1970	23,346	71,582	103,638	155,457	30,000	95,000	620,000	1,099,023
1971	22,069	59,823	98,094	147,141	25,000	75,000	404,000	831,127
1972	39,587	109,960	131,949	197,923	65,000	135,000	2,020,000	2,699,419
1973 [1]	1,726	6,542	5,625	8,437			2,000,000	22,330
Subtotal	195,764	501,357	939,793	1,409,686	415,000	935,000	10,270,000	14,666,600
Since cease-fire:								
1973 [2]	13,778	51,364	45,057	67,585	15,000	70,000	818,700	1,081,484
1974	11,499	51,822	79,806	119,709	NA	NA	594,300	857,136
Subtotal	25,277	103,186	124,863	187,294	15,000	70,000	1,413,000	1,938,620
Total	221,041	604,543	1,064,656	1,596,980	430,000	1,005,000	11,683,000	16,605,220

[1] Jan. 1–28.
[2] Jan. 28–Dec. 31.

Sources:
ARVN—Army of the Republic of Vietnam; PRG—Provisional Revolutionary Government; DRV—Democratic Republic of Vietnam.
Casualties ARVN and PRG/DRV 1960–72. Department of Defense.
PRG/DRV wounded. DOD projects 1.5 wounded per death.
Jan. 1–28, 1973. Government of Vietnam.
Jan. 28–D3c. 31, 1973. "Relief and Rehabilitation of War Victims in Indochina: 1 Year After the Ceasefire," Study Mission Report, Subcommittee to Investigate Problems Connected with Refugees and Escapees, Jan. 27, 1974, p. 9.
1974. Humanitarian Problems in South Vietnam and Cambodia: 2 Years After the Ceasefire, Study Mission Report, Subcommittee to Investigate Problems Connected With Refugees and Escapees, Jan. 27, 1975, p. 8. 1974 figures computed by subtracting 1973 figures from total figures.
Civilian casualties. Ibid., p. 7. Wounded computed by subtracting Subcommittee death estimated from subcommittee casualty estimates including deaths.
Refugees. Ibid., p. 4.
January 1–28, 1973 refugees. Estimated nonregistered refugees, including some 1,000,000 in Saigon ineligible since 1964 to register.
PRG/DRV killed since ceasefire. Saigon Government estimate was 156,222, in "Report, Vietnam Factfinding Trip, Feb. 24 to Mar. 3, 1975—The North Vietnam-South Vietnam Confrontation," by Congressman McCloskey, Congressional Record, Mar. 14, 1975 6776.

Casualties in North Vietnam:

Civilian casualties

1965	25,000
1966	50,000
1967	50,000
1972	50,000
Total	185,000

There are no accurate figures available. These estimates are based on former Defense Secretary McNamara's estimate in May 1967 that the three years of bombing was killing or seriously injuring 1,000 non-combatants per week (*Pentagon Papers*, Gravel ed., Vol. iv, p. 172). The National Security Studies Memorandum No. 1, commissioned by Henry Kissinger in 1969, estimated 57,000 persons killed in the bombing of North Vietnam 1965–68. The figures for 1972 bombing are also not available. North Vietnam reported (AP in *New York Times*, January 5, 1973) that 1,318 residents of Hanoi were killed and 1,261 wounded in ten days of bombing in December 1972.

Cambodian war casualties:

Cambodian refugees. There are no reliable figures on the number of refugees. However, in a GAO report reprinted in the March 20, 1975 *Cong. Record*, 7891, it was stated the "roughly three million of the five million [under control of Lon Nol's government] have become refugees." The Study Mission report for the Subcommittee to Investigate Problems Connected with Refugees and Escapees, "Humanitarian Problems in South Vietnam and Cambodia: Two Years After the Cease-Fire," January 27, 1975, reported that as of December 1974, there were 3,389,050 refugees in Cambodia. (p. 31). In Sydney Schanberg's article of September 8, 1974 in the *New York Times*, it is also stated, "The refugee rolls have soared by 200,000 in that time to an estimated total of 3 million people . . . Nearly half the people of Cambodia are now refugees."

Cambodian casualties. There are no reliable figures on killed and wounded in Cambodia over the past five years. The State Department, Cambodia desk, estimates about 50,000 government forces have been killed or wounded between 1972 and the first half of 1974, with about 35,000 "enemy" killed during the same period. State Department estimates for January and February 1975 are around 40,000 killed and wounded on both sides. These figures are obviously underestimated. Sydney Schanberg, in his September 8, 1974 New York Times article stated, "By the lowest possible estimates more than 300 Cambodians are killed or wounded every day. So far, at least 600,000 Cambodians have become casualty statistics, nearly one-tenth of the country's population of 7 million." In April 1975 Schanberg revised his estimated upwards to 1 million casualties. In the Senate Subcommittee on Refugees January 1975 report the figure for civilian casualties since the war began is "well over 450,000." (p. 35).

Laos war casualties:

There are no reliable estimates on the number of Laotians killed or wounded during the war, but the numbers are in the hundreds of thousands. In a Washington Post article of March 4, 1970, it was reported that 100,000 Meo tribesmen have died in the last nine years of war in Laos. Civilian casualties are impossible to determine. In "Refugee and Civilian War Casualty Problems in Laos and Cambodia," a report of the Refugee Committee, May 7, 1970, civilian casualties are given: 5,500 for 1967, 2,658 for 1968, and 3,674 for 1969 (p. 44). These figures are underestimates.

8. U.S. BOMBING TONNAGE IN INDOCHINA

	Tons	Sorties
1964–73:		
South Vietnam	3,223,553	946,142
North Vietnam	881,302	362,542
Laos	2,083,100	541,344
North Laos	320,722	
South Laos	1,762,378	
Cambodia [1]	96,598	3,316
Cambodia total	539,129	49,640
Indochina total	6,727,084	1,899,668
Indochina:		
1964	3,440	
1965	174,121	
1966	449,856	
1967	842,557	
1968	1,272,547	
1969	1,218,629	
1970	800,418	
1971	616,593	
1972	957,162	
1973	391,761	
1964–68	2,742,521	
1969–73	3,984,563	
Total	6,727,084	

[1] March 1969–March 1970.

Sources: 1965–72: Senator Stuart Symington, Congressional Record, July 18, 1973, 24519–24520. Tonnage, June 1964–December 1974, Jan 1–Aug. 15, 1973. Pentagon statistics supplied by Congressman Les Aspin.

BOMBING TONNAGE

SOUTH VIETNAM

	June 1964–December 1964	1965	1966	1967	1968	1969	1970	1971	1972	Jan. 1–27, 1973	Total
F/B sorties	?	65,921	123,645	165,103	200,258	150,321	74,212	16,123	76,664	6,695	878,942
B–52 sorties	0	1,538	4,290	6,375	16,505	11,525	4,069	2,416	19,430	1,650	67,798
Total sorties	?	67,459	127,935	171,478	216,763	161,846	78,281	18,539	96,094	7,747	946,142
F/B tons	3,250	86,620	153,102	293,275	334,967	308,912	141,195	52,163	187,708	13,004	1,574,196
B–52 tons	(1)	31,540	84,230	173,970	472,308	323,492	110,928	61,625	353,354	27,910	1,639,357
Total tons	3,250	118,160	247,332	467,245	807,275	632,404	252,123	113,788	541,062	40,914	3,223,553

[1] Started June 1965.

NORTH VIETNAM

	August 1964	February–December 1965	1966	1967	1968	1969	1970	1971	1972	Jan. 1–27, 1973	Total
F/B sorties	?	25,408	81,137	105,576	92,224	285	1,003	1,705	46,186	1,663	355,187
B–52 sorties	0	0	280	1,420	682	0	0	0	4,440	533	7,355
Total sorties	?	25,408	81,417	106,996	92,906	285	1,003	1,705	50,626	2,196	362,542
F/B tons	154	40,554	123,194	205,785	208,068	659	832	1,842	120,981	4,251	706,320
B–52 tons	0	0	5,710	41,625	18,971	0	0	0	97,502	11,096	174,904
Total tons	154	40,554	128,904	247,410	227,039	659	832	1,842	218,561	15,347	881,302

CAMBODIA

	March 1969–December 1970	January–March 1970	April–December 1970	1971	1972	January–Aug. 15, 1973	Total
F/B sorties	20	0	13,562	15,154	6,702	?	35,438
B–52 sorties	2,406	890	1,626	1,336	1,868	?	8,126
Total sorties	2,426	890	15,190	16,490	8,570	?	42,896
F/B tons	31	0	19,421	29,947	16,513	89,366	155,278
B–52 tons	70,500	26,067	48,719	33,567	36,899	168,099	383,851
Total tons	70,531	26,067	68,140	63,514	53,412	257,465	539,129

LAOS

	June–December 1964	1965	1966	1967	1968	1969	1970	1971	1972	January–April 1973	Total
Laos F/B sorties	?	9,923	47,690	44,402	75,247	142,502	97,480	82,314	31,260	10,920	541,738
Laos B–52 sorties	?	24	647	7,718	3,377	5,567	8,518	8,876	2,644	1,835	39,206
Total Laos sorties	?	9,947	47,737	52,120	78,624	148,069	66,998	91,190	33,904	12,755	541,344
North Laos F/B tons	36	8,643	8,186	10,903	31,505	81,670	55,363	38,992	22,057	14,993	272,348
South Laos F/B tons	0	6,295	52,366	72,008	113,529	274,881	179,643	177,995	57,665	19,142	953,524
Total Laos F/B tons	36	14,938	60,552	82,911	145,034	356,551	235,006	216,987	79,722	34,135	1,225,872
North Laos B–52 tons	0	0	0	0	0	(1)	4,217	6,513	25,097	22,547	58,374
South Laos B–52 tons	0	469	13,068	44,991	93,199	158,484	214,033	223,949	39,308	21,353	808,854
Total Laos B–52 tons	0	469	13,068	44,991	93,199	158,484	218,250	230,462	64,405	43,900	867,228
North Laos tons	36	8,643	8,186	10,903	31,505	81,670	59,580	35,505	47,154	37,540	320,722
South Laos tons	0	6,764	65,434	116,999	206,728	433,365	393,676	401,944	96,973	40,495	1,762,378
Total Laos tons	36	15,407	73,620	127,902	238,233	515,035	453,256	437,449	144,127	78,035	2,083,100

[1] Starts February 1970.

THE JACKSON 5

Mr. TUNNEY. Mr. President, I had the opportunity last weekend to attend a concert performed by the singing group, the Jackson 5, at Shady Grove in Maryland. I was accompanied by my two sons, Teddy and Mark. In the Tunney household, we think the Jackson 5 are a great musical team. Not only are they superb musicians but their vocal artistry is of the highest caliber. I think that my sons own every long-playing record that they have made. I was pleased to find that in person the Jackson 5 are as good as they sound on records. Not only can they sing and play music, but they also are outstanding dancers and have a totally agreeable stage presence. On the present concert tour, the five brothers are aided by three sisters and a younger brother. The entire younger generation of the Jacksons appear equally talented. They have to be one of the most extraordinarily gifted musical families in American history. I want to use this moment of my colleagues' time to publicly commend Mr. and Mrs. Joseph Jackson, the parents of this tremendously appealing family, for having given to them the love, the training, and the time to make them what they are. Despite Mr. and Mrs. Jackson's justified pride in their children's achievements, they have maintained a rare quality of humility which has been obviously passed on to the younger generation of Jacksons. All in all, my sons and I thoroughly enjoyed ourselves as did the 2,800 other persons in the audience.

NATIONAL NURSING HOME WEEK

Mr. BROCK. Mr. President, I would like to take this opportunity to join with President Ford in saluting the American

Health Care Association for the efforts of its members in providing quality care to our Nation's infirm elderly and chronically ill. The association represents some 8,000 health care facilities with approximately 600,000 patient beds. This week they are observing National Nursing Home Week, May 11–18, 1975, and have cordially invited all to visit their nearby nursing homes. As the President so aptly noted:

Such civic involvement is a useful way of bringing the community into the lives of nursing home residents and thus making their days more interesting and enjoyable.

Therefore, I urge each of my colleagues to accept this invitation.

As a member of the Senate Special Committee on Aging Subcommittee on Long-Term Care, I and my fellow members have been examining the inadequate public policy toward nursing homes and the deficiencies that exist in a number of these facilities. The Subcommittee report, "Nursing Home Care in the United States: Failure in Public Policy," documents our findings. However, at this time, I think we should give some recognition to the great number of unheralded nursing homes and dedicated health professionals, supportive staff, and volunteers who provide quality health services to the elderly.

At this time I would like to submit for the record a recent article from a fine Tennessee newspaper, the Jackson Sun, by Ms. Bettye Anderson on a good nursing home and the attitudes of the residents toward it.

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

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

[From the Jackson (Tenn.) Sun, Apr. 27, 1975]

RESIDENTS REFLECT ON LIFE IN HOMES

(By Bettye Anderson)

"Time gets long, but we laugh and talk with one another. You wouldn't want a better home," said Harriett Hennings, a resident of Mission Convalescent Home for the last five years.

The 72-year-old Mrs. Hennings, one of about 30 residents of the Glass Street home, said the modern, brick residence is "really a nice place to stay and these are good people to stay with."

Sitting in the doorway of her neatly decorated room, Mrs. Hennings pulled her chair closer and folded her hands in her lap as she reminisced about her home near Denmark.

"We never stray far from where we're born," she smiled, recalling the house where she spent her entire life before entering the convalescent home.

Generally, most nursing home residents interviewed by The Sun are satisfied with their present residence although they long for the days when they lived in their own homes and were among family and friends.

"All my real people are dead," said Mrs. Hennings. "But, I've got lots of friends and people here to talk with."

Mrs. Hennings, like many residents at the home, enjoys being active even if activity means walking from room to room or outside to a lawn chair.

"I love to stir," the slightly-built woman said. "When it's warm, I sit outside. Sometimes I get out there and pick up paper in the yard.

"If you sit too long, you get stiff," she noted.

However, some residents are not ambulatory and can't visit with patients in neighboring rooms.

For example, 45-year-old Eugenia Jones has crippling rheumatoid arthritis and until about three weeks ago could not even use her wheelchair.

"But the Lord was with me and brought me through it," said the 10-year nursing home patient.

"I've been sick the better half of my life," she explained. "The best you can adjust, the better off you are. You have to accept things you can't change. If you rely on the Lord, he will help you accept it."

However, Miss Jones said she enjoyed reading the Bible, other books and the newspaper and watching the daytime television shows.

After an 8:30 breakfast Miss Jones said she often writes letters to family and friends. At 10, she gets her bath and dresses, with the help of a nurse. Lunch is served between 12:30 and 1 and then the television stories "are a lot of company," she said.

Religion plays a large part in the lives of the elderly and disabled in area nursing homes. Many attend church services on Wednesday nights and Sundays. For those who are unable to attend services are piped in over the public address system at the Mission Convalescent Home.

Residents also participate in games, and once a month enjoy a celebration for those who have birthdays that month.

Many enjoy excursions away from the home and visits relatives and friends.

Leecie McNeal, for example, likes to go to the nearest ice cream establishment for an ice cream cone.

The 69-year-old Mrs. McNeal, a resident at Armour-Cathey Nursing Home on Cloverdals, goes out at least twice a week and on Sundays. Her home on Cartmell is "just two hops and a jump away," she said.

Although Mrs. McNeal spends the biggest part of her day "right in this chair," she has plenty of company in the room she shares with three other women. The neat quarters are decorated with red, white and blue bedspreads and red curtains.

Most residents agree the food served in nursing homes is "fine." Besides the meals, which provide generous portions of meat and vegetables, residents have fruit juice in midmorning and afternoon, and snacks are always available.

Dining areas are neat and pleasant. Many residents sit in the same spot to eat everyday and do not like to change places.

Some nursing home residents get lonesome, some get depressed and cry, and others want to go home, supervisors said.

"Molly often talks about going home," said 79-year-old Oce Moore of McNairy County. He and his wife Molly live at the Armour-Cathey nursing facility.

Sipping a soft drink as he sat in a rocker on the shady porch of the Armour-Cathey home, Moore (a retired farmer and sawmill worker) said he would like "to be able to farm again."

An early riser (he gets up at 4:30 a.m.), Moore's first chore of the day is to raise the American flag over the nursing home. Throughout the day, he helps others by rolling wheelchair patients to the dining room and helping the disabled to get a drink or other needed items.

Moore, like residents at both nursing facilities, saye he enjoys hearing birds sing and often feeds them.

"I love to hear the birds sing," said Mrs. Hennings. "I wake up about four or five o'clock and there is a little mockingbird out there (pointing out the window of her room) on a bush nearly every morning.

"Spring makes you feel good," she said, noting that the world was coming alive after a long winter.

BRITAIN: THE LOW-GROWTH STATE

Mr. BROCK. Mr. President, each day our economic situation becomes a little more confusing. Where are we going? What price will we pay to get there? Is our economy truly recovering? Indeed these are important questions and the American people want answers to them. However, as we strive for those answers, I believe it is necessary to look at the world around us.

The Washington Post recently carried an editorial calling attention to the plight of Britain. There are many similarities in some of the solutions being proposed in the United States and those already at work, or not at work as the case may be, in Britain. Mr. President, I ask unanimous consent that the editorial from the Post be printed in the RECORD.

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

BRITAIN: THE LOW-GROWTH STATE

Britain's new budget candidly acknowledges the country's economic troubles, but they are troubles on a scale that no budget can solve. More than any other major nation, Britain is living on money borrowed abroad. There are several theoretical solutions to these deficits, but as a practical matter neither of the parties has managed to build an effective public consensus for any of them. The decline in Britain's relative standing, in terms of wealth and economic power, has a large and unwelcome significance for American policy. It is an American habit of mind, both official and otherwise, to assume that Britain will continue to be an interlocutor for this country in Europe, and a steadying influence on European affairs.

Unfortunately, Americans and everyone else must reckon with the prospect that Britain will necessarily be increasingly absorbed in her own internal affairs. National influence tends to lag many years behind the actual state of national strength. But the steady decline of British productivity, measured against that of the three major countries of Western Europe, is inevitably eroding the weight that Britain carries on the continent.

The past 15 years have been, for the British economy, a creeping disaster. There have been no sudden declines or spectacular crises of the sort that draw great public attention. On the contrary, there has been steady growth—but at a very low level. British rates of economic growth have been consistently the lowest for any major nation. (The second-lowest growth rate is, incidentally, the United States', which explains why a number of Americans are beginning to take an uneasy interest in the relevance of the British example to our own case.)

In 1960 Britain's Gross National Product—the total value of all goods and services sold—was still slightly higher than West Germany's or France's. It was well over twice Italy's. But by last year, British GNP was less than half of Germany's, and only two-thirds as large as France's. In fact, it was only slightly higher than Italy's. But slow growth is far from the only symptom of malfunction.

The rate of price inflation in Britain is one of the highest in the industrial world. But since the wage inflation is even higher, the depreciation of the currency has become a mechanism for transferring wealth from the middle class and business to the working class. That is why the toleration for inflation among the unions is at present unlimited. The rise in consumer prices over the past year has been 20 per cent, but hourly wage rates have gone up an average of 32 per cent.

Rapid inflation is a peculiarly sharp threat in a country that earns a substantial part of its living in international banking and finance. That is where the British government's budget dilemma this month arose. The government feared that if it took no serious action, some of the foreign lenders and depositors would start edging toward the fire escapes in the purposeful manner of people who not only smell smoke but hear a crackling noise. But while it had to impose restraints, the government was severely limited by the referendum coming on June 5 over Britain's membership in the European Common Market.

British working people already tend to blame their economic hardships on the Common Market. Prime Minister Harold Wilson's Labor Party is severely split. The right wing is supporting Mr. Wilson, who, after much indecision, has decided to try to keep Britain in the Market. The left wing is campaigning strenuously to take the country out. Since the Conservative opposition also wants to stay in, a negative vote in the referendum would undercut the leadership of both big parties to the advantage of Labor's left half, as well as the Scottish nationalists and various other fragments. While the budget had to reassure lenders and bankers, it also had to do as little as possible to inflame voters as they approach the referendum.

The solution, as the Wilson government has presented it, is a series of very stiff taxes on just about everything—but no cuts in spending and services until next year. The excise taxes on beer, cigarettes and whiskey are up. The value-added tax on a television set is now 25 per cent. Income tax rates for most people are up. Altogether they add up to $3 billion a year; the equivalent in this country would be $24 billion. This budget has further exacerbated the tension within the Labor Party, since unemployment is high and rising. The left wanted a stimulative budget to put people back to work, instead of these sharply deflationary tax increases. The party will probably manage to hold together, since the desire for political survival is a marvelously strong glue. But whether it will be able to carry forward a coherent program is a closer question.

Economic trouble on this scale is never, at bottom, mere economics. On both sides of the channel, over the years, people have made a series of silent but tremendously significant choices. On the continent they have mainly chosen to pursue high productivity and the rapid accumulation of wealth, despite all of the uncomfortable and disruptive changes that it requires in people's lives. In two of those countries, West Germany and Sweden, GNP per capita is, at current exchange rates, higher than in the United States. Britain, in contrast to most of its Common Market partners, chose stability and security at the expense of growth. It was a decision not only to preserve everybody's job, but everybody's right to keep doing that job in the accustomed way. Unhappily, it has brought a decline in British industrial competitiveness that now threatens the jobs and security that it was intended to protect. British governments are not going to have much attention to spare for the concerns of Europe across the channel, or for the Atlantic world in general.

NATIONAL HISTORIC PRESERVATION WEEK—PART II

Mr. BEALL. Mr. President, Historic Preservation Week, 1975, gives us an opportunity to reflect upon the lessons of our Nation's history. This year is especially significant because we are so near to the celebration of the Bicentennial of the founding of this Republic.

In our modern, materialistic society, we too often lose sight of the role religion played in the founding and growth of America. Even though we are a Nation of great religious diversity, our forefathers, for the most part, adhered to the Judeo-Christian values which are the pillars of organized Western religion. In recent years many of these values and concepts have eroded, a process which I believe has been to our detriment. A society needs standards and values if it is to remain healthy.

Mr. President, I would hope that the vitality of the historic preservation movement and the Bicentennial celebration will give us as an opportunity to recapture not only the Spirit of 1776 but also the substance, the values, and the commitment of that era. We should never forget that a deeper strength enabled 13 diverse colonies to successfully rebel against the world's most powerful empire.

I would hope that churches, synagogues, and religious organizations of all faiths and denominations would become actively involved in preserving our heritage and celebrating our Bicentennial. I believe that we need a truly successful Bicentennial celebration in 1976 to help us recover psychologically from the political, economic, and foreign policy adversities which have befallen us in recent years. Thus the Bicentennial can serve to renew the American spirit, rededicate us to the cause of liberty, and strengthen our ties to the traditional virtues upon which our Nation was founded.

Mr. President, on April 20, Dr. F. Norman van Brunt, D.D., pastor of the Grace United Methodist Church in Baltimore, gave a commemorative service marking the Bicentennial of the outbreak of the Revolutionary War. Dr. van Brunt served as chairman of the Baltimore City Bicentennial Committee and he currently chairs the Bicentennial Committee of the Maryland Council of Churches United. At one time Dr. van Brunt served as a visiting chaplain to the U.S. Senate and it is safe to say that his is both a distinguished man and a very outstanding clergyman. Mr. President, I ask unanimous consent that Dr. van Brunt's Bicentennial sermon entitled "Redigging the Wells" be printed in the RECORD.

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

REDIGGING THE WELLS

(By F. Norman Van Brunt, D.D.)

There are those who have raised questions about the date on which the Bicentennial of this nation should begin or should have begun and also those who have questions about the terminal time. Some want it to be 1976 with the climax on July 4th. Others believe that the Revolution began with the passage of the Stamp Act in 1765 and that we are already ten years into the bicentennial with almost nothing having been done to commemorate many important dates in the life of the emerging nation. The interesting thing is that the Revolution was not just a war that was fought between the colonists and the mother country. It was a movement precipitated by God-given rights that were violated and the unique aspect of it was that never in the history of man had there been the coming together of perhaps a dozen gifted men whose minds were so creative that they were able to give the leadership that made possible the emphasis of those God-given rights in a new light.

Thus, the celebration of the Bicentennial of this nation covers the span of a generation, not just a year. It is appropriate to think of the Revolution as reaching from 1765 to 1789. However, that is a matter which will not be universally accepted across this nation. Most people will celebrate July 4, 1976 and that will be the Bicentennial for them. However, the date of April 19, 1775 is written unequivocally in the annals of our history. On that date:

By the rude bridge that arched the flood,
Their flag to April's breeze unfurled,
'There' once the embattled farmers stood,
And fired the shot heard round the world.

Two hundred years ago yesterday on the green at Lexington, the first blood was spilled into the brown earth of this land that marked the point of no return in the struggle for the freedom they believed God gave to them. It is not our purpose this morning to dwell upon the acts at Lexington and Concord but rather on certain principles which those historic scenes represent.

Now two hundred years later we are engaged in a struggle which many believe may be the contest to confirm the very future of this nation and its influence. In the midst of this attempt to find our way, we are experiencing confusion confounded and while our national leaders make efforts at bold pronouncements, it becomes more obvious with each passing day that some things seem to have vanished from our life and we are courting confusion and often further confounding the life of the nation in its intercourse with the world. So on this anniversary we look back at the decisions that were made, at the action that was taken, and we ask ourselves what motivated them? Somehow in these later years, we seem to have gotten off the track. We appear as a nation stunned by our position in the world asking ourselves "how did we get here and how do we get out of here?'

It may help us this morning if we turn briefly to the old narrative recorded in the Book of Genesis. That story says, "And Isaac dug again the wells which had been dug in the days of Abraham his father; for the Philistines had stopped them after the death of Abraham; and he gave them the names which his father had given them." What we see in that description of a heroic act is the recovery of an old gain which had been lost. Water in those desert areas was the substance of life. Without it those who dwelt there were hopeless. So when Isaac returned to the old places where Abraham had lived, they were confronted with a need. They had to have water. Isaac knew that Abraham had dug wells and he searched until he found the places where those wells had been, for he remembered that water was to be found there.

Through the years, the Philistines, the enemy, had wrought destruction and made the people ineffective by filling up all the

wells of water. The land lost its value because the element of life needed was no longer to be found. Isaac stood in the place of his father and saw what had been done and something more than the need of water compelled him to move into action for a new day. There was a loyalty to what his father had done which touched him very deeply. He knew full well that what his father had accomplished was absolutely basic to the ongoing of the people who were to be the sons of Abraham in future generations. So in a time when others would have said, "What is the use?" Isaac dug again the wells of Abraham and called them by the names his father had given them. This old story from Scripture is so relevant to us as we stand on the brink of the Bicentennial of this nation.

There are two things that confront us now as faced Isaac when he returned to the home of his father. The times demand that we face the future "all untried." There are new things that we have to do. They are demanded of us. We cannot shirk them. However, there are some old things that have to be regained because without them we will be impotent to fulfill the demands of these untried times. I do not mean that this Bicentennial must be a kind of emotional bath which we must undergo—although some cleansing is absolutely necessary. Maybe a good dose of emotion in the right way might help us immeasurably. However, while there may be moments when our spines will tingle as we recall, perhaps dramatically, the great moments two hundred years ago, the most demanding thing must happen in those quieter moments when we reflect upon ourselves and where we are.

I remember a few years ago reading an account of a revival of the perennial favorite—Thornton Wilder's "Our Town." That drama of another generation situated at Gordon's Corner, New Hampshire portrayed the simple life of humble people in rural America. After the production someone saw a fellow and a girl leaving the theatre. The fellow was flamboyant and emotionally charged with the nostalgia created in those moments of simple drama. Putting his arm around the lady he said, "Well, baby, that's where we came from." The girl was much more reflective, seeming to be spiritually moved by what she had seen. Her reply to him was significant. "Yes," she said, "but look where we are now." Her thoughts were obviously ones of dissatisfaction.

Running through the mind of America today is the thought of dissatisfaction. How did we get where we are? Why is our nation torn from "sea to shining sea" with conflict and hostility, strife and unrest? How do we solve the seeming unsolvable problems confronting us now? We must go on! We cannot go back and live in the eighteenth century. However, we can redig the wells of our fathers, for without the water of life we are not going to solve the issues of the future. They were dealing with such basic concepts of life that what they saw then we must see now.

Let me share with you briefly this morning what I think we must recover as a people. First, I think we must recover our identity as a people. They were united. We are divided. The founding fathers were rooted in purpose because they were rooted in a belief in the eternalness of what they were fighting for and in the eternal qualities based upon a belief in the Fatherhood of God. They were given that identity because of the foundations upon which they stood. They knew who they were. The patriotism they possessed was vital because they believed that what they were struggling for was rooted and grounded in right. There was no equivocation of purpose. They knew they were right. A year later Thomas Jefferson expressed it for all of them:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these rights, Governments are instituted, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundations on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness . . . And for the support of this . . ., with a firm reliance upon the protection of Providence, we mutually pledge to each other our lives, our fortunes and our sacred honor."

I submit to you, my brothers and sisters—those men knew who they were. There seems to have been in the inexorable course of time a movement away from those principles until today instead of drinking at the wells of our fathers, we are content with cisterns that have become contaminated.

A few years ago one evening Mrs. Van Brunt and I were on a street car in Frankfurt, Germany. We were impressed by the people of West Germany. They came through the experience of World War II and the shame heaped upon them by the deposits who had wrested power from them seemed to get a new grasp upon their purpose. While riding quietly that evening we were suddenly jolted by a great deal of noise and confusion in the back of the car. It turned out that it was created by a group of American teenagers, sons of military personnel stationed in that city, who had been drinking. They became so obnoxious that the motorman stopped the car and threatened to have them put off. They, in turn, almost put a motorman off of his own vehicle. Some German men came to his rescue and set the record straight. We sat in the car a bit fearful of what had happened as we saw the scorn written upon the faces of the German passengers. I leaned over to Mrs. Van Brunt and said, "Don't let anyone on this car know we are Americans." What a shameful thing to have done! We should have stood up in that car that night and said, "We are Americans also and we are ashamed of these people who have given you a bad image of America. All the people of America do not behave like that." We kept quiet and got off as soon as we could.

That is what seems to be happening in so many areas today. Why do not those of us who feel deep within ourselves the meaning of America stand up and let it be known? There are more in this land who believe in America than those who would replace our philosophy with some form of dictatorship. It would help us confirm our identity. God knows it is needed. Yet most of us are like the Van Brunts in that foreign city—we want to get off at the first stop.

The founding fathers stood up and said who they were. They were not a majority—their kind never were a majority during all of the Revolutionary period—the success of their venture was grounded in their identity. We must go back and redig that well. We need to recover spiritual values in this land because they are the promises upon which good life is built. Selfishness has reared its ugly head among us. Materialism has become our god. It seems more important to have our pleasures and affluence; our appliances and our automobiles than to insure life for our grandchildren. This is not the premise upon which this nation will stand for another two hundred years. Our founding fathers gave us the example. We must hold to what is right because it is right, not because it is legal or desirable.

Spiritual values are rooted in moral principles. Those principles do not change, the preachings of some social scientists to the contrary not withstanding. The direction we are going today, in this hour of permissiveness, has been tearing apart the very institutions which God created for the continuation of life among human kind. Why can we not see it? We are struck by fad—whatever comes along that seems innovative we must have now. Principles of the fathers are of no concern. The lack of the sense of history has created for us "a cut flower civilization." How long can it last? Unless we come to our senses we are destined to learn the lessons of history all over again. Government operates on the basis of expediency with little regard for what is right. The only possibility of recovering from this dilemma is to turn about and dig again the well of spiritual values that were dug by our fathers.

Finally, we need to recover our national purpose. I have only one thing to say about this. We are a nation which came up out of tyranny and we must stand today as the example to the emerging nations of this world, not as a nation which grabs and gains to fulfill the expediences dictated by selfish interests, but that the welfare of people and the means we use to accomplish that welfare stands the test of time. In 1832 Alexis de Tocqueville, the French historian, visited America. When he returned to France he wrote an assessment, a part of which seems apropo of this hour. He said:

I sought for the greatness and genius of America in fertile fields and boundless forests; it was not there.
I sought for it in her free schools and her institutions of learning; it was not there.
I sought for it in her matchless Constitution and democratic congress; it was not there.
Not until I went into the churches and temples of America and found them aflame with righteousness did I understand the greatness and genius of America.
America is great because America is good.
If America ceases to be good, America will cease to be great.

So we must, I think, redig the well of national purpose—not to be the greatest but to be people who are good.

So we celebrate today the bicentennial of the beginning of the War of the Revolution. It is not to exalt the battles where the blood of patriots was shed. It is rather to exalt the purposes which were so ingrained in the minds of the founders that it seemed the only way at that time to wrench the basic freedoms of a people out of the hands of tyrants. It is to exalt the basic greatness and goodness of America to this very hour. It is to say that more and more of those who believe that the life of this nation is best served by redigging the wells of identity, spirtual values and national purpose, that we can survive this moment in time, must step forth as did the patriots in 1775 and put ourselves in a position to say we will uphold this with all we have and all we are. We will not abide the muckraking that has passed for purpose and policy in the face of political expediency. We will build for the future as we stand upon those principles which do not pass away.

When the War of the Revolution had ended and the Constitution was finally framed, Benjamin Franklin met a well known Philadelphia lady who said, "Dr. Franklin, have you given us a monarchy or a republic?" Benjamin Franklin replied, "We have given you a Republic—if you can keep it." "If you can keep it."

Two hundred years have passed—now we stand on the concourse of time and we must move into the third century. We have a Republic still—can we keep it? I say we must redirect our energies and go back and dig the wells of our fathers, bringing forth the principles once again that do not change. This is a time of great opportunity. It is not a time to stand in the corners of this nation

and wring our hands and say "what shall we do?" It is the time to sound the trumpets and give thanks that God in his providence and mercy has brought us through to this hour and solemnly determine and covenant that, as the people of American at the beginning of the third century, we shall boldly march forth to reinaugurate the principles of goodness and truth—

That we may tell our sons who see the light high in the heavens—Their heritage take:
I saw the powers of darkness put to flight I saw the morning break.

THE PRESIDENT'S VETO OF THE EMERGENCY PRICE SUPPORTS FARM BILL AND THE NEED FOR REEXAMINING AMERICAN FARM POLICY

Mr. THURMOND. Mr. President, I supported the emergency price supports farm bill which the President has vetoed and feel that his decision, no matter how well motivated, will be damaging to the farmers of America.

The major arguments offered by the President in opposition to this legislation are that it would lead to greater budget deficits and higher food prices. I support the efforts of this administration to attempt to maintain fiscal responsibility, and I think we should do everything possible to curtail further rises in food prices. However, on this particular issue, I think the President has been ill advised regarding the critical need for this legislation and its possible economic consequences.

First, let us briefly examine the necessity for this legislation. To put it very mildly, there have been drastic changes in the prices of agricultural products and inputs in the past several years. The year 1973 saw a dramatic increase in the price of most farm products, resulting from previous curtailments in world agricultural production, and rapid increases in world demand.

However, this upturn in farm prices was relatively short lived, and the prices of most commodities have declined sharply since that time. Very recently, we have experienced a 5-month decline in prices received by farmers, and I sincerely hope that last month's slight turnaround signals brighter days ahead for our Nation's productive but poorly rewarded farm sector.

Compared with the recent cycle in prices of farm products, the trend in costs of farm inputs has been virtually all in the upward direction and generally more extreme. Much has been said about the severe impact of higher fuel, fertilizer, labor, machinery, and other production costs, which farmers have recently experienced. Even USDA's very conservative estimates of average production costs for 1975 crops have climbed to levels that are generally well above target and loan prices proposed in the emergency price supports legislation.

At this point, it should suffice to say that the typical American farmer has lost valuable ground on the treadmill of cost-price squeezes. Now, he is put in the position of having to produce more, absorb gigantic production costs increases, and yet, probably receive less for what he grows. Finally, these impossible objectives are to be achieved without regard to the probable consequences for that typical American farmer.

The consequences of declining farm prices and rising production costs are already being deeply felt by farmers in my State of South Carolina. A record-high number of farmers in South Carolina have already had to ask for loan extensions and/or refinancing. Many have had to liquidate all or part of their operations in order to meet credit obligations. The outlook for this crop year does not look good, and it appears that it may be disastrous for many cotton farmers after the veto of this bill.

Mr. President, I ask unanimous consent that a concurrent resolution recently adopted by the General Assembly of the State of South Carolina be printed in the RECORD at this point and referred to the appropriate committee for prompt consideration.

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

A CONCURENT RESOLUTION

To memorialize the Congress to take the necessary measures to assure farmers and ranchers an equitable return on their farm and fiber products, thereby protecting the American public against a possible severe shortage of food and fiber in the near future

Whereas, eighteen members of the Sumter County Agricultural Society made a trip to Washington, D.C., on March 13, 1975, to present certain facts to the South Carolina Congressional Delegation relating to the overall economic conditions and outlook for agriculture in this area; and

Whereas, the following facts and information were presented for their consideration:

1. Due to depressed farm commodity prices, a record-high number of farmers and ranchers in South Carolina have had to request extensions and renewals of their loans in an effort to make economic adjustments.

2. In the past twelve months we have seen a backward financial trend develop among a large percentage of the more successful farm operations in the State. It is evident that many operations will be forced into liquidation during the course of 1975 due to marketing factors over which the farmers have no control.

3. Due to inflation and profit-taking by many agricultural suppliers, the total input costs, based on 1974 projections, were underestimated by approximately twenty-five per cent in this area.

4. Farm receipts on the following commodities have decreased over the past twelve months, as indicated:

Cotton: From $.70 per pound to $.36 per pound.

Soybeans: From $8.00 per bushel to $5.50 per bushel.

Corn: From 3.25 per bushel to 2.50 per bushel.

Beef: From .60 per pound to .22 per pound.

5. At the same time the market value of farm commodities has declined, the input cost of farming has increased, as follows:

Farm machinery: Up forty per cent.
Fertilizer: Up forty-one per cent.
Chemicals: Up forty-five per cent.
Fuel: Up thirty-seven per cent.
Labor: Up fourteen per cent.
Utilities: Up thirty per cent; and

Whereas, this group met with the Director of CRO and other officials of the United States Department of Agriculture, and the following observations were made by members of the group:

1. The principal objective of USDA is to eliminate all surplus commodities and allow the economy to operate on a supply-and-demand basis. This objective is to be achieved without regard for consequences to the American farmer, and without regard for the fact that there is presently only an approximate sixty-day food supply on hand in the event of a national disaster.

2. It was stated by the USDA official that the actions of the Secretary of Agriculture and the USDA have no effect on farm market prices. We believe this premise to be entirely false.

3. USDA expects American farmers to compete on the world market at competitive prices; yet the federal government regulates input costs to farmers by setting controls on labor, oil, export and import quotas, and working conditions.

4. It is apparent that USDA is more consumer oriented than producer oriented; and

Whereas, we feel that the economic existence of farmers and ranchers in South Carolina is seriously threatened by the foregoing conditions. Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

That the Congress of the United States be memorialized to take such measures as may be necessary without delay to assure farmers and ranchers an equitable return on their farm and fiber products, thereby protecting the American public against a possible severe shortage of food and fiber in the near future.

Be it further resolved that a copy of this resolution be forwarded to the United States Secretary of Agriculture, the United States Senate and House Agriculture Committees, and to each member of the Congress from South Carolina.

Mr. THURMOND. Mr. President, this resolution further illustrates the severity of the cost-price squeeze and requests that Congress take prompt action to assure farmers an equitable return on their farm products, in order to protect the American public against possible severe shortages of food and fiber in the near future.

Now, Mr. President, this leads me to the second key point I would like to make regarding the veto of this farm bill. I have emphasized that I felt this legislation was necessary to avert financial disaster for many farmers. Additionally, farmers and consumers need the greater measure of stability in food and fiber prices that this legislation would provide. Furthermore, I basically disagree with the USDA cost estimates and economic consequences of the higher target prices in this bill.

The extravagant costs of this legislation, as cited by the administration, are predicated on the assumption that the prices of major farm commodities — wheat, corn, soybeans, and other feed grains—will fall below the specified target prices in the next several years, thus necessitating massive subsidy payments to farmers. Given the present world demand for foodstuffs and the expected recovery from the current recession, I question the accuracy of these predictions. Furthermore, the cost estimates of the staff economists of the Senate and House Agriculture Committees are far less than those put forward by USDA.

Additionally, consumers may incur higher food costs in the long run because this legislation was not approved. Extreme price instability and extensive

farm unit failures, which I believe will result from the rejection of this bill, are likely to create future commodity shortages and resultant higher food prices for consumers.

Naturally, there is considerable disagreement among agricultural economists regarding the need for reasonable stability in farm commodity prices, the relationship between price variation at the farm level and retail food prices, and the proper role of the Federal Government in farm policy.

On the one hand, the present USDA hierarchy, led by Secretary Butz, argues strongly for a free market-oriented farm policy. Such a policy is typically characterized by periods of great price instability, which some economists contend are necessary to bring about continued economic efficiency in agriculture.

If farmers purchased their inputs in a truly competitive market, if they did not have to cope with great variation in the weather and the possibility of natural disaster, if farmers could readily adjust the size and nature of their crops in response to market changes, if farmers could be certain of prices and readily compete with industry for hired laborers—if a number of factors were not such as they are, then I could readily embrace a totally free market with no support programs for American agriculture. However, given the present real world constraints and the fact that industrial workers received guaranteed wages but farmers have little assurance on commodity prices, I think there is a need for reasonable target and loan price guarantees to provide security for farmers and adequate food supplies for the remainder of our society.

In between these extremes there is adequate room for a reasonable, responsible farm policy based on free enterprise with stability. It is such an intermediate approach which most agricultural economists are now supporting. Such a policy would provide for target and support prices at reasonable levels, somewhere above the average variable, "out-of-pocket" costs of production, but below average total cost of production.

In other words, farmers would be encouraged to produce crops for which market demand was sufficient to enable them to recover production costs. They would be partially protected against sudden, drastic declines in commodity prices. Yet, target prices would be carefully monitored and set low enough to allow the market to efficiently allocate agricultural resources to commodity areas where demand was highest.

This kind of intermediate, rational agricultural policy recognizes the need for flexibility to cope with changing market demand and productivity gains. It also makes it possible to avoid excessive payments and unwanted surpluses. Fundamentally, it affirms the need for reasonable stability in commodity prices. Extreme instability, such as we have had in the last two years, is harmful to farmers, food handlers and processors, and consumers. Such instability creates unnecessary cost in the form of increased risks and inefficiency of resource use.

This, then, is the kind of responsible agricultural policy that I would hope Congress and the administration could unite behind. It is a concept that recognizes the importance of agriculture to society; the unique, highly competitive structure of American agriculture; and the many problems of food and fiber production. Properly implemented, it would combine the best points of a market-oriented agriculture with reasonable guarantees of market stability, achieved by spreading some of the cost of agricultural risks among all of us who depend on farm products for our survival.

I hope that the administration will reconsider its course toward farm policy in the future. President Ford is right in wanting to reduce Federal expenditures and hold down food prices. However, I think his veto of this bill will not accomplish those worthy goals. We need a strong, viable agricultural sector—not a crippled, uncertain one.

Mr. President, I ask unanimous consent that an excellent article on "The Effects of Unstable Prices in Agriculture," by Dr. Max I. Loyd of Clemson University, Clemson, S.C., be printed in the RECORD at the conclusion of these remarks. Dr. Loyd's article, while somewhat technical, provides an objective analysis of some of the advantages and disadvantages of instability in farm commodity prices. I commend it to my colleagues and others interested in farm policy.

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

EFFECTS OF UNSTABLE PRICES IN AGRICULTURE

(By Max I. Loyd)

Extreme fluctuation in prices of most major U.S. crops during the past two years has been unlike anything experienced since the 1920's. In 1973, cotton and soybean prices reached about three times 1972 levels. Most other farm prices showed dramatic increases during the same period.

We may not be on the other side of the cycle for several commodities. Crop prices usually reach a seasonal low during peak harvest and trend upward to reflect approximate carrying charges until the next harvest. However, cotton, corn, and soybeans have trended downward since the 1974 peak harvest and haven't shown much promise of improving.

Cotton and beef cattle producers are either selling their products at a substantial loss or are trying to hold out for better prices. Some optimists feel that the current setback is temporary and that prices will improve substantially. A more realistic view, given current world supply and demand conditions, is that prices will continue wide fluctuations but will remain well below 1973 levels for the next year or two. It appears that currently a downward cyclical trend is more than offsetting the normal seasonal upward trend.

WHAT CAUSES SUCH EXTREME FLUCTUATIONS?

The supply of and demand for agricultural products is such that relatively small changes in supply or demand cause relatively large changes in price. Increases in supply because of weather or favorable grower expectations (with other conditions constant) result in more production and lower total returns to producers. In this case consumers get more for less. On the other hand, a decrease in supply—as might be caused by scarcity of inputs or poor weather—results in consumers paying more and getting less. Changes in demand, if in the opposite direction from changes in supply, magnify the effect on price.

Surplus stocks of U.S. farm products in the 1950's and 60's kept domestic and world prices near the CCC loan rate levels. These stocks were virtually used up before the 1973 harvest.

The dramtic increase in agricultural prices in 1973 resulted from curtailed world production and increased world demand. The current decline in prices is due to increasing world supply and stagnant or decreasing demand. Soybean, cotton, and feed grain prices would have dropped even more dramatically in recent months if the combination of spring floods, summer drought, and early frost had not cut U.S. production. Although an increase in production was expected in 1974, corn and soybean production was down one-fifth and cotton production was down one-eighth from 1973.

Many farmers are now in a quandary about what to do in 1975. The banker will answer this question for some—if they cannot sell their products forward at a projected profit and do not have sufficient net worth to cover potential losses, they will not be able to get production financing.

EFFECTS OF INSTABILITY

Several economic studies have evaluated the effects of stable versus unstable prices. These studies show that producers gain from stabilization of price fluctuations caused by shifts in supply. Producers may lose from stabilization of fluctuations caused by shifts in demand if the unexplained variation in demand is autocorrelated—that is, if the unexplained variation in a given time period is related to the unexplained variation in a previous period. A recent study has shown that even in this worst case for producers, consumers gain more than producers lose so that the economy as a whole gains from stable prices.[1]

The above study is based on a mathematical evaluation of "consumer surplus" and "producer surplus," using linear supply and demand functions. Consumer surplus is the difference between the amount consumers would be willing and able to pay for a commodity and the amount actually paid. Producer surplus is the difference between the income producers would be willing to produce for and the amount they actually receive.

This is a brief description of the concepts involved in price-stability studies. If you think it sounds complicated, you should see the mathematical formulas involved! These studies are based on theoretical demand and supply curves and show the direction, but not the magnitude, of effects. A practical approach is to observe the real world effects of instability on resource use. For example, in 1973, with rising cotton prices, farmers and ginners "geared up" to supply more cotton by buying as many pickers as manufacturers could build and by installing new gin equipment. In contrast, 1975 cotton acreage is projected at slightly over two-thirds of 1973 and 74 acreage. This means that about one-third of the harvesting and ginning capacity will be idle.

The agricultural and consumer protection act of 1973 recognizes the disruptive effects of extremley low prices. The act provided 1975 target prices of 38 cents per pound for cotton, $2.05 per bushel for wheat, and $1.38 per bushel for corn. However, most farmers consider these target prices to be unrealistically low.

Extreme price fluctuations also result in increased risk and inefficient resource use by processors and handlers of farm products. Processing firms have been among the strong-

[1] Turnovsky, Stephen J.: Welfare Gains From Price Stabilization, American Journal of Agricultural Economics, V56–4, Nov. 1974.

est advocates for price-stabilization programs and specifically for more realistic target prices.

THE ROLE OF PRICES IN THE U.S. ECONOMY

Prices play a vital role in a mixed economy. Prices ration the economy's output among consumers according to their wants and ability to pay. Product prices are reflected in resource prices, which allocate resources among industries. In particular the movement of resources from declining industries to growth industries is important to a dynamic economy. This provides a strong argument against stabilization programs.

Some agriculturists argue that unstable prices are desirable and that previous stabilization programs inhibited economic growth and caused the current high food prices. This argument is questionable in view of the remarkable ability of U.S. agriculture to produce abundant food at low cost.

On the other hand, rigid price regulation can be harmful. The present market-oriented program is designed to overcome previous deficiencies of stabilization programs. An intermediate solution might be possible which would provide for flexibility but prevent harmful effects of highly unstable prices. Target prices could be set above average variable cost without causing inefficient use of resources if the target price is sufficiently below average total cost to encourage movement of resources from declining to growing industries.

Careful monitoring of target prices would be needed for such a stabilization policy to encourage new technology, to allow for changes in market conditions, to avoid excessive payments and unwanted surpluses, or to accumulate reserve stocks if desired.

In summary, unusual conditions during the past two years have caused wide price fluctuations. There is much disagreement about stabilization policy; however, economic studies have shown that the overall economy gains from stable prices.

CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

FIRST CONCURRENT RESOLUTION ON THE BUDGET—FISCAL YEAR 1976—CONFERENCE REPORT

The PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of the conference report on House Concurrent Resolution 218, which the clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. Con. Res. 218), setting forth, on an aggregate basis only, the congressional budget for the United States Government for the fiscal year 1976.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the following members of the staff of the Committee on the Budget be granted the privilege of the floor during the consideration and votes on the conference report on House Concurrent Resolution 218: Douglas Bennet, John McEvoy, Arnold Packer, Sid Brown, Robert Boyd, Franklin Jones, David Blackburn, Bruce Thompson, Bill Stringer.

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

Mr. MUSKIE. Mr. President, I ask unanimous consent that the vote on the conference report take place by 12:30 p.m., immediately prior to the vote on the Johnston amendment to the bill S. 200.

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

Mr. MUSKIE. Mr. President, I ask unanimous consent that the text of the conference report be printed in the RECORD at this point.

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

CONFERENCE REPORT (S. REPT. NO. 94–113)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the concurrent resolution (H. Con. Res. 218) setting forth, on an aggregate basis only, the congressional budget for the United States Government for the fiscal year 1976, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That the Congress hereby determines, pursuant to section 301(a) of the Congressional Budget Act of 1974, that for the fiscal year beginning on July 1, 1975—

(1) the appropriate level of total budget outlays is $367,000,000,000;

(2) the appropriate level of total new budget authority is $395,800,000,000;

(3) the amount of the deficit in the budget which is appropriate in the light of economic conditions and all other relevant factors is $68,820,000,000;

(4) the recommended level of Federal revenues is $298,180,000,000, and the amount by which the aggregate level of Federal revenues should be decreased is $3,400,000,000; and

(5) the appropriate level of the public debt is $617,600,000,000, and the amount by which the temporary statutory limit on such debt should accordingly be increased is $86,600,000,000.

And the Senate agree to the same.

EDMUND S. MUSKIE,
WARREN MAGNUSON,
FRANK MOSS,
W. F. MONDALE,
ERNEST F. HOLLINGS,
ALAN CRANSTON,
HENRY BELLMON,
ROBERT DOLE,
J. GLENN BEALL, Jr.,
PETE V. DOMENICI,
Managers on the Part of the Senate.

BROCK ADAMS,
JIM WRIGHT,
THOMAS L. ASHLEY,
ROBERT N. GIAIMO,
NEAL SMITH,
JAMES G. O'HARA,
SAM GIBBONS,
PARREN J. MITCHELL,
BUTLER DERRICK,
Managers on the Part of the House.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the concurrent resolution (H. Con. Res. 218) setting forth, on an aggregate basis only, the congressional budget for the United States Government for the fiscal year 1976, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

OUTLAYS

The House resolution provided for total outlays in the amount of $368.213 billion. The Senate amendment provided for outlays in the amount of $365 billion. The conference report provides for total outlays in the amount of $367 billion.

BUDGET AUTHORITY

The House resolution provided for total new budget authority in the amount of $395.938 billion. The Senate amendment provided for new budget authority in the amount of $388.6 billion. The conference report provides for total new budget authority in the amount of $395.8 billion.

DEFICIT

The House resolution provided for a budget deficit in the amount of $70,032 billion. The Senate amendment provided for a deficit in the amount of $67.2 billion. The conference report provides for a budget deficit in the amount of $68.8 billion.

REVENUES

The House resolution provided for Federal revenues in the amount of $298.181 billion; and, to achieve that level, it provided that revenues should be decreased by $4.4 billion. The Senate amendment provided for Federal revenues in the amount of $297.8 billion. The conference report provides for Federal revenues in the amount of $298.180 billion; and, to achieve that level, provides that revenues should be decreased by $3.4 billion.

The conference substitute (1) accepts the House assumption that major provisions of the Tax Reduction Act scheduled to expire December 31, 1975, will be extended by the Congress, lowering revenues by $4.4 billion; (2) accepts the House position with respect to raising additional revenues through enactment of tax reform legislation, but reduces from $3 billion to $1 billion the amount to be realized in Fiscal Year 1976; and (3) assumes that, as a result of recent tax collection experience, an additional $2 billion in revenues will be received during Fiscal Year 1976.

PUBLIC DEBT

The House resolution provided for a public debt level of $619.9 billion; and to achieve that level, provided that the temporary statutory limit on the public debt should be increased by $88.9 billion. The Senate amendment provided for a public debt level of $617.6 billion. The conference report provides for a public debt level of $617.6 billion; and that, to achieve that level, the temporary statutory limit on the public debt should be increased by $86.6 billion.

FUNCTIONAL CATEGORIES

The aggregate budget figures in the report represent the best judgment of the managers as to the appropriate levels of spending and income for fiscal 1976. That judgment could change if economic conditions change significantly between May and September, when the Senate and House Budget Committees will submit a Second Concurrent Resolution to set aggregate ceilings for fiscal 1976.

The functional category figures in this report are intended to serve as guidelines for the Congress, to explain the steps by which the conference reached the aggregate totals, and to provide a benchmark for the Second Concurrent Resolution. The estimates of the managers for budget authority and outlays in each functional category are as follows:

National defense (050)

The House Resolution assumes budget authority of $100.5 billion and outlays of $90.2 billion.

The Senate amendment assumes budget authority of $101.0 billion and outlays of $91.2 billion.

The Conference substitute assumes $100.7 in budget authority and $90.7 in outlays. This is an increase of $0.2 billion in budget authority and $0.5 billion in outlays above the House amounts and a decrease of $0.3 billion in budget authority and $0.5 billion in outlays below the Senate amounts. In arriving at these amounts, the managers considered and agreed to the following:

(a) If Congress should decide not to limit increases in defense salaries and retirement allowances, there are sufficient funds within this total to support that decision.

(b) All funds requested for military assistance to Southeast Asia were deleted from fiscal 1976 estimates, including the outlay effect of the 1975 supplemental request.

(c) The balance of the reductions are the result of revised inflation estimates, reductions in program growth, and financial adjustments.

International affairs (150)

The House Resolution assumes budget authority of $4.7 billion and outlays of $5.0 billion.

The Senate Resolution assumes budget authority of $6.0 billion and outlays of $4.9 billion.

The Conference substitute allows $0.2 billion in budget authority for the Special Financing Facility and assumes that the estimate for foreign economic assistance will be reduced by $0.9 billion in budget authority and $0.4 billion in outlays below the budget as submitted.

The managers agreed to the House level for foreign economic assistance, assuming major reductions in Indochina Postwar Reconstruction. The managers also agreed that token budget authority should be provided for the Special Financing Facility to indicate the Congress anticipates a legislative proposal for this purpose.

General science, space and technology (250)

The House Resolution assumes budget authority of $4.7 billion and outlays of $4.6 billion.

The Senate amendment assumes budget authority of $4.7 billion and outlays of $4.6 billion.

The House and Senate estimates were substantially the same. The managers agreed to the Senate's figures.

Natural resources, environment and energy (300)

The House Resolution assumes budget authority of $14.1 billion and outlays of $11.5 billion.

The Senate amendment assumes budget authority of $13.4 billion and outlays of $11.7 billion.

The Conference agreed to budget authority of $13.8 billion, and outlays of $11.6 billion.

Agriculture (350)

The House Resolution assumes budget authority of $4.3 billion and outlays of $1.8 billion.

The Senate amendment assumes budget authority of $4.3 billion and outlays of $2.0 billion.

The Conference agreed to the House estimates. By this action the Conference does not either include or exclude outlays for the farm bill recently vetoed, because the conferees assume that outlays in fiscal 1976 will be minimal if that bill or a similar bill becomes law.

Commerce and transportation (400)

The House resolution assumes budget authority of $11.0 billion and outlays of $18.5 billion.

The Senate amendment assumes budget authority of $9.5 billion and outlays of $16.6 billion.

The conference substitute assumes $11.3 billion in budget authority and $17.5 billion in outlays. The estimates include a total of $0.8 billion in outlays for small business, postal service and rail rehabilitation projects now being considered by the House-Senate conference on the Emergency Employment Appropriations Act of 1975. The estimates also contain $3.3 billion in budget authority to continue advance highway apportionments and $6.3 billion in highway outlays. Outlays of $0.4 billion are provided for housing legislation expected to pass in fiscal 1975. Funding for other rail improvement projects recommended by the Senate is included, with $600 million in budget authority and outlays. Other items include additions to the Administration's budget of $0.2 billion in budget authority and outlays for the Washington Metro; $0.2 billion in budget authority and outlays for Postal Service subsidies; and $0.3 billion in budget authority and $0.2 billion in outlays for additional small business loans.

Community and regional development (450)

The House resolution assumes budget authority of $10.8 billion and outlays of $9.0 billion.

The Senate amendment assumes budget authority of $6.0 billion and outlays of $6.6 billion.

The conference substitute assumes $11.0 billion in budget authority and $8.65 billion in outlays.

The House resolution assumes $5.0 billion in budget authority and $2.5 billion in outlays for accelerated public works programs. The Senate amendment did not include this assumption. Since the accelerated public works program is intended to provide economic stimulus, the Conference agreed to retain the House budget authority estimate and an outlay estimate of approximately $2.1 billion to be available either for an accelerated public works program or some other appropriate stimulative program that Congress may decide to enact, such as emergency financial assistance to state and local governments.

Education, manpower and social services (500)

The House resolution assumes budget authority of $19.0 billion and outlays of $20.4 billion.

The Senate amendment assumes budget authority of $20.7 billion and outlays of $19.4 billion.

The conferees agree to budget authority of $19.0 billion and outlays of $19.85 billion in this function. These figures assumes that all programs in this function can be funded at least at their fiscal year 1975 funding level, the regular on-going programs be increased, and that the number of public service employment jobs also be increased. The conferees reached a decision to add $0.45 billion to the $3.1 billion already in this function for public service jobs in view of the job-creating effect of the $0.6 billion assumed in function 400 for rail assistance.

Health (550)

The House resolution assumes budget authority of $33.1 billion and outlays of $30.7 billion.

The Senate amendment assumes budget authority of $32.6 billion and outlays of $31.0 billion.

The Conferees agreed to the House figures.

Income security (600)

The House resolution assumes budget authority of $141.3 billion and outlays of $124.9 billion.

The Senate amendment assumes budget authority of $138.5 billion and outlays of $126.1 billion.

The conferees agreed to budget authority of $140.9 billion and outlays of $125.3 billion in this function.

This total includes $0.8 billion for the extension of emergency benefits for insured unemployed for an additional 13 weeks. It also assumes savings in fiscal year 1976 through legislative and administrative improvements in programs such as food stamps, aid to families with dependent children, and social security.

The managers intend that there be no cap on benefit increases as proposed in the President's budget. The managers intend that the resolution provide sufficient funds to extend both emergency benefits for the insured unemployed and also special unemployment assistance for the uninsured unemployed.

Veterans benefits and services (700)

The House Resolution assumes budget authority of $18.0 billion and outlays of $17.5 billion.

The Senate amendment assumes budget authority of $17.6 billion and outlays of $16.9 billion.

The Conference agreed to the House assumptions of $18.0 billion in budget authority and $17.5 billion in outlays for this function. The managers on the part of the Senate agreed to these figures because of the probability that Congress will reject Administration proposals to reduce the eligibility period for veterans' readjustment benefits and to require reimbursement from private health insurers for VA health care. The Senate amendment did not assume increases in budget authority and outlays for either. The House assumed $0.7 billion in budget authority and outlays for these probable expenditures to which the conferees agreed.

Law enforcement and justice (750)

The House resolution assumes budget authority of $3.3 billion and outlays of $3.4 billion.

The Senate amendment assumes budget authority of $3.3 billion and outlays of $3.4 billion.

The Conference agreed to the House figures.

General government (800)

The House resolution assumes budget authority of $3.3 billion and outlays of $3.4 billion.

The Senate amendment assumes budget authority of $3.3 billion and outlays of $3.2 billion.

The conference committee agreed to $3.3 billion in budget authority, the same as the House and Senate estimates, but to $3.3 billion in outlays, $50 million below the House assumption and $100 million above the Senate assumption.

Revenue sharing and general purpose fiscal assistance (850)

The House resolution assumes budget authority of $7.3 billion and outlays of $7.2 billion.

The Senate amendment assumes budget authority of $7.3 billion and outlays of $7.2 billion.

Essentially, the assumptions of both houses were the same for this function, but the conference committee agreed to round out the House estimate to the nearest tenth of a billion dollars.

Interest (900)

The House resolution assumes budget authority of $35.0 billion and outlays of $35.0 billion.

The Senate amendment assumes budget authority of $35.3 billion and outlays of $35.3 billion.

The Conference substitute provides $35.0

billion in budget authority and outlays, the same as the House estimate and $0.3 billion lower than the Senate estimate.

Allowances

The House resolution assumes budget authority of $1.7 billion and outlays of $1.5 billion.

The Senate amendment assumes budget authority of $1.3 billion and outlays of $1.1 billion.

The Conference agreed to $1.4 billion in budget authority and $1.2 billion in outlays.

The conferees assume that the levels agreed upon are sufficient to cover civilian agency pay raises under existing law and outlays that may be required for humanitarian assistance for Indochina refugees, as well as other contingencies.

Undistributed offsetting receipts (950)

The House resolution assumes budget authority of —$16.2 billion and outlays of —$16.2 billion.

The Senate amendment assumes identical amounts.

The conference substitute accepts the Senate estimate.

Both the House resolution and the Senate amendment assumed $4.0 billion in receipts from leases of mineral rights on the Outer Continental Shelf, rather than $8.0 billion estimated by the Administration.

BUDGET AUTHORITY AND OUTLAYS: FISCAL YEAR 1976

[In billions of dollars]

Function	Budget authority			Outlays		
	Senate	House	Conference	Senate	House	Conference
050—National defense	101.0	100.5	100.7	91.2	90.2	90.7
150—International affairs	6.0	4.7	4.9	4.9	5.0	4.9
250—General science, space, and technology	4.7	4.7	4.7	4.6	4.6	4.6
300—Natural resources, environment, and energy	13.4	14.1	13.8	11.7	11.5	11.6
350—Agriculture	4.3	4.3	4.3	2.0	1.8	1.8
400—Commerce and transportation	9.5	11.0	11.3	16.6	18.5	17.5
450—Community and regional development	6.0	10.8	11.0	6.6	9.0	8.65
500—Education, manpower and social services	20.7	19.0	19.0	19.4	20.4	19.85
550—Health	32.6	33.1	33.1	31.0	30.7	30.7
600—Income security	138.5	141.3	140.9	126.1	124.9	125.3
700—Veterans benefits and services	17.6	18.0	18.0	16.9	17.5	17.5
750—Law enforcement and justice	3.3	3.3	3.3	3.4	3.4	3.4
800—General government	3.3	3.3	3.3	3.2	3.4	3.3
850—Revenue sharing and general purpose fiscal assistance	7.3	7.3	7.3	7.2	7.2	7.2
900—Interest	35.3	35.0	35.0	35.3	35.0	35.0
Allowances	1.3	1.7	1.4	1.1	1.5	1.2
950—Undistributed offsetting receipts	—16.2	—16.2	—16.2	—16.2	—16.2	—16.2
Total	388.6	395.9	395.8	365.0	368.2	367.0

Note: Details may not add to totals due to rounding.

EDMUND S. MUSKIE,
WARREN MAGNUSON,
FRANK MOSS,
W. F. MONDALE,
ERNEST F. HOLLINGS,
ALAN CRANSTON,
HENRY BELLMON,
ROBERT DOLE,
J. GLENN BEALL, Jr.,
PETE V. DOMENICI,
Managers on the Part of the Senate.

BROCK ADAMS,
JIM WRIGHT,
THOMAS L. ASHLEY,
ROBERT N. GIAIMO,
NEAL SMITH,
JAMES G. O'HARA,
SAM GIBBONS,
PARREN J. MITCHELL,
BUTLER DERRICK,
Managers on the Part of the House.

Mr. MUSKIE. Mr. President, today, we ask the Senate to take one more step in the process of improving congressional management of the Federal budget. The Senate has before it the conference report on the first concurrent resolution on the budget for fiscal 1976. I urge Senate approval of the report.

Before getting into details on the report, I want to say that so far the new process is working precisely the way those of us who helped write the Congressional Budget and Impoundment Control Act thought it should. It also is working more smoothly than many of us had any right to expect it would this early in its career.

As a result, we have before us a budget that is tailored to the needs of the economy. And we have before us a budget which has been written in the open, with every detail subject to public examination and debate. There is no mystery about how it was put together and why it calls for the spending patterns it recommends.

As the act requires, the managers of the conference have agreed upon a combination of revenue and outlays which have been chosen with care to meet the needs of a nation and its people during the worst recession in more than 30 years. We are persuaded that the target for outlays of $367 billion will help stimulate the economy and put Americans back to work without generating new inflationary pressures.

We have agreed upon a pattern of spending that gives highest priority to those programs which get Americans back to work and help them in other ways to weather this recession.

During the course of the conference, some major amounts of money were moved among the functional categories. In every case, the reason for the move was to provide a maximum amount of spending for antirecession programs and to keep increases in the base of permanent, long-range spending to a minimum.

Thus, the conference managers have increased the amount of money that will create new jobs. They have balanced those increases with cuts in programs where spending can be deferred without leading to a loss of jobs. And they present these changes with unanimous support. All 10 managers for the Senate have signed the report.

When we brought the first concurrent resolution before the Senate last month, I said that the Federal budget is more than an exercise in cost-accounting. It is an annual affirmation of national hopes and goals. It is couched in terms of dollars, but its real meaning is in the purpose for which those dollars are spent—in the education of children, the defense of the Nation, and the support of retired workers.

Today, however, I will concentrate on the numbers, on accounting for the changes which the conference recommends in the budget ceilings and revenue estimates which the Senate and House approved on May 1.

One change is in the revenue recommendations. The Senate recommended revenues of $297.8 billion in its resolution. The conference managers recommend a higher revenue estimate of $298.2 billion, based on three factors:

First. Congress probably will extend major provisions of the Tax Reduction Act of 1975 into next year;

Second. The revenues for fiscal 1976 probably will be at least $2 billion higher than the Treasury Department originally calculated them to be; and

Third. Congress will enact tax reforms that will produce about $1 billion in additional revenues during fiscal 1976. The House resolution was amended on the House floor to recommend tax reforms to produce $3 billion in new revenues, with a majority of the members of the Ways and Means Committee supporting the amendment. The Senate did not assume any tax reform in its resolution.

The conference also recommends a change in the target ceiling for outlays to $367 billion, which is $2 billion higher than the ceiling approved by the Senate and $1.2 billion lower than the ceiling set by the House. All of the increase above the original Senate resolution outlay figure would go to job-creating temporary programs.

The combination of the revenue and outlay recommendations would produce a fiscal 1976 deficit of $68.8 billion—somewhat higher than the Senate figure; somewhat lower than the House figure. However, the conference deficit figure assumes an extension of the Tax Reduction Act, which was not included in the Senate resolution. This will reduce revenues by an estimated $4.4 billion in fiscal year 1976.

The most important change in the conference budget proposal is in the increase in funds that would be directed into temporary recovery.

The House approved about $9 billion for public works and other temporary job-creating programs. The Senate approved $4.5 billion for similar temporary recovery spending. The conference recommends temporary recovery spending of $7.5 billion.

The higher figure is closer to my personal preference. I wanted to allocate more than $4.5 billion to temporary job-creating programs but that was not the

will of the Budget Committee or of the Senate.

The higher figure is possible, in part, because of the revised estimate of revenue which was made after the Senate approved the first concurrent resolution. It also is possible because the conference agreed to a tighter ceiling on defense spending than that which the Senate approved.

The higher level of spending for job-creating programs are divided among the functions of commerce and transportation, community and regional development and education, manpower and social services.

The conferees left open the question of how some $2 billion of the temporary recovery money would be spent. It could take the form of public works projects or it would be used for emergency help for State and local governments, many of which have been hard hit by both recession and inflation.

Without emergency help, many cities in this country will be forced to make a choice between raising taxes and cutting services or postponing major projects, either of which would run directly counter to the Federal Government's efforts to stimulate the economy.

Finally, these increases in funds for job-creating programs made it possible to reduce recommended outlays for unemployment insurance by nearly $1 billion below the original Senate figure.

The Congressional Budget Act requires the Senate to consider and report a second concurrent resolution on the budget in September. If economic conditions have changed significantly by then, Congress will want to change its outlay and deficit figures to meet the new situation.

As part of our preparation for that resolution, I have asked the Director of the Congressional Budget Office to prepare two reports on the Nation's economy, one for delivery on June 30 and the second on August 15. Those reports should help tell us whether the assumptions we have made about the behavior of the economy in the weeks ahead are correct and whether the policies we have adopted are valid.

I have asked Ms. Rivlin also to analyze the temporary recovery programs envisioned in this budget resolution and to prepare a report on various approaches Congress might take to launching such programs when they are needed and withdrawing them when stimulus is no longer appropriate. Ms. Rivlin advises me that she has begun her analysis and that she will report to Congress by August 15 on experiences with such temporary programs both in the United States and abroad.

Now the question remains: What are we going to do with these numbers during the summer?

When we are voting on the second and binding resolution in September, will these targets be more or less intact? Will our self-discipline have worked?

Success really will be a measure of self-discipline, because neither I nor the other members of the Budget Committee has the power to enforce these totals. We will be happy to work with all committees as their legislation goes forward to explain how these targets were achieved. The Congressional Budget Office is establishing an advisory monitoring system which will give us an understandable tally sheet on a very regular basis showing what we have already spent, what seems likely to come to the floor, and how much room there is left beneath the targets. But the decision to vote "yea" or "nay" for this spending bill or that will be up to the individual Members, as it always has been.

Applying the first concurrent resolution will not be easy, but neither have any of the other steps we have taken to date in this new process. The objective of fiscal responsibility remains valid, however, and I believe we now know it is achievable. We can emerge in September with a success far beyond what the skeptics ever envisioned for the first year of this new process.

Congress also must prepare for a so-called "transition quarter" which will occur from July 1 to September 30, 1976, during the shift to the new October 1 fiscal year under the terms of the Congressional Budget Act. Due to the press of time, neither the Senate nor the House Budget Committee has been able to include the transition quarter in its deliberation on this first concurrent resolution. I think it is fair to say, however, that both budget committees will agree that our approach to this interim period should be one of restraint. Activities of the Federal Government must, of course, be maintained at necessary levels, but new program initiatives clearly should be deferred until fiscal year 1977, which begins on October 1, 1976, wherever possible.

Mr. President, I submit that this conference report is one of the most important pieces of legislation to be presented to the Senate in many years.

The choices will not be easy. Many legitimate demands will have to be deferred. But with this budget proposal as a guideline, I believe we can meet the most urgent needs of Americans and, at the same time, restore their confidence in the Nation's economic future.

Mr. President, I urge the Senate's support of the conference report.

At this point, I express my appreciation again to the distinguished Senator from Oklahoma (Mr. BELLMON), the ranking Republican on the Senate Committee on the Budget. In the deliberations of the Committee on the Budget and on the Senate floor, he was a staunch supporter of our efforts in protecting the Senate position in conference. He attended every moment of those deliberations, which I think, on the whole, were constructive if, at times, reflecting vigorous dissent between the House and Senate conferees. Once again, I say "thank you" to Senator BELLMON and yield to him at this point.

Mr. BELLMON. Mr. President, I thank our distinguished chairman. The experience of working out a resolution on the budget with the House is certainly one that everyone who participates will remember for a long time. The House Members seemed to be pretty determined in their positions and it was only through the leadership of our chairman that we were finally able to come to a compromise and have the resolution which we are considering now.

Mr. President, this first concurrent resolution marks the end of the initial step in our implementation of the Congressional Budget Act. The resolution is the product of many hours of debate between joint conferees, and as such, it contains compromises between the differing positions of the two Houses of Congress. However, I believe the resolution represents more than simply compromises worked out in joint conference. It is the first positive result of the efforts of Congress to gain control of the budgetary process.

The resolution represents a compromise between many differing points of view. In my own case, I should have preferred a lower spending level and a lower deficit. In spite of my personal preferences, I support this resolution as the best result obtainable. I urge other Members of the Senate to do the same. Once these limits are fixed, Congress must act to see that they are not broken.

I wish to take this opportunity to reflect for a moment on the implications of the process we have set in motion.

For the first time and, I might add rather belatedly, Congress is now required to come to grips with the issues and hard choices involved in setting spending levels and priorities. No longer can we consider each spending program singularly, with no awareness or concern of its effect on the total level of Federal spending. No longer can we suddenly discover late in the session that we have, inadvertently perhaps, spent far beyond the anticipated level of receipts. From this time forward, Congress will have current information regarding the relationship between income and outlay. Our decisionmaking process should now be informed and deliberate.

As a part of our decisionmaking process, Congress must now examine the current and projected state of the economy and the effects of past action upon current conditions. Timely adjustments will undoubtedly be needed. A major responsibility of the budgeting procedure is to recommend these changes as conditions develop.

The spending levels recommended in this resolution for the various functional categories were not arrived at easily. They are the product of extensive and, in many cases, intensive and heated debate. As a result, I can recommend them to the Senate as being well thought out. They represent our best judgment as a way to cure the recession while minimizing to the greatest extent possible return to an intolerable rate of inflation.

With the adoption of the resolution, we move on to our next task, which involves working with the various authorizing committees and the Appropriations Committee to see that the Senate follows this fiscal discipline. We have a responsibility to the American people to get Government spending under control and to administer the budget in a responsible manner. This process gives us an excellent opportunity to show the American people that we are serious about setting spending levels and then living within

them. If we proceed to ignore these ceilings, we will have thrown away what I believe to be a unique chance to show the Nation that we are indeed serious in our efforts to enforce fiscal discipline on the Federal Government.

Chairman MUSKIE referred to our responsibility constantly to monitor the economy through the summer months so as to gage properly the effects that the stimulus contained in this budget is having on the economy. This task must be performed in conjunction with our responsibility to bring a second concurrent resolution to the floor of the Senate in September. At that time, we shall have the opportunity and duty to adjust the budget where necessary to compensate for the changes in the then existing economic outlook.

With this second concurrent resolution in mind, I would urge my colleagues to give this budget time to work before the cry for more spending is raised. The process provides for orderly adjustments when conditions warrant.

Congress must now proceed in an orderly and responsible manner to live within the constraints of this resolution. Otherwise, we run the risk of further weakening the already declining public confidence in the ability of the Government to cope with and solve our financial problems.

As I have previously cautioned, we must reorient our problem-solving decisions to place less emphasis on shortrun solutions which tend to exacerbate future problems. We must view problem solving in a longer term environment and this new budgetary process gives us the opportunity to do just that.

Finally, I join Senator MUSKIE in his thoughts regarding the "transition quarter." It is a period of time with which we have not yet dealt in a budgetary context. We must address ourselves to it at an early date. In the meantime, I urge that it be treated with "benign neglect"; that no programs be enacted to begin during this period. To do otherwise, is to subvert the budget process.

Once again, I commend our able chairman, the senior Senator from Maine, for his leadership during this arduous process. He has been fair, effective and resourceful. This first concurrent resolution could never have come to the floor without his inspired and dedicated leadership.

Mr. President, I ask unanimous consent that Harold Gross of Senator CRANSTON'S staff be granted the privilege of the floor during the remainder of the debate on this resolution.

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

Mr. MOSS. Mr. President, I am pleased to speak in support of the first concurrent resolution on the budget for fiscal year 1976. I believe that the resolution represents a major step forward in bringing the Federal budget under control and in establishing national priorities. In my view, the new process which the Congress adopted in enacting the Congressional Budget Act last year is one of the most significant and positive changes in Government in decades. The debate on the resolution in this body has already served to identify issues and to provide an exchange of information on the Federal budget in a way heretofore unknown. In my view, the end result will be of great assistance to the authorizing committees in considering and developing measures which appropriately address budget-related needs.

The resolution considered by the Senate earlier this month which provided a basis for the conference report before us today, resulted from extensive committee seminars, hearings, and consideration of recommendations and viewpoints from people of various disciplines and persuasions. Like other products of the legislative process, it does not reflect the complete views of any single member of the committee. But is it reasonable, responsible, and responsive to the Nation's budgetary needs as determined by the committee at this time. It is important that the new process which the Congress has adopted succeed if we are to bring the Federal budget under control consistent with the Congressional Budget Act of 1974 from which the new process evolved. For these reasons as well as those reflected in my speech before this body on April 29, I have firmly supported the resolution, even when it did not precisely square with my own views.

Some recommend more Federal spending now to stimulate the economy. However, I think we should consider the stimulus and jobs included—in this resolution—over a million adult jobs and three quarters of a million summer youth jobs in the recent tax cut—which is expected to yield a million to a million and a half jobs and provide longer hours for an equal number of workers, some of whom are on part time and the other actions the Congress has already taken in recent months to stimulate the economy and create jobs; for example, the Emergency Jobs and Unemployment Assistance Act.

The economy has not fully benefited from the effects of these measures. I think the prudent course is to give these remedial actions a chance to work and to assess their impact on the economy prior to enacting the second concurrent resolution in September. This will afford an opportunity to consider additional recovery programs or to make other adjustments based on the economy's actual performance.

I share the concern of those who advocate a smaller deficit. However, we have over 8.9 percent unemployed including over 2 million heads of households. This is costing the Federal Government about $69 billion and State and local governments $5 billion annually in lost revenues and unemployment compensation. Our economy is also losing over $200 billion annually from lost production. Whatever figures we can cite do not begin to tell the real story of human suffering. Congress did not create the deficit, but people are looking to the Congress for help in alleviating the causes of the recession from which the deficit results, turning the economy around, and getting Americans back to work.

How much spending is enough to do this is itself a delicate question. I believe this resolution offers the best strategy at this time for meeting the Nation's needs and bringing the economy back to something closer to full employment. That is the only way to stop deficit spending.

I especially want to commend the committee leadership—Chairman MUSKIE and Senator BELLMON—and all the members of the staff of the new Senate Budget Committee, for their noteworthy contributions to what, in my view, history will record as an important step in budgetary reform.

Mr. DOLE. Mr. President, today we are going to take up the matter of the conference report on House Concurrent Resolution 218, the first concurrent resolution on the budget. Since the Budget Act requires that this first concurrent resolution be adopted by May 15, which is tomorrow, there will be a great deal of pressure to simply whisk it through.

I urge my colleagues to again consider the levels of expenditures and deficit embraced by this resolution. The Senate has approved an outlay figure of $365 billion—conference increased this by $2 billion. The resulting deficit is $1.6 billion over the Senate proposal. I do not fault the Senate conferees for the resolution we are now considering for I was one of the conferees, and I believe all the conferees from the Senate worked very hard and valiantly to be responsible in this historic occasion. It was indeed a difficult task.

Mr. President, I am opposed to the conference report. I believe the spending limits are too high. I will not be satisfied with the claim that the conference figures are somewhere between the proposals of the House and Senate. I felt that the Senate figures were too high to begin with, and was unsuccessful in offering an amendment during floor debate to lower the totals.

This is our last chance to demonstrate our absolute concern for the health of our economy and a restraining influence on growing deficits. While the proposed budget contains much needed stimulus to our economy, sooner or later we will have to accept the fact that we cannot continue to mortgage the future or our country.

Mr. HOLLINGS. Mr. President, I rise to urge adoption of the conference committee report on the budget resolution. We have been through a long and laborious process in formulating and passing this milestone legislation. The final result is, inevitably, a compromise. I did not get my way, but neither did any other Senator. Some of my colleagues have been pushing for a higher level of budget expenditure and deficit spending. Others, myself included, have argued in favor of restraint and holding the deficit down. During the course of Senate debate on the budget resolution—and in our many committee meetings—I have expressed and reiterated my concern lest the Federal Government monopolize the money markets via these huge deficits, thereby

retarding a broadly based economic recovery.

I wish the conference committee figure had been closer to the Senate's suggested figure. But here again, compromise was necessary, and I will vote in favor of approving the work of the conference. I believe we have provided the means to generate economic recovery. And if we follow this up with generous amounts of restraint in the months ahead, I believe we can succeed in keeping that recovery on a sound footing.

Let me say in conclusion that this first experiment with the new budgeting process holds out great promise for the future. The Budget Committee had many obstacles with which to contend, and it had to operate without the full resources and capabilities which will be available to it in the future. But there was a willingness to make it work—not just in the committee itself, but here on the floor of the Senate. This augers well for the future. Certainly the new budgeting procedure is long overdue. And with the kind of performance and attitude I have seen in recent weeks and months, I believe the Budget Committees will make an enduring contribution to the prosperity and well-being of the American people.

Mr. CRANSTON. Mr. President, after both Houses of Congress act on the conference report on the first concurrent resolution on the budget, the Congress will have taken its first major step in carrying out its responsibilities under the new congressional budget process.

We will have set an upper guidepost for Federal spending, and we will have agreed upon a budget which reflects a congressional view of national priorities.

Now, the test will be whether we can hold ourselves within the overall budget.

I believe that it is essential that we attempt to do so.

For, these are the main thrusts of the budget reform discipline we have imposed upon ourselves:

First, to eliminate the long-standing, fiscally irresponsible congressional practice of piecemeal budgeting—that is, appropriating funds for one perceived need after another without ever looking at the total on the bottom line, or the amount of revenues available to spend.

Second, to permit Congress to reassert its constitutional power of the purse in establishing national budget priorities.

It is clearly a congressional responsibility, not a Presidential one, to determine among competing programs the spending priorities of the Nation.

Now, for the first time under the new budget reform process we have done so.

And we have come some distance, but not far enough, from the peculiar priorities the President suggested in the budget he released to us in February.

The President's budget imposed cuts on the elderly, the disadvantaged, the poor, the sick, and the unemployed, while requesting a turn-around real growth budget for the military, and a sizable increase in overseas assistance.

These were priorities badly in need of reversal, and to some extent Congress has reversed them.

These are the worst economic times since the Great Depression.

This is no time to force those who are least able to bear a greater burden to bear the biggest brunt of Federal revenue losses caused by the recession.

By making modest cuts in the Schlesinger defense request, the fiscal year 1976 congressional budget reduces from 26.9 to 24.7 percent the percentage to be spent on national defense, and from 1.8 to 1.3 percent the percentage spent on international aid.

At the same time, the congressional budget allocates $5.25 billion more than the amount requested by the President for education, manpower, and social services.

This allows for Federal education programs to recover from the adverse effects of last year's inflation, and provides more than $3.3 billion in fiscal year 1976 for public service employment jobs to help get people back to work.

The President requested only $2.4 billion for this purpose—by no means enough to meet the immediate need.

By percentage, this category has been increased from 4.2 to 5.4 percent of the budget.

The congressional budget also makes significant increases in the percentages allocated for commerce and transportation, and for community and regional development.

In the commerce function, Congress provided $400 million for the badly depressed housing industry, for which the President made no provision in his budget.

This category also includes substantial amounts for the rehabilitation of our railroads, including additional public service jobs in railbed improvement.

The share of the budget occupied by this category was increased from 3.9 to 4.7 percent.

In community and regional development, the congressional budget provides $2.75 billion more than the President requested—almost entirely for temporary recovery programs to stimulate the economy.

These programs will hopefully be designed to end as the economy recovers, so that they will not overheat the economy at the wrong time, nor add to long-range Federal spending.

Again, the President's budget made no provision for these programs to aid economic recovery.

The budget process makes us aware—perhaps for the first time—to relieve unemployment—to provide assistance to the sick or the elderly—or to provide better education for our children, for example, we must find the money somewhere.

In better times, we might consider raising taxes.

But this is not the time for a tax hike to achieve higher revenues than the $298.2 billion that the congressional budget provides for in fiscal year 1976.

Hopefully, as our stimulative recovery programs begin to work on the economy, higher revenues than are anticipated will be generated, as people go back to work and as business profits increase.

In addition, the congressional budget envisages raising $1 billion in additional revenues through tax reform in fiscal year 1976.

I support this modest goal.

I see it as merely the beginning of a long-range effort to eliminate inequity from our tax system, by reevaluating tax incentives and advantages and insuring that all Americans with sufficient earnings pay a fair minimum tax.

That is certainly not the case now.

But the $1 billion taken into account in the congressional budget may mark our achievable ability to produce revenue by this means in the short run.

It then becomes clear that unless we disregard our budget discipline—an alternative I believe has disastrous consequences—if we want to spend more than this budget permits in one category, we must take it out of another.

There are those who advocate creating a larger deficit to accelerate the rate of recovery.

I believe we should restore our economy to health as rapidly as we reasonably can—and far more quickly than the President and his advisors deem possible—but I believe that enlarging the deficit proposed in the budget resolution—$68.82 billion—involves too many long-range risks which could quickly eradicate any short-range economic advantage.

In my view, further reallocation of our budget is necessary.

The congressional budget recommends an upper guidepost for defense, as it does for other areas.

But it does not require that the amount allocated be spent.

I firmly believe that each dollar spent unnecessarily on defense could be better used to provide additional temporary recovery programs, which would—unlike defense dollars—not commit us to expensive, long-run programs which will continue to burn up our financial resources wastefully long after the economy has recovered.

Further savings can be achieved by adopting an approach to the defense budget that Secretary Schlesinger himself suggested in his defense posture statement:

That is, recognizing the connection "between the safety, interests, commitments, and foreign policy of the United States on the one hand, and the size, composition, and deployment of the Defense Establishment on the other."

While the Secretary's full statement of this position assumes that DOD correctly perceives the amount of money necessary to carry out assigned missions—an assumption that bears further examination—it does recognize the intimate relationship between mission and budget.

It is readily apparent to me that the Schlesinger defense budget is built on a number of questionable assumptions and judgments which Congress ought specifically to review.

It is also clear that none of these were accounted for in the reductions from the Schlesinger request contained in the congressional budget.

I encourage Senators, in making spending decisions affecting the national defense function, to examine closely the assumptions and policy judgments the Secretary has made, on which his funding requests are based.

Senators who, like me, disagree with one or more of the debatable assumptions can realize substantial savings in defense spending by eliminating the manpower or weaponry that result from these assumptions.

Using this approach—and by disagreeing with some, but by no means necessarily all, of the assumptions—I believe it is easily possible to achieve substantial further savings from the defense request.

The following debatable assumptions are found in the Schlesinger defense budget:

First, that the Vladivostok agreement means that both nations must race to reach its ceilings.

Second. That we must maintain "essential equivalence" in strategic weapons, despite our present possession of a secure deterrent for the foreseeable future.

Third. That development of sea and air launch cruise missiles, which would adversely affect arms control negotiations, should proceed, with a potential price tag of $10–16 billion.

Fourth. That we need a hard target capability for the Trident II SLBM.

Fifth. That current world conditions require further development and procurement of advanced ICBMs and SLBMs despite our current overkill capacity.

Sixth. That we need to procure an additional 50 Minuteman III missiles at a cost of $270 million for flight testing and possible future deployment, even though we already have the 1000 Minuteman missiles originally desired.

Seventh. That we need to continue an ABM effort, to defend our ICBMs.

Eighth. That the present world situation requires the creation and equippage of three new Army divisions.

Ninth. That we need to maintain U.S. forces in Taiwan, Korea, Thailand, Japan, and the Philippines which leads to a total estimated cost for the Asian force posture of between $20 and $25 billion per year.

Tenth. That we need overall to maintain over 500,000 military personnel overseas in 33 countries.

Eleventh. That we need an airborne surveillance command and control system—AWACS—housed in a large airplane, at a cost of $111 million per unit, to provide battle management in tactical air warfare.

Twelfth. That we need to modify 747s and DC 10s to a convertible cargo/transport configuration at a cost of $680 million.

Thirteenth. That we need to authorize $130 million in new budget authority for procurement of the SAM–D missile, even though its production has been delayed because its guidance system does not work.

Fourteenth. That we need to develop a new battle tank at a cost of $1.9 million each.

Fifteenth. That we need a new tanker/cargo aircraft to support general purpose forces.

Sixteenth. That we need to authorize $4.2 billion in new budget authority for shipbuilding a variety of ships.

Seventeenth. That the possibility of nuclear air attack justifies spending $88 million on civil defense this year, with far vaster expenditures to follow once we move in this direction, and

Eighteenth. That we need both an all-volunteer Army with a fully-subscribed recruitment quota, a $463 million annual advertising budget, and a highly competitive pay scale—and also a selective service system costing $47.9 million annually, for "the development of alternate contingency processing procedures designed to increase the system's capability to meet the DOD manpower requirements in a major military crisis should existing procedures prove inadequate."

In addition to these 18 points, some potential savings may be realized from funds from prior years' budgets which have become "unprogramed" and can be transferred for use in fiscal year 1976, and the cash balance of defense stock funds. These funds are used to acquire inventories of consummable materials and supplies.

Still another possible reduction is the Inventory Replenishment Fund. This fund is used to buy weapons—with U.S.-appropriated dollars—to sell to other countries.

These and other funds—including billions for intelligence—buried deep within DODs budget deserve close scrutiny.

Our national needs are too great, and our national resources too limited, to accept even so much of the hug Schlesinger "turn-around" defense budget uncritically, as the congressional budget suggests.

For, if we can trim from the defense budget that which is unnecessary or dangerous, or simply wrongheaded—we will find the funds to meet our other national needs.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the order for the vote on the conference report at 12:30 p.m. be vitiated.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MUSKIE. 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. MUSKIE. Mr. President, I think we are ready for the vote on the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. MUSKIE. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. MOSS. I move to lay that motion on the table.

Mr. BELLMON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

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

CONSUMER PROTECTION ACT OF 1975

The PRESIDING OFFICER. Under the previous order the Senate will now resume consideration of the pending business, S. 200, which the clerk will state by title.

The assistant legislative clerk read as follows:

A bill (S. 200) to establish an independent consumer agency to protect and serve the interest of consumers.

The Senate continued with the consideration of the bill.

Mr. MANSFIELD. Mr. President, is the time controlled now?

The PRESIDING OFFICER. The time is not controlled.

AMENDMENT NO. 446

The PRESIDING OFFICER. The pending question is on amendment 446 to S. 200, which the clerk will state.

The assistant legislative clerk read as follows:

The Senator from Louisiana (Mr. JOHNSTON) proposes amendment No. 446.

The amendment is as follows:

On page 15, beginning with line 6, strike out through "consumers" in line 10, and insert in lieu thereof the following:

The Administrator shall have standing to obtain, in the manner prescribed by law, judicial review of any Federal agency action reviewable under law that substantially and directly affects the health or safety of consumers.

On page 17, line 5, insert the following:

Notwithstanding any other provisions of this Act, a determination of an agency not to take the action requested shall not be subject to judicial review unless the requested action substantially and directly affects the health or safety of consumers.

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

The assistant legislative clerk proceeded to call the roll.

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

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

RECESS UNTIL 12:10 P.M.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate stand in recess until the hour of 12:10 p.m. today.

There being no objection, the Senate, at 11:52 a.m., recessed until 12:10 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. HELMS).

CONSUMER PROTECTION ACT OF 1975

The Senate continued with the consideration of the bill (S. 200) to establish an independent consumer agency to protect and serve the interest of consumers, and for other purposes.

Mr. PEARSON. Mr. President, I ask unanimous consent that Mr. John Kirtland and Mr. Arthur Hill of my staff be allowed the privileges of the floor during debate on this measure.

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

Mr. RIBICOFF. Mr. President, I yield to the distinguished majority leader.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, the time to be charged to both sides.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, I yield to the distinguished Senator from Georgia (Mr. NUNN) to make a request.

FIRST CONCURRENT RESOLUTION ON THE BUDGET—FISCAL YEAR 1976—CONFERENCE REPORT

Mr. NUNN. Mr. President, I ask unanimous consent that it shall be in order for me to enter a motion to reconsider the vote by which the conference report on House Concurrent Resolution 218 was approved, that the papers which have been forwarded to the House be returned to the Senate, and that the House be requested to return the papers.

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

Mr. MANSFIELD. Mr. President, if the House accedes to the request of the Senate, I should like to take it up immediately after the vote on the Johnston amendment. I ask unanimous consent that there be a time limitation of 30 minutes, the time to be equally divided between the Senator from Georgia (Mr. NUNN) and the Senator from Maine (Mr. MUSKIE) with the usual conditions.

Mr. JOHNSTON. Mr. President, reserving the right to object, as I understand this motion as the Senator from Georgia just explained it to me, it could involved a cut of 700,000 to 800,000 troops and personnel from the Department of Defense. I do not think that is the kind of cut that should be considered on 30 minutes' debate. I hate to upset the agreement, where the majority leader has just agreed to reconsider, but I really think that is a most weighty measure, if I understood the explanation correctly.

Mr. NUNN. I certainly agree with my friend and colleague from Louisiana that it is a very important matter. It is a budget resolution which, if we are going to take the budget process seriously, is certainly one of the most important items we will consider this year. Of course, my objection goes to the cuts in the Department of Defense budget, which I shall get into later. But in light of the fact that the Senate has already acted without a rollcall vote, in light of the fact that the majority leader is being most cooperative in giving us some time at least to discuss this matter, and in light of the fact that I anticipate a rollcall vote following at least a 30-minute discussion on a point that I think everybody can understand, I do ask that the Senator from Louisiana give strong consideration to complying or agreeing to the unanimous-consent request by the majority leader. We will have a chance to vote up or down on this.

Of course, once a concurrent resolution is passed, it is always in order to come back with another concurrent resolution. In my opinion, based on the rather hasty analysis that has been done on this, it may very well be that once the Department of Defense and the administration recognize what has been done in this particular resolution, they may come back and ask for another consideration. If we do not do that, of course, we have always the option of exceeding the resolution on the authorization and appropriation measures. The Senator from Georgia hopes that will not be done, because I hope that the budget process will work.

In light of all the circumstances, yet agreeing with my friend from Louisiana about the importance of this, I hope that the majority leader's unanimous-consent request will not meet objection.

Mr. JOHNSTON. Mr. President, I want first to congratulate the Senator from Georgia for his alertness to what may be the implications and congratulate the majority leader for his usual fairness in seeing that the Senate gets a full opportunity to know what it is voting on. But in all fairness to the country, if these implications, even may be correct, the Senate ought to consider it in full. I simply have to object to 30 minutes' debate. Therefore, I object.

Mr. MANSFIELD. Mr. President, then I do not know what is going to happen, because we are in difficulty over in the House. They are preparing to vote on the bill. The papers may not be returned, and this is about the only chance that we have to face up to this issue.

Furthermore, I want to get the pending business underway, which will be set aside temporarily, on which cloture has been invoked. I would extend the time to an hour; otherwise, I think we are in great difficulty.

Mr. JOHNSTON. I have no objection; I shall accede to the majority leader's statement.

Mr. MANSFIELD. With the same stipulations.

Mr. HELMS. A parliamentary inquiry, Mr. President.

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

Mr. HELMS. Mr. President, parlimentary inquiry.

The PRESIDING OFFICER. The Senator from North Carolina will state it.

Mr. HELMS. Has the Senator from Georgia made his motion, and if so, has the motion been agreed to?

The PRESIDING OFFICER. The majority leader has made the motion and the motion has been agreed to, for 1 hour—a unanimous-consent agreement.

Mr. HELMS. I thank the Chair.

The PRESIDING OFFICER. The motion to reconsider has not been offered by the Senator from Georgia.

Mr. HELMS. That is what I had in mind.

Mr. MANSFIELD. We cannot do that until the papers get back. We cannot do anything until we have the papers. Is there an objection, before it goes that far? If there is, I would like to know now. Will there be an objection to the motion to reconsider?

Mr. HELMS. Not at all. Not from this Senator.

CONSUMER PROTECTION ACT OF 1975

The Senate continued with the consideration of the bill (S. 200) to establish an independent consumer agency to protect and serve the interest of consumers, and for other purposes.

Mr. JOHNSTON. Mr. President, what is the pending question?

The PRESIDING OFFICER. The pending question is on agreeing to the amendment of the Senator from Louisiana.

Mr. JOHNSTON. And under the unanimous-consent agreement, the Senator from Louisiana has 10 minutes?

The PRESIDING OFFICER. That is correct; and the Senators have 5 minutes each remaining of the time allotted for the amendment.

Mr. JOHNSTON. Mr. President, I believe the Senator from Louisiana was never recognized under the unanimous-consent agreement, but rather a unanimous-consent request by the distinguished Senator from Georgia was being propounded and discussed. Am I not correct?

The PRESIDING OFFICER. There was a unanimous-consent agreement for the vote to occur on the amendment at 12:30 p.m., and the intervening time to be equally divided.

Mr. RIBICOFF. Mr. President, I am pleased to yield 3 or 4 minutes of my time to the distinguished Senator from Louisiana, so that he can have almost 10 minutes.

Mr. JOHNSTON. Mr. President, that will be suitable, and I thank the distinguished Senator from Connecticut.

Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. JOHNSTON. I request that my colleagues who are not familiar with this amendment listen to me. This is not, first, an attempt to kill this bill; it is an attempt to make the bill a better bill, and if the amendment is agreed to I shall vote for it.

Mr. President, there has not been a bill to come through the Senate, which has been less understood than this bill, in quite some time.

Indeed, two basic questions were propounded on this floor yesterday to be answered ultimately by staff. In all good faith, because of complication of the bill, the questions were misunderstood; the answers were incorrect.

The first question was, is the right of the administrator subject to review? The answer was yes, it is. In fact, the right of the administrator to state a consumer interest and to promote it in the agencies or in the courts is not subject to review.

The second question was, does this agency have any greater right to proceed than does an individual? The answer is very plainly that individuals in almost every agency must prove an interest and failing to prove that interest they have no right to appeal.

I have only had a chance to look at the FTC, the SEC and the CAB.

Mr. President, I ask unanimous consent that two court decisions and a statute involving those agencies be printed showing that lack of interest.

There being no objection, the 2 court decisions and statute were ordered to be printed in the RECORD, as follows:

[U.S. Court of Appeals, District of Columbia Circuit, No. 12404]

WILLIAM LEIGHTON, PETITIONER, AGAINST SECURITIES AND EXCHANGE COMMISSION, RESPONDENT

Argued Jan. 31, 1955.

Decided Feb. 10, 1955.

Proceeding to review Securities and Exchange Commission's refusal to investigate and regulate issuance and sale of travelers checks. On motion by Commission to dismiss the Court of Appeals held that even if action of Securities and Exchange Commission in declining to entertain request to investigate and regulate issuance and sale of travelers checks constituted an order of the Commission, nevertheless it was within discretion of Commission, and such an order was not reviewable.

Motion granted.

Administrative Law and Procedure—701.

Licenses—18½ (57).

Even if action of Securities and Exchange Commission in declining to entertain request to investigate and regulate issuance and sale of travelers checks constituted an order of the commission, nevertheless it was within discretion of commission and such an order was not reviewable. Securities Act of 1933, §§ 1 et seq., 9(a), 20 as amended 15 U.S.C.A. §§ 77a et seq., 77i, 77t; Administrative Procedure Act, § 10, 5 U.S.C.A. § 1009.

Mr. William Leighton, petitioner pro se.

Mr. William H. Timbers, General Counsel, Securities and Exchange Commission, with whom Mr. Alexander Cohen, Special Counsel, Securities and Exchange Commission, was on the brief, for respondent.

Before Edgerton, Bazelon and Fahy, Circuit Judges.

Per curiam.

William Leighton, the petitioner, sought to persuade the Securities and Exchange Commission to assume jurisdiction to investigate and regulate the issuance and sale by the American Express Company of travelers checks, contending they are securities within the meaning of the Securities Act of 1933.[1] The Commission refused. Leighton then petitioned this court to review the Commission's refusal, contending jurisdiction resides in this court under Section 9(a) of the Securities Act[2] and Section 10 of the Administrative Procedure Act.[3] The Commission has moved that we dismiss the petition for lack of jurisdiction.

Were we to assume that the action of the Commission in declining to entertain petitioner's complaint, or to investigate the matters pressed by him, constituted an order of the Commission nevertheless it would be one within the discretion of the Commission under Section 20 of the Securities Act[4] and, in any event, not such an order as would be reviewable by this court under Section 9(a) of the Act. See Vrooker v. Securities and Exchange Commission, 1 Cir., 161 F.2d 944, 949. The discretionary character of the Commission's action likewise remove it from Section 10 of the Administrative Procedure Act, which excepts from its provisions for judicial review agency action committed by law to agency discretion. The motion to dismiss accordingly will be granted.

It is so ordered.

FOOTNOTES

[1] 48 Stat. 74 et seq., as amended, 15 U.S C.A. § 77a et seq.

[2] 48 Stat. 80, as amended, 15 U.S.C.A. § 771.

[3] 60 Stat. 237, 243, as amended, 5 U.S.C.A. § 1009.

[4] 48 Stat. 86, as amended, 15 U.S.C.A. § 77t.

[U.S. District Court, N.D. Georgia, Atlanta Division, No. 15091]

ORIAN A. SAUCKE AGAINST FEDERAL TRADE COMMISSION

Oct. 22, 1971.

Proceedings on defendant's motion to dismiss mandamus proceeding. The District Court, Edenfield, J., held that mandamus petitions growing out of plaintiff's personal financial affairs and relating to plaintiff's eviction from his former residence and subsequent inability to find suitable housing through federal agency did not invoke jurisdiction of federal court and did not state claim upon which federal court could grant relief.

Motion granted.

1. Courts—265

Mandamus petitions growing out of plaintiff's personal financial affairs and relating to plaintiff's eviction from his former residence and subsequent inability to find suitable housing through federal agency did not invoke jurisdiction of federal court and did not state claim upon which federal court could grant relief.

2. Trade Regulation—811

Exercise of enforcement powers by FTC is discretionary and is applicable only in cases of public interest. Federal Trade Commission Act, §§ 5, 6, 15 U.S. C.A. §§ 45, 46; Fair Credit Reporting Act, § 621, 15 U.S.C.A. § 1681s.

3. Mandamus—73(1)

Mandamus was not available to compel exercise of FTC investigative powers, particularly where plaintiff sought to have FTC seize certain records relevant to plaintiff's financial status. Federal Trade Commission Act, §§ 5, 6, 15 U.S.C.A. §§ 45, 46; Fair Credit Reporting Act, § 621, 15 U.S.C.A. § 1681s.

Orlan A. Saucke, pro se.

John W. Stokes, Jr., U. S. Atty., Julian M. Longley, Jr., Asst. U. S. Atty., Atlanta, Ga., Joseph Martin, Jr., Gen. Counsel, Harold D. Rhynedance, Jr., Asst. Gen. Counsel, Robert E. Duncan, Atty., F. T. C., Washington, D. C., for F. T. C.

Order.

Edenfield, District Judge.

[1] This is the first of four pro se mandamus petitions which have been filed by plaintiff. Two of the petitions relate to problems growing out of plaintiff's personal financial affairs.[1] The other petitions relate to plaintiff's eviction from his former residence[2] and his subsequent inability to find suitable housing through a federal agency.[3] While plaintiff may in fact have some serious legal problem, the complaints presented to this court simply do not invoke the jurisdiction of a federal court, nor do they state any claim upon which a federal court could grant relief.

In this action plaintiff requests mandamus relief requiring the Federal Trade Commission to seize certain records relevant to plaintiff's financial status. These records are in the possession of various credit bureaus in Georgia, Iowa, Minnesota, and Wisconsin, and allegedly contain erroneous credit information which is damaging to plaintiff. The FTC has moved to dismiss the petition.[4]

[2, 3] It is well settled that an action in the nature of mandamus requires the existence of a specific duty owed to plaintiff. *E. g.*, In re Wingreen Co., 412 F.2d 1048 (5th Cir. 1969). No such duty is alleged in this action and it clearly appears that no such duty exists. The exercise of enforcement powers by the FTC is not only discretionary but is applicable only in cases of public interest. 15 U.S.C. §§ 45, 46, and 1681s. Such being the case, mandamus is not available to compel the exercise of FTC investigative powers particularly where plaintiff seeks to have the FTC assist him in his personal financial affairs. FTC v. Klesner, 280 U.S. 19, 50 S.Ct. 1, 74 L.Ed. 138 (1929); Stancato v. Department of Justice and FTC, Civil Action No. 69–1378 (D.C.Cal., Aug. 14, 1969).

Therefore, defendant's motion to dismiss is granted and the Clerk is directed to dismiss plaintiff's petition for failure to state a claim upon which relief can be granted.

It is so ordered.

FOOTNOTES

[1] This action and Civil Action No. 15669.

[2] Civil Action No. 15591.

[3] Civil Action No. 15670.

[4] Subsequent to the filing of defendant's motion to dismiss plaintiff informally contacted the court regarding his cases and was advised that his petitions did not appear to set forth a federal cause of action. The court informed plaintiff that prior to any ruling on the sufficiency of his petitions, he would be given an opportunity to obtain counsel and file any additional documents which he wished the court to consider. Plaintiff has responded by requesting appointment of counsel and filing an amendment. The request for appointment of counsel is denied and the amendment fails to cure plaintiff's fatally defective petition. The amendment contains a vague allegation that plaintiff is under the jurisdiction of a federal agency. While the purpose of this allegation is unclear, it clearly does not establish federal jurisdiction. Furthermore, even assuming that the amendment states a claim under subchapter III of the Consumer Credit Protection Act (15 U.S.C. § 1681 *et seq.*), such an action may not be maintained against the FTC, which is the only named defendant.

49, § 1482—FEDERAL AVIATION PROGRAM, CH. 20

§ 1482.—COMPLAINTS TO AND INVESTIGATIONS BY THE ADMINISTRATOR AND THE BOARD—FILING OF COMPLAINTS; COMPLAINTS AGAINST MEMBERS OF THE ARMED FORCES

(a) Any person may file with the Administrator or the Board, as to matters within their respective jurisdictions, a complaint in writing with respect to anything done or omitted to be done by any person in contravention of any provisions of this chapter, or of any requirement established pursuant thereto. If the person complained against shall not satisfy the complaint and there shall appear to be any reasonable ground for investigating the complaint, it shall be the duty of the Administrator or the Board to investigate the matters complained of. Whenever the Administrator or the Board is of the opinion that any complaint does not state facts which warrant an investigation or action, such complaint may be dismissed without hearing. In the case of complaints against a member of the Armed Forces of the United States acting in the performance of his official duties, the Administrator or the Board, as the case may be, shall refer the complaint to the Secretary of the department concerned for action. The Secretary shall, within ninety days after receiving such a complaint, inform the Administrator or the Board of his disposition of the complaint, including a report as to any corrective or disciplinary actions taken.

Investigations on initiative of Administrator or Board

(b) The Administrator or Board, with respect to matters within their respective jurisdictions, is empowered at any time to institute an investigation, on their own initiative, in any case and as to any matter or thing within their repective jurisdictions, concerning which complaint is authorized to be made to or before the Administrator or Board by any provision of this chapter, or concerning which any question may arise under any of the provisions of this chapter, or relating to the enforcement of any of the provisions of this chapter. The Administrator

or the Board shall have the same power to proceed with any investigation instituted on their own motion as though it had been appealed to by complaint.

Entry of orders for compliance with chapter

(c) If the Administrator or the Board finds, after notice and hearing, in any investigation instituted upon complaint or upon their own initiative, with respect to matters within their jurisdiction, that any person has failed to comply with any provision of this chapter or any requirement established pursuant thereto, the Administrator or the Board shall issue an appropriate order to compel such person to comply therewith.

49, § 1486—FEDERAL AVIATION PROGRAM, CH. 20

§ 1486.—JUDICIAL REVIEW—ORDERS SUBJECT TO REVIEW; PETITION FOR REVIEW

(a) Any order, affirmative or negative, issued by the Board or Administrator under this chapter, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 1461 of this title, shall be subject to review by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

Venue

(b) A petition under this section shall be filed in the court for the circuit wherein the petitioner resides or has his principal place of business or in the United States Court of Appeals for the District of Columbia.

Notice to Board or Administrator; filing of record

(c) A copy of the petition shall, upon filing, be forthwith transmitted to the Board or Administrator by the clerk of the court, and the Board or Administrator shall thereupon file in the court the record, if any, upon which the order complained of was entered, as provided in section 2112 of Title 28.

Power of court

(d) Upon transmittal of the petition to the Board or Administrator, the court shall have exclusive jurisdiction to affirm, modify, or set aside the order complained of, in whole or in part, and if need be, to order further proceedings by the Board or Administrator. Upon good cause shown and after reasonable notice to the Board or Administrator, interlocutory relief may be granted by stay of the order or by such mandatory or other relief as may be appropriate.

Conclusiveness of findings of fact; objections

(e) The findings of facts by the Board or Administrator, if supported by substantial evidence, shall be conclusive. No objection to an order of the Board or Administrator shall be considered by the court unless such objection shall have been urged before the Board or Administrator or, if it was not so urged, unless there were reasonable grounds for failure to do so.

Review by Supreme Court

(f) The judgment and decree of the court affirming, modifying, or setting aside any such order of the Board or Administrator shall be subject only to review by the Supreme Court of the United States.

Mr. JOHNSTON. What my amendment does, Mr. President, is to take away from the Administrator the right to delay proceedings by appeal to the courts and protracted reviews. The Administrator would still have that right, Mr. President, to present a claim, to gather information, to act as an advocate, to act as an ombudsman, to act in every way to represent the interest of the consumers except to engage in protracted legal delays when his plan has first been turned down by the agency.

Mr. President, in effect, what my amendment would do would be to prevent this bill from being a consumer overkill in much the same way that the seatbelt law became an overkill provision for protection of consumers.

Unless this amendment is agreed to, Mr. President, we will find, I believe, that every Federal agency will be subject to years of review, as indeed FTC was on natural gas rates in my State, as the ICC was on proceedings with railroad cases, and as every Federal agency has been upon occasion.

If it were a question of the consumer having no voice and not being able to be represented, then I would say vote against this amendment. But all the amendment does is take away that right to resort to the courts when the proceeding has been turned down after a full hearing by the agency itself.

Mr. President, the Administrator will still have, if this amendment is agreed to, the right to intervene in any proceeding or activity. The Administrator will still have the right to intervene by written or oral submissions in the Federal agency proceeding. He will still have the right to intervene on appeal. He will still have the right to gather information. He will still have every right except the right to subject consumers, agencies, and businesses in this country to protracted delays and expensive legal appeals.

I think it is exceedingly simple. I realize the difficulty of trying to explain this bill, which is totally misunderstood, in this amendment, but I submit, while we still have the chance, let us make this a reasonable bill, one that truly represents the consumers and does not simply serve the interests of the legal profession in this country.

Mr. RIBICOFF. Mr. President, I yield 1 minute to the distinguished Senator from Florida.

Mr. STONE. I thank the distinguished Senator from Connecticut.

If this amendment were to be agreed to, it would mean that, for example, a no-frills lower air fare otherwise approved by the CAB, were it not to have been approved, the consumer advocate could not have had it reviewed. On the other side of the coin, where the 4-percent air fare increase was approved and within a few weeks the airlines themselves realized that they had killed their consumer business and were back asking for review, that type of an increase could have been reviewed.

What this would do, then, in effect, is remove the ability to review economic decisions, and if the consumer advocate cannot review an economic decision, what kind of a decision really could be reviewed?

That is to say nothing of the examples raised by the Senator from Florida yesterday, where the Federal Trade Commission after secret proceedings terminated its investigation into consumer abuses in the condominium industry and the cooperative housing industry.

The instance where there is the most likelihood of abuse in terms of time-consuming litigation and unnecessary burdens on businesses is where the ACA appeals an agency action in which it did not intervene or otherwise participate. During the markup of this bill, I offered an amendment which was designed to alleviate the possible harm of such court initiation. The amendment was accepted in a modified form. It requires the Administrator to state the reasons for his failure to intervene or participate in the agency proceedings. The court then has the power to determine that those reasons are not sufficient and that the interests of justice would be impeded if the ACA were allowed to file suit.

In the case where the ACA did participate in the agency proceeding, it should have the same rights as every other party and be able to appeal not only in those instances where the health or safety of consumers is involved but also in the important area of economic concerns.

So it seems to the Senator from Florida that the guts of the bill is the ability by the consumer advocate not merely to appear before a Federal agency but to review an interest, a decision of that agency which adversely affects a consumer interest in a substantial fashion.

Mr. RIBICOFF. Mr. President, the amendment proposed by the Senator from Louisiana would really torpedo this entire consumer agency and would make it impossible for the ACA to seek judicial review when economic concerns of individuals and consumers are involved. I therefore oppose it. Now the ACA may seek judicial review of a Federal agency action which may substantially affect a health, safety or economic concern of consumers.

The Johnston amendment would limit the ACA's ability to seek judicial review to only agency actions which affect consumer health or safety. It would make it impossible for the ACA to seek judicial review when an economic concern of consumers was involved.

What we have here in the Johnston amendment, is an attempt to give the ACA less rights than any other party to an agency proceeding.

In a recent speech at the White House Conference on Domestic and Economic Affairs, the President cited surveys indicating that the average American family is paying $2,000 a year—a national total of $130 billion—in excessive and unnecessary costs resulting from ineffective Government regulation.

Department of Justice Antitrust Chief, Thomas Kauper, has estimated the price-fixing and other anticompetitive actions by businesses raise price levels by as much as $80 billion each year.

These figures are staggering. The effect of the Johnston amendment would be to keep the ACA from seeking judicial reviews of just those very agency actions which are costing American consumers billions and billions of dollars each year in unnecessary costs.

When the CAB considers airlines rate increases, when the ICC considers truck-

ing rate increases, when the FCC considers telephone rate increases, when the FTC prosecutes false and misleading advertising—in all these instances and many, many others throughout the Federal Government, the economic concerns of consumers are clearly and dramatically affected by what the agencies decide to do.

For these reasons, I oppose the Johnston amendment as an undue and unjustifiable restriction on the power of the ACA to represent the economic concerns of consumers in the Federal courts.

Mr. PERCY. Mr. President, if the Senator will yield briefly, I join him in opposing the Johnston amendment. It would prevent the Consumer Protection Agency from moving into some of the most scandalous situations involving ICC rate fixing, where the consumer simply does not have a voice.

We know billions of dollars have been added to the costs of shippers, and the consumer pays that bill without having an adequate voice. It is absolutely essential and necessary, it would certainly seem, in connection with the housing scandals that we had across the country where section 235 was perverted by builders, labor unions, and others. The Agency for Consumer Advocacy should have the right to appeal decisions and speak on behalf of the consumer, using the courts if necessary.

Mr. President, for this and many other reasons I respectfully oppose the amendment of the distinguished Senator from Louisiana.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Louisiana.

On this question the yeas and nays have been ordered, under a unanimous-consent agreement, with the vote to occur at this time.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Kentucky (Mr. FORD), the Senator from Louisiana (Mr. LONG), and the Senator from Montana (Mr. METCALF) are necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Maryland (Mr. BEALL), the Senator from New York (Mr. BUCKLEY), and the Senator from Arizona (Mr. GOLDWATER) are necessarily absent.

The result was announced—yeas 29, nays 63, as follows:

[Rollcall Vote No. 174 Leg.]

YEAS—29

Allen	Fannin	Scott, William L.
Baker	Garn	Stennis
Bartlett	Griffin	Stevens
Bellmon	Hansen	Taft
Brock	Helms	Talmadge
Byrd, Harry F., Jr.	Hruska	Thurmond
Curtis	Johnston	Tower
Dole	Laxalt	Young
Domenici	McClellan	
Eastland	McClure	
	Nunn	

NAYS—63

Abourezk	Burdick	Clark
Bayh	Byrd, Robert C.	Cranston
Bentsen	Cannon	Culver
Biden	Case	Eagleton
Brooke	Chiles	Fong
Bumpers	Church	Glenn
Hart, Gary W.	Mansfield	Percy
Hart, Philip A.	Mathias	Proxmire
Hartke	McGee	Randolph
Haskell	McGovern	Ribicoff
Hatfield	McIntyre	Roth
Hathaway	Mondale	Schweiker
Hollings	Montoya	Scott, Hugh
Huddleston	Morgan	Sparkman
Humphrey	Moss	Stafford
Inouye	Muskie	Stevenson
Jackson	Nelson	Stone
Javits	Packwood	Symington
Kennedy	Pastore	Tunney
Leahy	Pearson	Weicker
Magnuson	Pell	Williams

NOT VOTING—7

Beall	Goldwater	Metcalf
Buckley	Gravel	
Ford	Long	

So Mr. JOHNSTON's amendment (No. 446) was rejected.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. RIBICOFF. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 418

Mr. HELMS. Mr. President, I call up my amendment No. 418, which is at the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 29, lines 20 and 21, strike out the phrase "determine that (A) such information, so far as practicable," and insert in lieu thereof the following: "exercise great care to determine that (A) such information".

Mr. HELMS. Mr. President, the amendment that I am offering is simple. Its purpose is straightforward and clear. It seeks to insure that all parties against whom consumer complaints are filed are afforded certain basic elements of procedural due process, and it provides freedom of information.

As the bill now reads, the Agency is required to notify parties against whom complaints are filed of all complaints of any significance, unless the Administrator determines that it would not be in the consumer's best interest to do so. In that event, notification would not be required.

The amendment which I am submitting requires the Agency to notify all persons concerned of each and every complaint filed against them and upon which the Agency intends to act. Furthermore, neither the Agency for Consumer Advocacy nor any other agency is permitted to initiate action based upon any complaint until 60 days after all persons concerned have been notified. In other words, this provision simply insures that defendants will be notified that a complaint has been filed against them. It will put them on notice that they may be investigated, subjected to an agency proceeding, or taken to court. This is simply justice. It is an element of fairness that is basic to our American concept of government and law.

Additionally, the present language of the bill provides that the Agency for Consumer Advocacy shall maintain a public document room in which consumer complaints are to be made available for public inspection and copying. Under this language, however, the Administrator may in his discretion withhold information. The amendment I offer requires the Agency to make available all complaints as well as copies of all official documents relative to each complaint in addition to annotations of actions taken in response to such complaints. Neither the Agency for Consumer Advocacy nor any other agency is permitted to initiate any action until 60 days after a copy of the complaint upon which the action is based is placed in the document room.

This amendment does not permit anonymous complaints. The bill as it now reads would. In my view, it is fundamental to American law that a party complained against be allowed to be confronted with his accuser. To allow anonymous, confidential complaints would be to introduce into American law a concept so patently unjust as to shock one's conscience. Have we not learned the lesson of the secret inquisitions of old, of the historic injustices that our forefathers fought to protect us against?

Finally, this amendment allows the party complained against to comment on any such complaint, with the comment also being displayed in the public document room. This feature exists in the present bill and is retained in the amendment. In addition, any agency to which a complaint is referred shall notify the Administrator of what action, if any, it intends to take with respect to the complaint, and a copy of such notice must be displayed in the document room.

As stated, this amendment is simple and direct. It represents an attempt to afford the defendants due process and fair treatment. In our zeal to protect the consumer, we must not abandon the basic safeguards of American justice that we have come to value so dearly.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina.

Mr. RIBICOFF. Mr. President, I oppose this amendment.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. Mr. President, did the Chair rule there was not a sufficient second?

The PRESIDING OFFICER. There is a sufficient second. The clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Kentucky (Mr. FORD), and the Senator from Iowa (Mr. CLARK) are necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL) is absent on official business.

I further announce that, if present and voting, the Senator from Iowa (Mr. CLARK) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Maryland (Mr. BEALL), the

Senator from New York (Mr. BUCKLEY), the Senator from Arizona (Mr. GOLDWATER), the Senator from Maryland (Mr. MATHIAS), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The result was announced—yeas 41, nays 50, as follows:

[Rollcall Vote No. 175 Leg.]

YEAS—41

Abourezk	Fong	Randolph
Allen	Garn	Roth
Baker	Griffin	Scott,
Bartlett	Hansen	William L.
Bellmon	Helms	Sparkman
Brock	Hruska	Stafford
Byrd,	Johnston	Stennis
Harry F., Jr.	Laxalt	Stone
Byrd, Robert C.	Long	Taft
Chiles	McClellan	Talmadge
Curtis	McClure	Thurmond
Dole	Montoya	Tower
Domenici	Morgan	Young
Eastland	Nunn	
Fannin	Packwood	

NAYS—50

Bayh	Hatfield	Moss
Bentsen	Hathaway	Muskie
Biden	Hollings	Nelson
Brooke	Huddleston	Pastore
Bumpers	Humphrey	Pearson
Burdick	Inouye	Pell
Cannon	Jackson	Percy
Case	Javits	Proxmire
Church	Kennedy	Ribicoff
Cranston	Leahy	Schweiker
Culver	Magnuson	Scott, Hugh
Eagleton	Mansfield	Stevenson
Glenn	McGee	Symington
Hart, Gary W.	McGovern	Tunney
Hart, Philip A.	McIntyre	Weicker
Hartke	Metcalf	Williams
Haskell	Mondale	

NOT VOTING—8

Beall	Ford	Mathias
Buckley	Goldwater	Stevens
Clark	Gravel	

So Mr. HELMS' amendment (No. 418) was rejected.

Mr. RIBICOFF. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. PERCY. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I ask unanimous consent to present an agreed-upon amendment.

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

Mr. JOHNSTON. Mr. President, I send an amendment to the desk. This is simply a clarifying amendment to make it clear that the right of the administration to find a consumer interest may be reviewed on appeal, as indicated in the colloquy yesterday. It is simply to correct a misimpression.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk proceeded to read the amendment.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 42, between lines 13 and 14, add the following new subsection:

"(3) The Administrator's determination pursuant to subsections 6(a)(2), 6(a)(3), and 6(d) that an agency action may substantially affect an interest of consumers shall be subject to review during judicial review of a final agency action.

Mr. RIBICOFF. Mr. President, I am willing to accept the amendment of the Senator from Louisiana.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 417

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, I have an amendment at the desk, No. 417, which I call up and ask for immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk proceeded to read the amendment.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 52, immediately below line 16, insert the following new section:

"CIVIL LIABILITY FOR ACTIONS OF THE AGENCY

"SEC. 27. (a)(1) Notwithstanding any other provisions of law, any person injured as a result of any act or omission of the Administrator, or any officer or employee of the Agency, or of any officer or employee of any other agency (as defined in section 551 of title 5, United States Code) of the Federal Government who, while acting within the scope of his office or employment, makes or causes to be made, any false or misleading disclosure, statement, or other publication to any agency or to the public, which disclosure, statement, or publication results in a reduced consumer demand for or sales of any product, good, or service, may bring a civil action for monetary damages against the United States.

"(2) The United States shall be liable, respecting provisions of this subsection, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for punitive damages.

"(b)(1) The district courts of the United States, together with the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, shall have exclusive jurisdiction to hear and determine any action brought under this section in accordance with the provisions of subsection (a) of this section.

"(2) Any action against the United States under this section shall, at the request of any party to such action, be tried by the court with a jury.

"(c) Appellate review of an action brought under this section shall be had in the same manner and subject to the same requirements as an action brought under section 1346(b) of title 28, United States Code.".

On page 29, lines 20 and 21, strike out the phrase "determine that (A) such information, so far as practicable," and insert in lieu thereof the following: "exercise great care to determine that (A) such information".

Mr. HELMS. Mr. President, the advocates of consumerism insist that the American consumer needs protection from the business community. They argue that the consumer is a victim of false claims, harmful goods, and deficient services. They propose that we establish what is now called an Agency for Consumer Advocacy to eradicate these evils and aid the consumer.

It is true, of course, that businessmen do make mistakes. Through negligence or zeal, they may produce inadequate goods or present a misleading advertisement. Like everyone else, American businessmen are fallible beings, subject to human error. These capabilities for error are rooted in human nature. But they do not exist solely in the commercial establishments of this country.

What disturbs me, Mr. President, is the fact that the proposed Consumer Protection Act of 1975 overlooks the possibility for human error in the Agency for Consumer Advocacy. This Agency will be empowered to issue public statements regarding the quality or safety of a product or service. Because so many products and services will be under the scrutiny of this Agency—and many of these products are extremely complicated from a technical standpoint—we can be certain that the Agency will, sooner or later, make a false public statement about the safety of a product, or its utility, or its general value. Through error, indifference, or negligence, such mistakes are bound to occur.

And when they do, the consumer will suffer with the producer. The producer may suffer a crushing financial loss when his product is wrongfully removed from the market. But it is the consumer who will be denied the product that he desires; or he may be compelled to pay a higher price for a product after it returns to the market, and after the producer has increased the price to cover his loss. It is difficult to avoid the conclusion, Mr. President, that this bill may produce the opposite effect intended and in many instances actually harm the consumer's interest. So, neither is the consumer properly served, nor is justice promoted in the event the agency commits an error.

If the act is adopted in its present form, the Administrator will have broad powers over the thousands of commercial enterprises of the Nation. Yet, the act seems to assume—and it is a false assumption—that in the exercise of this power, the Administrator will never make a mistake. The act provides no protection whatever to the businessman whose products or services are wrongfully condemned by the Administrator.

The purpose of my amendment is to provide this protection. This amendment will allow any injured party to sue for damages in a Federal district court, if the Administrator of the Agency makes a false or misleading statement concerning any product or service offered to the public.

The need for this amendment is clear enough when we examine section 11(c)(1) of the act. Under this provision, "The Administrator, in releasing information concerning consumer products and services, shall determine that (A) such information, so far as practicable, is accurate." We may safely assume that the judicious Administrator will take proper measures to make certain that any information he publicizes about the safety or quality of a product or service is accurate and not misleading or incomplete; but reasonable men will differ as to what a "practicable" determination of the facts might be. Indeed, the act pre-

sumes that the Administrator himself will be the judge of the "practicability" of his own determinations.

In anticipation of the possibility that the Administrator may make a mistake and fail to take proper action, the Consumer Protection Act that we considered last year, S. 707, purported to protect the businessman by requiring the Administrator to retract his false or misleading statement. As I pointed out in a statement of July 17, 1974, in this Chamber, this retraction provision did not offer any real protection to the businessman. A retraction may be helpful if the mistake is caught in time, but what good is a retraction after a company has been ruined? What justice is accorded to the businessman who suffers economic injury as a result of a false statement that has been indelibly impressed upon the public mind?

The revised Consumer Protection Act of 1975 offers even less protection in that it contains no provision whatever requiring the Administrator to retract a false or misleading statement. Section 11(c)(3) of the act simply states that, "Notice of all changes in, or any additional information which would affect the fairness of information previously disseminated to the public shall be promptly disseminated in a similar manner." At best, it may be inferred from this provision that the errant Administrator will issue a public retraction at his own discretion.

As a second assurance against unfair actions, the act further provides under section 11(c)(4) that, "Where the release of information is likely to cause substantial injury to the reputation or good will of a person, the Administrator shall notify such person of the information to be released and afford him a reasonable opportunity, not to exceed 10 days, to comment or seek injunctive relief." All this means is that some unfortunate business will receive notice that its product or service is about to be condemned.

Mr. President, I have said it before and I shall say it again: mere notification is no real protection to the businessman. In the first place, the judgment of the Administrator prevails, whether he is right or wrong. If he is wrong, notification is not going to aid the business that is going to be publicly maligned.

Besides, the act provides that the Administrator does not have to give any notification at all. If, in his judgment, he decides that an "immediate release" of information is essential to protect the health or safety of the consumer, then he may proceed under his own discretion and deny the businessman an opportunity to challenge the statement. In other words, there is no way for a company to prevent the publication of a false or misleading statement; and after it has been published there is no way in which a company can be compensated for wrongful injury.

These are not remote possibilities arising under this act. They are clear and present dangers. The tragedy of the Marlin Toy Co. of Horicon, Wis., is a case in point. This small company, employing 75 individuals, has been driven to bankruptcy. How did this happen? Through administrative negligence and error in the Federal Government.

For many years, the Marlin Toy Co. manufactured a toy known as the flutter ball. It was a clear, plastic ball, containing a plastic butterfly and plastic pellets. The toy sold well. It was popular with children. But in November of 1972, at the outset of the Christmas season, the Food and Drug Administration notified—notified, I repeat—the Marlin Toy Co. that its flutter ball was banned and would have to be withdrawn from the market. The Food and Drug Administration reasoned—and I am certain that the FDA took all reasonable measures that its information was correct—that the ball was unsafe, even though no injury had ever been reported. According to the FDA, however, there was a possibility that the ball might break, and if so, that a child might swallow or inhale the plastic pellets.

The Marlin Toy Co. suffered a severe financial setback, but proceeded to redesign the toys without the pellets, hoping to regain its losses in the following year. The company submitted the toy to the FDA, and the FDA assured Marlin that the toy was now acceptable. The Marlin Toy Co. was back in business—but not for long. Through administrative oversight, the Consumer Products Safety Commission neglected to remove the product from the holiday list of banned toys. The Commission admitted its mistake and apologized, assuring the Marlin Toy Co., that it would issue a corrected list. By this time, however, it was too late. The damage had already been done, and the Marlin Toy Co., was in a state of financial ruin. As of February 1974, the Marlin Toy Co. had suffered a loss of $87,000, not counting its losses in future sales and goodwill. The factory is now an empty shell, and most of the employees have been laid off.

Because the Federal Tort Claims Act does not permit recovery for such offenses as misrepresentation or false statements by Federal authorities, the distinguished Senator from Wisconsin (Mr. PROXMIRE) introduced a private bill during the last session to grant relief to the Marlin Toy Co. I cosponsored this bill, and the Consumer Products Safety Commission offered its support as well. If the Marlin Toy Co. is compensated for the wrongful damages, it may yet survive.

But if the Consumer Protection Act is passed, Mr. President, it is reasonable to believe that there will be more Marlin Toy companies put out of business, more bankruptcies, and more people put out of work because of bureaucratic mistakes. Indeed, the likelihood of similar errors is greatly increased under the Agency for Consumer Advocacy. If the Consumer Products Safety Commission cannot adequately handle a matter involving the safety of a simple plastic ball, we can well imagine the difficulties that the Agency for Consumer Advocacy will experience. For this new agency will be dealing with a great variety of sophisticated and technical products, concerning not only their safety, but their durability, their usefulness, and their general worth.

In a recent column by Nicholas von Hoffman of the Washington Post, the calamity of the Marlin Toy Co. was brought to the attention of the American public. As Mr. von Hoffman has observed, the Marlin case raises a crucial issue. The buyers need to be informed about the products they are using, but "now the question is how can public administration learn to protect the buyer and the seller too?"

My amendment, Mr. President, is designed to protect both the buyer and the seller. It will create a new section (27) on page 52 of S. 200, immediately below line 16. Subsection (a), paragraph 1 of this section provides that any person may bring a civil action for monetary damages against the United States, if the Administrator, or any officer or employee of Agency for Consumer Advocacy, as defined in section 551 of title 5, United States Code, of the Federal Government, makes or causes to be made a false or misleading statement which results in reduced sales or consumer demand for any product or service.

Paragraph 2 exempts the United States from punitive damages, but otherwise holds it liable in the same manner as a private individual.

Subsection (b) confers exclusive jurisdiction over actions brought under this section upon district courts of the United States, and the U.S. District Court for Guam, the Canal Zone, and the Virgin Islands.

Paragraph 2 grants the right of trial by jury to any party to any action arising under this section, and subsection (c) provides that appellate review of any action brought under this section shall be had in the same manner and subject to the same requirements as an action brought under section 1346(b) of title 28, United States Code.

To conform the language of section 11(c)(1), previouly mentioned to this amendment, this amendment provides that the paragraph shall be amended to state that the Administrator shall exercise great care to determine that information is accurate.

Mr. President, the Agency for Consumer Advocacy has extensive powers under this act. Some have argued that its powers are too extensive. In the interest of governmental restraint of power, in the interest of justice, and in the interest of both the consumer and the business community, I urge support of this amendment.

I think the point has been made, Mr. President. There ought to be some protection for people who are wrongfully maligned and damaged by the Federal Government. They ought to have recourse. That is the purpose of this amendment.

Mr. PERCY. Mr. President, I have looked carefully at the amendment offered by our distinguished colleague (Mr. HELMS). I was struck by the fact that we were both deeply concerned about the same thing.

Certainly, we do not want this agency

to be in a position where it could unfairly damage any business firm.

For that reason the Senator from Illinois introduced an amendment to the bill some 2 or 3 years ago, which is now part of the committee bill, in section 11, Limitations on Disclosures, where we provide in paragraph 4 on page 30 of the bill as follows:

(4) Where the release of information is likely to cause substantial injury to the reputation or good will of a person, the Administrator shall notify such person of the information to be released and afford him a reasonable opportunity, not to exceed ten days, to comment or seek injunctive relief, unless immediate release is necessary to protect the health or safety of the public. The district courts of the United States shall have jurisdiction over any action brought for injunctive relief under this subsection, or under section 10(b)(7).

The purpose of that was to be certain that a firm or company was notified that there was going to be a complaint so that they could respond, and so that if there were to be a publication of the complaint it would be simultaneous, along with the answer.

Within the Government Operations Committee, we tried this in several specific cases where, though it was not provided for by law, as it is here. One vivid instance involved certain pharmaceutical companies. I remember the Senator from Connecticut (Mr. RIBICOFF), suggested at that time.

Let us now establish the principle in government that we are trying to establish for the Agency for Consumer Protection. Accordingly, we promptly contacted the 10 pharmaceutical companies involved and apprised them of the situation.

Under the provisions I have cited, if any company wants to reply, it can reply simultaneously with the complaint that is made. Generally when a charge is made it is on page 1, and when an answer comes later it is on the obituary page.

The Senator from Connecticut could not have been more helpful in the case involving the pharmaceutical companies. Now we embody the procedure of prior notice in law as a protection in this particular section.

Mr. RIBICOFF. If the Senator will yield, the Senator from North Carolina might be interested that somewhere in the long consideration of the bill I anticipate that an amendment will be offered taking away this protection.

As manager of the bill I will oppose it. It does seem to me that we do raise something of a problem by setting up a standard for this agency that we do not have in any other regulatory agency, and it could very well be that the Judiciary Committee should be considering whether all regulatory agencies should be subjected to such a procedure or rule as that suggested by the Senator from North Carolina. Otherwise we are putting a burden on this agency that no other agency has.

Mr. HELMS. Mr. President, if the Senator will yield, I agree with that. However, this is a new bureaucracy that we are creating—and I am not all that concerned about placing a burden of responsibility on it.

Mr. PERCY. Mr. President, it would appear to the Senator from Illinois that this proposed remedy might constitute a tremendous burden for this one agency, because those who would want to frustrate its activities could constantly challenge it in court, tie up the administrative personnel, and tie up the ACA's funds. We do not really know what would be the effect of such a proposal.

I think it should be looked at, though. I would fully support the Committee on the Judiciary looking into it to see whether the principle that the distinguished Senator is trying to incorporate for this one agency might not be considered for all regulatory agencies, as well as the Agency for Consumer Advocacy, which is not a regulatory agency, but will function like an ombudsman.

Mr. RIBICOFF. Mr. President, there would be a greater burden on this agency than any other agency, and this is the one agency that has no rulemaking power and no right to issue any regulations.

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

Mr. RIBICOFF. I yield.

Mr. HELMS. It will have access to the news media. That is where much of the damage will be done, I would say to the distinguished Senator.

Mr. RIBICOFF. Mr. President, I would say they have no more access to the news media than any other agency of the Federal Government.

Mr. HELMS. But it is involved in most sensitive areas of commerce, I would say to the Senator.

Mr. President, I am encouraged by the comments of both of the distinguished Senators, and I appreciate what they are saying. I am tempted to withdraw my amendment if I can secure from each of the Senators the assurance that they will join the Senator from North Carolina in urging the Judiciary Committee to examine this whole question.

Mr. RIBICOFF. The whole question, not just as it applies to this agency.

I would hope then, that when an amendment is introduced to eliminate this protection the Senator from North Carolina will support the Senator from Connecticut in trying to defeat the amendment.

Mr. HELMS. The Senator from North Carolina will go along with the Senator from Connecticut. Yes, the Senator from Connecticut can count on that.

In light of the discussion here on the floor, Mr. President, I think we have made some progress along the lines I desire. Therefore, I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The bill is open for further amendment.

AMENDMENT NO. 433

Mr. PEARSON. Mr. President, I call up my amendment 433 in the nature of a substitute to S. 200.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk proceeded to read the amendment.

Mr. PEARSON. Mr. President, I ask unanimous consent to dispense with the further reading of the amendment in the nature of a substitute.

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

Mr. PEARSON. Mr. President, on this amendment on page 7, there is an omission which was inadvertently made, at the time the amendment was printed.

In view of the fact that we are operating pursuant to the provisions of rule XXII of the rules of the Senate, I ask unanimous consent that on page 7, line 11—and I understand this has been discussed with the managers of the bill—following the word "reappointed" that the words "or his successor is appointed" be added.

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

The amendment in the nature of a substitute, as modified it as follows:

AMENDMENT NO. 433

Strike all after the enacting clause and insert in lieu thereof the following:

"That this Act may be cited as the 'Consumer Protection Act of 1975'.

"STATEMENT OF FINDINGS AND PURPOSES

"SEC. 2. (a) The Congress finds that the interests of consumers are inadequately represented and protected within the Federal Government; that regulations have been adopted and policies have been promulgated by the Federal Government without first securing available information as to the potential costs and benefits of such regulations and policies; and that vigorous representation and protection of the interests of consumers are essential to the fair and efficient functioning of a free market economy. As a result of this lack of effective representation before and within Federal agencies and courts, consumers suffer economic harm and other adverse consequences in the course of acquiring and using goods, services, and credit available in the marketplace.

"(b) The Congress therefore declares that—

"(1) Effective consumer advocacy before and within Federal agencies would help such agencies to exercise more fully and effectively their statutory responsibilities, in a manner consistent with the public interest and with effective and responsive government. It is the purpose of this Act to protect and promote the interests of the people of the United States, as consumers of goods and services that are made available through commerce, by establishing independent Offices of Consumer Counsel within the executive branch and certain agencies of the Federal Government.

"(2) It shall be the purpose of each Office of Consumer Counsel to represent the interests of consumers before and within the Federal agency of which it is a part and before the Federal courts in matters relating to such agency; to receive and transmit consumer complaints; to develop and disseminate information of interest to consumers; and to perform other functions to protect and promote the interests of consumers. In the exercise of its functions, powers, and duties, each such Office shall be independent of all other offices and officers of the agency of which it is a part.

"(3) It is the purpose of this Act to promote the protection of consumers with respect to the—

"(A) safety, quality, purity, potency, healthfulness, durability, performance, repairability, effectiveness, dependability, availability, and cost of any real or personal property or tangible or intangible goods, services, or credit;

"(B) preservation of consumer choice and a competitive market;

"(C) prevention of unfair or deceptive trade practices;

"(D) maintenance of truthfulness and fairness in the advertising, promotion, and sale by a producer, distributor, lender, retailer, or other supplier of such property, goods, services, and credit;

"(E) provision of full, accurate, and clear instructions, warnings, and other information by any such supplier concerning such property, goods, services, and credit;

"(F) protection of the legal rights and remedies of consumers; and

"(G) provision of estimates of the costs and benefits of programs and activities established by regulations and laws of the Federal Government.

"DEFINITIONS

"SEC. 3. As used in this Act, unless the context otherwise requires—

"(1) 'agency action' includes the whole or any part of an agency 'rule,' 'order,' 'license,' 'sanction,' or 'relief' (as defined in section 551 of title 5, United States Code), or the equivalent thereof, the denial thereof, or the failure to act;

"(2) 'agency activity' means any agency process, or phase thereof, conducted pursuant to any authority or responsibility under law;

"(3) 'agency proceeding' means agency 'rulemaking,' 'adjudication', or 'licensing' (as defined in section 551 of title 5, United States Code);

"(4) 'commerce' means trade, traffic, commerce, or transportation, within the jurisdiction of the United States, (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, commerce, or transportation described in clause (A);

"(5) 'consumer' means any individual who uses, purchases, acquires, attempts to purchase or acquire, or is offered or furnished any real or personal property, tangible or intangible goods, services, or credit for personal, family, agricultural, or household purposes:

"(6) 'Consumer Counsel' means, with respect to a Federal agency, as defined in this section, the officer who is appointed pursuant to this Act to represent the interest of consumers in accordance with this Act;

"(7) 'Federal agency' or 'agency' means the Departments of Agriculture, Defense, Commerce, Health, Education, and Welfare, Housing and Urban Development, Interior, Justice, Labor, Transportation, and Treasury, the Civil Aeronautics Boards, the Consumer Product Safety Commission, the Energy Research and Development Administration, the Environmental Protection Agency, the Federal Communications Commission, the Federal Energy Administration, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the Interstate Commerce Commission, the National Aeronautics and Space Administration, the National Transportation Safety Board, the Securities and Exchange Commission, and the Small Business Administration;

"(8) 'Federal court' means any court of the United States, including the Supreme Court of the United States, any United States court of appeals, any United States district court established under chapter 5 of title 28, United States Code, the District Court of Guam, the District Court of the United States Customs Court, the United States Court of Customs and Patent Appeals, the United States Tax Court, and the United States Court of Claims;

"(9) 'interests of consumers' means any health, safety, or economic concern of consumers involving real or personal property, tangible or intangible goods, services, or credit, or the advertising or other description thereof, which is or may become the subject of any business, trade, commercial, or marketplace offer or transaction affecting commerce, or which may be related to any term or condition of such offer or transaction. Such offer or transaction need not involve the payment or promise of a consideration;

"(10) 'participation' includes any form of submission;

"(11) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Canal Zone, Guam, American Samoa, and the Trust Territory of the Pacific Islands; and

"(12) 'submission' means participation through the presentation or communication of relevant evidence, documents, arguments, or other information.

"ESTABLISHMENT

"SEC. 4. There is hereby established within each Federal agency an independent Office of Consumer Counsel. Each such Office shall be directed and administered by a Consumer Counsel. Each Consumer Counsel shall be appointed by the President, by and with the advice and consent of the Senate, for a term not to exceed four years and shall be compensated at a rate not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code. Each Consumer Counsel shall be an individual who, by reason of training, experience, and attainments, is qualified to represent effectively and independently the interests of consumers. Upon the expiration of his term, each Consumer Counsel shall continue in office until he is reappointed or his successor is appointed and qualifies. A Consumer Counsel may be removed by the President for neglect of duty or malfeasance in office.

"POWERS AND DUTIES OF CONSUMER COUNSEL

"SEC. 5. (a) Each Consumer Counsel shall be responsible for the exercise of the powers and the discharge of the duties of the Office, and shall have the authority to direct and supervise all personnel and activities thereof.

"(b) In addition to any other authority conferred upon him by this Act, each Consumer Counsel may, in carrying out his functions under this Act and to the extent funds are appropriated—

"(1) select, appoint, employ, and fix the compensation (subject to the civil service and classification laws) of such officers and employees as are necessary to carry out the provisions of this Act, and shall prescribe the authority and duties of such officers and employees;

"(2) employ experts and consultants, in accordance with section 3109 of title 5, United States Code. Each Consumer Counsel may compensate individuals so employed for each day (including traveltime) at rates not in excess of the maximum rate of pay for Grade GS–18, as provided in section 5332 of title 5, United States Code, and may, while such experts and consultants are so serving away from their homes or regular place of business, pay them travel expenses and per diem in lieu of subsistence at rates authorized, by section 5703 of title 5, United States Code, for persons in Government service employed intermittently;

"(3) promulgate, in accordance with the applicable provisions of the Administrative Procedure Act, title 5, United States Code, such rules, regulations, and procedures as may be necessary to carry out the provisions of this Act, and to assure fairness to all persons affected by the actions of the Office, and to delegate authority for the performance of any function to any officer or employee under his direction and supervision;

"(4) utilize, with their consent, the services, personnel, and facilities of State, regional, local, and private agencies and instrumentalities;

"(5) accept voluntary uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b));

"(6) conduct conferences and hearings and otherwise secure data and expression of opinion;

"(7) accept unconditional gifts or donations of services, money or property, real, personal, or mixed, tangible or intangible;

"(8) designate representatives to serve or assist on such committees as he may determine to be necessary to maintain effective liaison with other Offices of Consumer Counsel and with State and local agencies carrying out programs and activities related to the interests of consumers;

"(9) appoint such advisory committees as he deems necessary or appropriate to assist him with respect to his functions under this Act. Each Consumer Counsel may compensate the members of any such advisory committees (other than those who are regularly employed by the Federal Government) in the manner provided under paragraph (2) of this subsection. All meetings of such committees shall be open to the public, and interested persons shall be permitted to attend, appear before, or file statements with any such committee, subject to such reasonable rules or regulations as the Consumer Counsel involved may prescribe; and

"(10) perform such other administrative activities as may be necessary for the effective fulfillment of his duties and functions.

"(c) Each Consumer Counsel shall prepare and submit a monthly report, on the activities of his Office of Consumer Counsel, to the head of the Federal agency of which such Office is a part, and he shall prepare and submit to the President and to the Congress simultaneously, not later than April 1 of each year beginning April 1, 1976, an annual report on such activities. Each such annual report shall include a description and analysis of—

"(1) the activities of his Office, including its representation of the interests of consumers;

"(2) the relevant Federal agency actions and Federal court decisions affecting the interests of consumers;

"(3) the appropriation by Congress for the Office, the distribution of appropriated funds for the current fiscal year, and a general estimate of the resource requirements of the Office for each of the next three fiscal years; and

"(4) the extent of participation by consumers in the activities of his Office, and the effectiveness of the representation of consumers before the agency of which his Office is a part.

"(d) Each office and officer of the agency of which an Office of Consumer Counsel is a part shall provide such Office with such information and data as the Consumer Counsel requests, except as provided in section 11 of this Act. The budget requests and budget estimates of each Office of Consumer Counsel shall be submitted by the agency of which it is a part directly to the Congress, and moneys appropriated for the use of such an Office shall not be used by the agency of which it is a part for any other purpose.

"OFFICE FUNCTIONS

"SEC. 6. Each Consumer Counsel shall—

"(1) represent the interests of consumers within and before the agency of which his Office is a part and before the courts, to the extent authorized by this Act;

"(2) conduct and support research, and studies, to the extent authorized by section 10 of this Act;

"(3) submit recommendations annually to the appropriate committees of the Congress

and the nead of the agency of which his Office is a part, on measures to improve the operation of such agency and of the Federal Government in general in the protection and promotion of the interests of consumers, including, but not limited to, any reorganization recommendations;

"(4) receive, transmit to appropriate officials, and make publicly available consumer complaints, to the extent authorized in section 8 of this Act;

"(5) conduct conferences, surveys, and investigations, including economic surveys, concerning the needs, interests, and problems of consumers: *Provided*, That such conferences, surveys, or investigations are not duplicative in significant degree of similar activities conducted by other Federal officials or agencies;

"(6) cooperate with State and local governments and encourage private enterprise in the promotion and protection of the interests of consumers;

"(7) keep the appropriate committees of Congress fully and currently informed of all the activities of his Office, when asked or on his own initiative;

"(8) encourage the adoption and expansion of effective consumer education programs;

"(9) encourage the application and use of new technology, including patents and inventions, for the promotion and protection of the interests of consumers;

"(10) encourage the development of informal dispute settlement procedures involving consumers;

"(11) encourage meaningful participation by consumers in the activities of his Office;

"(12) publish information and material obtained and developed in carrying out his responsibilities under this Act, including, but not limited to, a consumer register of matters that may be useful to consumer; and

"(13) perform such other related activities as he deems necessary for the effective fulfillment of his duties and functions.

"REPRESENTATION OF CONSUMERS

"SEC. 7. (a)(1) Whenever a Consumer Counsel determines that the result of a relevant proceeding or activity of the agency of which his Office is a part may substantially affect an interest of consumers, he may as of right intervene as a party or otherwise participate for the purpose of representing an interest of consumers, as provided in paragraph (2) of this subsection. The Consumer Counsel shall refrain from intervening in any proceeding as a party, unless he determines that such intervention is necessary to represent adequately an interest of consumers. The Consumer Counsel shall comply with the relevant Federal agency statutes and rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with laws and agency rules of procedure of general applicability governing the conduct thereof. The intervention or participation of a Consumer Counsel in any proceeding or activity in accordance with this subsection shall not affect the obligation of the Federal agency conducting such proceeding or activity to assure procedure fairness to all participants.

"(2) Whenever a Consumer Counsel determines, with respect to the agency of which his Office is a part, that the result of any relevant Federal agency proceeding—

"(A) which is subject to the provisions of section 553, 554, 556, or 557 of title 5, United States Code;

"(B) which involves a hearing pursuant to the administrative procedural requirements of any other statute, regulation, or practice;

"(C) which is conducted on the record after opportunity for an agency hearing; or

"(D) which provides for public notice and opportunity for comment; may substantially affect an interest of consumers, he may as of right intervene as a party or otherwise participate for the purpose of representing an interest of consumers in such proceeding.

"(b) At such time as a Consumer Counsel determines to intervene or participate in a proceeding under subsection (a)(2) of this section, he shall issue publicly a written statement setting forth his findings under subsection (a)(1) of this section and stating concisely the specific interest of consumers to be protected. Upon intervening or participating, he shall file a copy of such statement in the proceeding.

"(c) To the extent that any person, if aggrieved, would by law have such right, a Consumer Counsel shall have the right, in accordance with the following provisions of this subsection, to initiate or participate in any Federal court proceeding that involves an action of the agency of which his Office is a part;

"(1) A Consumer Counsel may, as of right, and in the manner prescribed by law, initiate a civil action in a Federal court for the review of a relevant Federal agency action that the Consumer Counsel determines may substantially affect an interest of consumers. If the applicable Consumer Counsel did not intervene or otherwise participate in such Federal agency proceeding or activity out of which such agency action arose, the Consumer Counsel, before initiating a proceeding to obtain judicial review, shall petition such agency for rehearing or reconsideration thereof, if the statutes or rules governing such agency specifically authorize rehearing or reconsideration. Such a petition shall be filed within 60 days after the Federal agency action involved, or within such longer period as may be allowed by applicable procedures. The Consumer Counsel may initiate a judicial review proceeding immediately if the Federal agency does not finally act upon such a petition within 60 days after the filing thereof, or at such earlier time as may be necessary to preserve the Consumer Counsel's right to obtain effective judicial review of the Federal agency action. If the applicable Consumer Counsel did not intervene or otherwise participate in the relevant Federal agency proceeding or activity, the court shall determine whether the Consumer Counsel's initiation of a judicial proceeding pursuant to this subsection would impede the interests of justice. When the Consumer Counsel initiates a judicial proceeding arising out of a relevant agency proceeding or activity in which he did not intervene or otherwise participate, he shall file a statement setting forth the reasons for such failure, for the court's consideration in connection with its determination as to whether the initiation of such a proceeding would impede the interests of justice.

"(2) A Consumer Counsel may, as of right, and in the manner prescribed by law, intervene or otherwise participate in any civil action in a Federal court if such civil action involves the review or enforcement of an action of the agency of which his Office is a part, if he determines that such civil action may substantially affect an interest of consumers.

(3) The initiation, or other participation of, by a Consumer Counsel in a judicial proceeding pursuant to this subsection shall not alter or affect the scope of review otherwise applicable to the agency action involved.

"(d) Whenever a Consumer Counsel determines it to be in the interest of consumers, he may request the relevant Federal agency to initiate a judicial proceeding for review, or to take such other action, as may be authorized by law with respect to such agency. If such Federal agency fails to take the action requested, it shall promptly notify the Consumer Counsel of its reasons therefor, and such notification shall be a matter of public record.

"(e) Appearances by an Office of Consumer Counsel under this Act shall be in its own name and shall be made by qualified representatives designated by the respective Consumer Counsel.

"(f) In any Federal agency proceeding in which a Consumer Counsel is intervening or participating pursuant to subsection (a)(2) of this section, such Consumer Counsel is authorized to request such Federal agency to issue, and such agency shall issue, such orders as are authorized pursuant to its statutory powers for the copying of documents, papers, and records, for the summoning of witnesses and the production of books and papers, and for the submission of information in writing. Such orders shall only be issued by a Federal agency upon a statement or showing by the Consumer Counsel of general relevance and reasonable scope of the evidence sought, if such a statement or showing is required by the general rules of procedure of such agency.

"(g) A Consumer Counsel is not authorized to intervene in proceedings or actions before State or local agencies and courts.

"(i) Each Federal agency shall review its rules of procedure of general applicability, and, after consultation with its Consumer Counsel, shall issue any additional rules which may be necessary to provide for such Consumer Counsel's orderly intervention or participation, in accordance with this section, in its proceedings and activities which may substantially affect the interests of consumers.

"(j) Each Consumer Counsel is authorized to represent an interest of consumers which is presented to him for his consideration upon petition in writing by a substantial number of persons or by any organization which includes a substantial number of persons. Each Consumer Counsel shall notify the principal sponsors of any such petition, within a reasonable time after receipt of any such petition, of the action taken or intended to be taken by him with respect to the interest of consumers presented in such petition. If a Consumer Counsel declines or is unable to represent such interest, he shall notify such sponsors and shall state his reasons therefor.

"CONSUMER COMPLAINTS

"SEC. 8. (a) Whenever a Consumer Counsel receives from any person any complaint or other information which discloses—

"(1) an apparent violation of law, agency rule or order, or a judgment, decree, or order of a Federal court relating to an interest of consumers; or

"(2) a commercial, trade, or other practice which is detrimental to an interest of consumers;

he shall, unless he determines that such complaint or information is frivolous or outside the jurisdiction of the agency of which his Office is a part, promptly, transmit such complaint or information to the Federal official which has the authority to enforce any relevant law or to take appropriate action. Each Federal agency shall keep its Consumer Counsel informed to the greatest practicable extent of any action which it is taking on complaints transmitted by him.

"(b) Each Consumer Counsel shall promptly notify producers, distributors, retailers, lenders, or supplies of goods, services, and credit of all complaints of any significance concerning them received or developed under this section, unless such Consumer Counsel determines that to do so is likely to prejudice or impede an action, investigation, or prosecution concerning an alleged violation of law.

"(c) Each Consumer Counsel shall maintain a public document room for public inspection and copying (without charge or at a reasonable charge, not to exceed cost), containing an up-to-date listing of all consumer complaints of any significance which he has received, arranged in meaningful and useful

categories, together with annotations of actions taken in response thereto. Unless a Consumer Counsel, for good cause, determines not to make any specific complaint available, complaints listed shall be made available for public inspection and copying: *Provided*, That—

"(1) the party complained against has had a reasonable time to comment on such complaint and such comment, when received, is displayed together with the complaint;

"(2) the Federal official to whom the complaint has been referred has had a reasonable time to notify the Consumer Counsel what action, if any, he intends to take with respect to the complaint; and

"(3) no unsigned complaints shall be placed in the public document room.

"CONSUMER INFORMATION AND SERVICES

"SEC. 9. (a) In order to carry out the purposes of this Act each Consumer Counsel shall develop on his own initiative, and shall, subject to the other provisions of this Act, gather from other offices and officers of the agency of which his Office is a part and from any other source, and shall disseminate to the public (in such manner, at such times, and in such form as he determines to be most effective), information, statistics, and other data, including, but not limited to, any matter over which his agency has jurisdiction concerning—

"(1) the functions and duties of his Office;

"(2) consumer products and services;

"(3) problems encountered by consumers generally or conditions, situations, developments, or practices which may adversely affect consumers; and

"(4) notices of hearings, proposed and final rules and orders, and other pertinent activities of the agency of which his Office is a part that affect consumers.

"(b) All Federal agencies which possess information which would be useful to consumers are authorized and directed to cooperate with their respective Consumer Counsels in making such information available to the public.

"STUDIES

"SEC. 10. Each Consumer Counsel is authorized to conduct, support, and assist research, studies, plans, investigations, conferences, and surveys concerning the interests of consumers: Provided, That such activities are not duplicative of other efforts of the respective agencies.

"ACCESS TO INFORMATION

"SEC. 11. (a) Upon written request by the Consumer Counsel, each Federal agency is authorized and directed to furnish or allow access to all documents, papers, and records in its possession which such Consumer Counsel deems necessary for the performance of his functions and to furnish at cost copies of specified documents, papers, and records. Notwithstanding this subsection, a Federal agency may deny its Consumer Counsel access to and copies of—

"(1) information classified in the interest of national defense or national security by an individual authorized to classify such information under applicable Executive order or statutes, and restricted data whose dissemination is controlled pursuant to the Atomic Energy Act (42 U.S.C. 2011 et seq.);

"(2) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

"(3) information which such Federal agency is expressly prohibited by law from disclosing to another Federal agency, including, but not limited to, such expressly prohibited information contained in or related to examination, operating, or condition reports concerning any individual financial institution prepared by, on behalf of, or for the use of an agency responsible for regulations or supervision of financial institutions;

"(4) information which would disclose the financial condition of individuals who are customers of financial institutions; and

"(5) trade secrets and commercial or financial information described in section 552(b)(4) of title 5, United States Code—

"(A) obtained prior to the effective date of this Act by such Federal agency, if the agency had agreed to treat and has treated such information as privileged or confidential and states in writing to the Consumer Counsel that, taking into account the nature of the assurances given, the character of the information requested, and the purpose, as stated by the Consumer Counsel, for which access is sought, to permit such access would constitute a breach of faith by the agency; or

"(B) obtained subsequent to the effective date of this Act by the Federal agency, if the agency has agreed in writing as a condition of receipt to treat such information as privileged or confidential, on the basis of its reasonable determination set forth in writing that such information was not obtainable without such an agreement and that failure to obtain such information would seriously impair performance of the agency's function.

"(b) Before granting a Consumer Counsel access to trade secrets and commercial or financial information described in section 552(b)(4) of title 5, United States Code, the agency shall notify the person who provided such information of its intention to do so and the reasons therefor, and shall, notwithstanding section 18(b) of this Act, afford him a reasonable opportunity, not to exceed 10 days, to comment or seek injunctive relief. Where access to information is denied to its Consumer Counsel by a Federal agency pursuant to this subsection, the head of the agency and the Consumer Counsel shall seek to find a means of providing the information in such other form, or under such conditions, as will meet the agency's objections.

"LIMITATIONS ON DISCLOSURE

"SEC. 12. (a) Except as provided in this section, section 552 of title 5, United States Code, shall govern the release of information by a Consumer Counsel or any employee or agent of his Office.

"(b) No officer or employee of an Office of Consumer Counsel shall disclose to the public any information which was received solely from its Federal agency when such agency has notified the Consumer Counsel that the information is within the exceptions stated in section 552(b) of title 5, United States Code, and the Federal agency has determined that the information should not be made available to the public; except that if such Federal agency has specified that such information may be disclosed in a particular form or manner, such information may be disclosed in such form or manner.

"(c) The following additional provisions shall govern the release of information by a Consumer Counsel pursuant to any authority conferred by this Act, except information released through the presentation of evidence in a Federal agency or court proceeding pursuant to section 7 of this Act:

"(1) A Consumer Counsel, in releasing information concerning consumer products and services, shall determine that (A) such information, so far as practicable, is accurate, and (B) no part of such information is prohibited from disclosure by law. A Consumer Counsel shall comply with any notice by his Federal agency pursuant to section 11(b) of this Act that such information should not be made available to the public or should be disclosed only in a particular form or manner.

"(2) In the dissemination of any test results or other information which directly or indirectly disclose product names, it shall be made clear that (A) not all products of a competitive nature have been tested, if such is the case, and (B) there is no intent or purpose to rate products tested over those not tested or to imply that those tested are superior, inferior, or preferable in quality over those not tested.

"(3) Notice of all changes in, or any additional information which would affect the fairness of information previously disseminated to the public shall be promptly disseminated in a similar manner.

"(4) Where the release of information may cause substantial injury to the reputation or good will of a person, the Consumer Counsel shall notify such person of the information to be released and afford him a reasonable opportunity, not to exceed 10 days, to comment or seek injunctive relief, unless immediate release is necessary to protect the health or safety of the public. The district courts of the United States shall have jurisdiction over any action brought for injunctive relief under this subsection, or under section 11(a)(5) of this Act.

"NOTICE

"SEC. 13. Each Federal agency considering any action which may substantially affect an interest of consumers shall, upon request by its Consumer Counsel, notify him of any proceeding or activity at such time as public notice is given.

"SAVING PROVISION

"SEC. 14. Nothing in this Act shall be construed to limit the right of any consumer or group or class of consumers to initiate, intervene in, or otherwise participate in any Federal agency or court proceeding or activity, nor to require any petition or notification to the appropriate Consumer Counsel as a condition precedent to the exercise of such right, nor to relieve any Federal agency or court of any obligation, or affect its discretion, to permit intervention or participation by a consumer or group or class of consumers in any proceeding or activity.

"EXEMPTIONS

"SEC. 15. (a) This Act shall not apply to the Central Intelligence Agency, the Federal Bureau of Investigation, or the National Security Agency, the national security or intelligence functions (including related procurement) of the Departments of State and Defense (including the Departments of the Army, Navy, and Air Force), the military weapons program of the Energy Research and Development Administration, and the broadcast license renewal proceedings of the Federal Communications Commission.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 16. For purposes of this Act, existing appropriated funds should be utilized to the greatest extent possible. However, there are authorized to be appropriated such sums as are necessary, not to exceed $500,000 for each Office of Consumer Counsel for the fiscal year ending June 30, 1976, $125,000 for the fiscal year transition period from July 1, 1976, through September 30, 1976, and $500,000 for the fiscal year ending September 30, 1977.

"EVALUATION BY THE COMPTROLLER GENERAL

"SEC. 17. (a) The Comptroller General of the United States shall audit, review, and evaluate the implementation of the provisions of this Act.

"(b) Not less than 30 months nor more than 36 months after the effective date of this Act, the Comptroller General shall prepare and submit to the Congress a report on his study conducted pursuant to subsection (a) of this section, which shall contain, but not be limited to, the following:

"(1) an evaluation of the effectiveness of consumer representation activities authorized by this Act;

"(2) an evaluation of the effect of the activities of the Consumer Counsels on the efficiency, effectiveness, and procedural fairness of affected Federal agencies in carrying out their assigned functions and duties;

"(3) recommendations concerning any legislation he deems necessary, and the reasons therefor, for improving the implementation of the objectives as set forth in section 2 of this Act.

"(c) Restrictions and prohibitions under this Act applicable to the use or public dissemination of information by Consumer Counsels shall apply with equal force and effect to the General Accounting Office in carrying out its functions under this section.

"MISCELLANEOUS PROVISIONS

"SEC. 18. (a) Nothing in this Act should be construed to limit the discretion of any Federal agency or court, within its authority, including a court's authority under rule 24 of the Federal Rules of Civil Procedure, to grant a Consumer Counsel additional participation in any proceeding or activity, to the extent that such additional participation may not be as of right, or to provide additional notice to the respective Consumer Counsel concerning any agency proceeding or activity.

"(b)(1) No act or omission by any Consumer Counsel or any Federal agency relating to such Consumer Counsel's authority under sections 7 (a), (d), (f), (i), and (j), 8, 9, 12, and 13 of this Act shall affect the validity of an agency action or be subject to judicial review: *Provided*, That—

"(A) a Consumer Counsel may obtain judicial review to enforce his authority under sections 7 (a), (d) (f), (i), and (j), 9, and 13 of this Act: *Provided, further*, That he may obtain judicial review of his Federal agency determination under section 7(f) of this Act only after final action by such agency and only to the extent that such determination affected the validity of such action;

"(B) a party to any agency proceeding or a participant in any agency activity in which its Consumer Counsel intervened or participated may, where judicial review of the final agency action is otherwise accorded by law, obtain judicial review following such final agency action on the ground that the Consumer Counsel's intervention or participation resulted in prejudicial error to such party or participant based on the record viewed as a whole; and

"(C) any person who is substantially and adversely affected by any action taken by a Consumer Counsel pursuant to section 7 (f), 9(a), or 12 of this Act may obtain judicial review, unless the court determines that such judicial review would be detrimental to the interests of justice.

"(2) For the purposes of this subsection, a determination by a Consumer Counsel that any proceeding or activity of the agency of which his Office is a part may substantially affect an interest of consumers or that his intervention in any proceeding is necessary to represent adequately an interest of consumers shall be deemed not to be a final agency action.

"PUBLIC PARTICIPATION

"SEC. 19. (a) After reviewing its statutory authority and rules of procedure, relevant agency and judicial decisions, and other relevant provisions of law, each Federal agency shall issue appropriate interpretations, guidelines, standards, or criteria, and rules of procedure, to the extent that such rules are appropriate and are not already in effect, relating to the rights of individuals who may be affected by agency action to—

"(1) petition the agency for action;

"(2) receive notice of agency proceedings;

"(3) file official complaints (if appropriate) with the agency;

"(4) obtain information from the agency; and

"(5) participate in agency proceedings for the purpose of representing their interests.'

Such interpretations, guidelines, standards, criteria, and rules of procedure shall be published in proposed and final form in the Federal Register.

"(b) Each Federal agency shall take all reasonable measures to reduce or waive, where appropriate, procedural requirements for individuals for whom such requirements would be financially burdensome, or which would impede or prevent effective participation in agency proceedings.

"(c) Any rules of procedure issued by any Federal agency pursuant to this section shall be published in a form and disseminated in a manner that is designed to inform, and that is able to be understood by, the general public.

"COST AND BENEFIT ASSESSMENT STATEMENTS

"SEC. 20. (a) In furtherance of the purpose and policy of section 2(b)(3) of this Act, and except as otherwise provided in this Act, each Federal agency which is authorized to promulgate rules (as defined in section 551(4) of title 5, United States Code) shall prepare a cost and benefit assessment statement with respect to any rules to which section 553(b) of title 5, United States Code, is applicable, and which are likely to have a substantial economic impact. Each such statement shall be short and concise, and, together with such supporting documentation as the agency in its discretion determines to be necessary or appropriate, shall consist of the following three elements:

"(1) estimated costs, that are foreseeable as a result of the effective implementation of such rule;

"(2) estimated benefits, that are foreseeable as a result of the effective implementation of such rule; and

"(3) the apparent relationship, if any, between such costs and benefits.

To the extent deemed practicable by the agency responsible for its preparation, each cost and benefit assessment statement shall indicate in an appendix the assumptions, if any, which were made by it regarding the means, or alternative means, and attendant costs of compliance with the proposed rule, including any manufacturer's costs and consumer costs reflected in the price of any product affected by such rule.

"(b) With respect to any proposed rule subject to the requirements of subsection (a), each Federal Register notice of proposed rulemaking shall request interested persons to submit to the applicable agency, in writing, comments, materials, data, information, and other presentations relevant to the preparation of the required cost and benefits assessment statement.

"(e) Each agency shall, to the extent it deems necessary or appropriate, seek to obtain comments, materials, data, information, and presentations relevant to the costs and benefits, if any, likely to ensue from effective implementation of any proposed rule, within the time prescribed for consideration of the proposed rule, from other Federal agencies and persons. No extensions of time for comment shall be granted solely for the purpose of receiving any such presentations with respect to such benefits.

"(d) Each person who contends that effective implementation of a proposed rule will result in increased or decreased costs, may furnish to the applicable agency the information upon which he bases such assertion, and which is in his possession, is known to him, or is subject to his control. Such information shall be furnished to the agency in such form, manner, and detail as such agency in its discretion prescribes. Whenever any relevant information, which an applicable agency deems necessary or appropriate to the preparation of a cost and benefit assessment statement, is or may be in the possession or control of a person who may be directly affected by the proposed rule, such agency is authorized to request such relevant information as reasonably described by it, and such person shall furnish such relevant information promptly to such agency. Such request for information shall be enforceable by appropriate orders by any court of the United States. Such information as is furnished shall be considered a statement for purposes of section 1001 of title 18, United States Code.

"(e) A cost and benefit assessment statement prepared pursuant to subsection (a) shall be first published at the end of the year in which it was prepared in the Federal Register in a report which shall contain all cost and benefit assessment statements applicable to rules promulgated during the preceding 12 months. All relevant information developed or received by the applicable agency in connection with the preparation of such statement shall be available to all interested persons, subject to the provisions of section 552 of title 5, United States Code.

"(f) The President, or his designee, shall issue, pursuant to the provisions of this subsection, (1) regulations providing guidelines for Federal agencies as to the nature and content of any cost and benefit assessment statement required by subsection (a) of this section and (2) regulations which shall insure that any agency shall be able to obtain information deemed by it to be necessary or appropriate to the preparation of any such cost and benefit assessment statement. Such regulations shall be issued by the President upon the recommendation submitted to the President by the Director of the Office of Management and Budget and the Comptroller General of the United States. In issuing or modifying any regulations implementing this section, the President shall proceed in accordance with the procedures prescribed by subsections (b) and (c) of the new section inserted by section 202, Public Law 93-637 (88 Stat. 2193; 15 U.S.C. 57 (a), (b), (c)). The President shall provide public notice of proposed rulemaking to implement this subsection within sixty days of the effective date of this Act. After issuance of any regulations implementing this section, the President shall transmit them to the Congress, together with all recommendations submitted to the President pursuant to this subsection. Such regulations shall take effect 90 legislative days after such transmittal to the Congress by the President, unless either House of Congress by resolution of disapproval, pursuant to procedures established by chapter 35, title 44, United States Code, and by section 1017 of the Congressional Budget and Impoundment Control Act of 1974 (31 U.S.C. 1407), disapproves such regulations.

"(g) No Federal officer or agency shall submit proposed legislation to the Congress which is likely, if enacted, to have a substantial economic impact, unless such legislation is accompanied by a cost and benefit assessment statement. The statement required by this subsection shall be prepared in accordance with the provisions of subsection (a) of this section. The requirements of this subsection may be postponed upon the request of a committee of Congress having jurisdiction over such legislative proposal, for a period not to exceed 30 days from the date of submission to the Congress of such legislation.

"(h) In addition to the definitions in section 3 of this Act, the following definitions shall apply with respect to the provisions of this section:

"(1) 'benefit' includes any direct or indirect, tangible or intangible, gain or advantage which the agency, in its discretion, deems proximately related to the promulgation of a proposed regulation or the enactment of the proposed legislation. The term shall include such nonquantifiable benefits as the agency identifies and describes. Benefits may include the costs that would be likely to result from the agency's failure to act, but which are likely to be avoided by the agency's action;

"(2) 'cost' includes any direct or indirect expense, including component costs of pro-

duction and supply, and any loss, penalty, or disadvantage which the agency, in its discretion, deems proximately related to the promulgation of a proposed regulation, or the enactment of proposed legislation. The term shall include such nonquantifiable costs as the agency identifies and describes;

"(3) the term 'legislation' or 'law' means a statute of the United States or any amendment thereto; and

"(4) the term 'rule' means 'rule' as defined by section 441(4) of title 5, United States Code.

"(i) The Comptroller General of the United States shall monitor and evaluate the implemention of this section. In addition to any other reports or studies made by the Comptroller General relating to this section, he shall, three years after the effective date of this section, conduct a comprehensive review of this section including an evaluation of the advantages and disadvantages of cost and benefit assessment statements and of the nature and extent of Federal agency compliance with this section. The Comptroller General shall prepare and submit to the Congress and to the Congressional Office of the Budget a report based on such study and review. Such report shall include, but need not be limited to, his recommendations as to the necessity or advisability of the provisions of this section, and of the need to amend subsection (k), or any other provision, of this section.

"(j) No court shall have the jurisdiction to review, or enforce or shall review, or enforce and, except for the general review of the effectiveness of this section provided for in subsection (i), no officer or agency of the United States, other than the agency responsible for the preparation of a cost and benefit assessment statement and the duly authorized committees of the Congress, shall have the authority to review, or enforce or shall review, or enforce, in any way the compliance of any cost and benefit assessment statement with this section, or, except where the agency preparing such a statement seeks to enforce in court its request for information, the compliance, by such agency with any other requirement of this section, including the manner or process by which such statement is prepared: *Provided*, That a Federal court may, upon the request of any interested person, review and enforce compliance with the provisions of this subsection.

"(k) The requirements of this section shall supersede the requirements of any existing executive order or law imposing any economic, cost-benefit, inflationary, or other similar impact assessment requirement. No requirement of this section shall alter or supersede any Federal agency statutory requirement, regulation, or lawful practice which such agency determines to be inconsistent with any of the requirements of this section. Further, no agency shall be required to prepare and issue a cost and benefit assessment statement required by this section, if information which would be contained in such statement is encompassed within another statement required by law to be prepared in connection with the promulgation of the applicable rule.

"(l) The provisions of this section shall become effective upon the effective date of implementing regulations submitted by the President under subsection (g) of this section.

"EFFECTIVE DATE

"SEC. 21. (a) This Act, other than section 20 of this Act, shall take effect 90 calendar days following the date on which this Act is enacted, or on such earlier date as the President shall prescribe and publish in the Federal Register.

"(b) Notwithstanding subsection (a) of this section, any of the officers provided for in this Act may be appointed in the manner provided for in this Act at any time after the date of the enactment of this Act.

"SEPARABILITY

"SEC. 22. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality and effectiveness of the remainder of this Act and the applicability thereof to any persons and circumstances shall not be affected thereby.".

Amend the title so as to read: "A bill to establish an independent Consumer Counsel within certain Federal agencies in order to protect and serve the interests of consumers, and for other purposes.".

Mr. PEARSON. Mr. President, this amendment establishes independent "Offices of Consumer Counsel" within Federal agencies whose activities directly affect the consumer interest. The duties and activities of each Consumer Counsel closely parallel those granted the Administrator of the Agency for Consumer Advocacy established by S. 200.

BACKGROUND TO THE DEBATE

Mr. President, the efforts of those who have sought increased protection for the consumer in the public forums of American society are well known and commendable. Public awareness of the "consumer interest" has increased. Consumerism has become an economic and social fact of life.

In past years, most Americans believed that the traditional institutions of our society were sufficient to meet what they perceived to be the consumer interest. Business concerns were to produce in sufficient quantities those goods and services needed in a modern society. Government was charged with the responsibilities of promoting increased production and an expanding economy while protecting the health, safety, and welfare of the public.

Somewhere along the way, this viable and utilitarian system became suspect. On the one hand, the American public demanded ever increasing quantities of goods and services. On the other hand, the public called upon Government to assume a more aggressive role in promoting the consumer interest. As the economy expanded, so did the number and scope of consumer-oriented programs approved by Congress.

Mr. President, the impact of such programs on the private sector, both in economic and social terms, is substantial. And even though each is designed to benefit the consumer, that same consumer could not be blamed if he found this vast array of Federal mandates and managers somewhat incomprehensible. Indeed, only those enterprises with massive personnel and financial resources are able to monitor effectively the multitude of Federal agency actions which directly affect their interests.

Those who administer Federal consumer programs are charged with the duty to insure due process, not only to the consumer, but the regulated as well. The administrator of a particular program or agency performs executive, quasi-legislative and quasi-judicial functions in promulgating rules, standards, or regulations which affect all concerned interests.

The Senate has testimony to the effect that business interests outnumber consumer interests in Federal proceedings by 100 to 1. All too often, the consumer side of national issues is not heard. Those who administer consumer-oriented programs are, in many cases, left with the alternative of relying either on business interests for expert testimony, or on their own best judgment as to what the consumer interest might be. It is prudent, therefore, that we move forward to promote consumer advocacy in the Federal administrative process.

PURPOSE OF S. 200

Mr. President, S. 200 has been proposed to promote consumer advocacy. Its primary function is to establish a single consumer advocate within the Government. It is suggested that with adoption of this proposal, the confusion and lack of representation now evident in our consumer effort will be abated.

I do not deny that the voice of the consumer has gone unheard in the cacophony of the Federal regulatory process. Nor do I deny the need for Congress to act expeditiously in providing attentive consumer advocacy in the administrative and judicial processes.

However, I question the claims of those who maintain that S. 200 provides the most viable approach. And I doubt whether one individual, and a single staff, can effectively monitor public affairs of direct importance to the consumer at all times, in all places, and under all circumstances.

I question, finally, whether a single administrator, as envisioned in S. 200, should be vested with the enormous responsibility to decide the primary "consumer interest" in all situations involving Federal agency action. ACA will be only as effective as a single person—the Administrator—wants it to be; or stated another way, the competence of ACA will reflect the competence of its administrator, and little more.

AN ALTERNATIVE TO S. 200

Mr. President, I believe the Senate should consider an alternative to S. 200; one which seeks to accomplish the same objectives as the bill, but which uses a different mechanism tailored more precisely to the Federal Establishment. Accordingly, I propose my substitute amendment as a means of obtaining substantial reform in behalf of the consumer, at minimal cost and dislocation to the Government.

My substitute proposal addresses itself to two basic questions with respect to S. 200:

First, whether the goal of consumer advocacy is best achieved by the creation of a single agency for consumer advocacy with a single administrator; and

Second, whether the broad information-gathering authority, as contained in section 10 of the bill, is an appropriate extension of power to the Government's consumer advocate.

Mr. President, the proponents of S. 200, as reported by the committee, have answered these two questions in the affirmative. The bill provides a single consumer advocate. Under the bill, the ACA would be required to be expert in all fields of Federal agency action at all

times. And the ACA would have broad subpena powers, broad powers to interrogate major business enterprises—powers that lead agencies, charged directly with promoting the consumer interest, do not have.

Mr. President, my substitute would answer these two critical questions in the negative. Instead of establishing a single agency, it would establish within each of 24 major Federal departments and agencies, an independent "Office of Consumer Counsel."

Each Consumer Counsel would be appointed by the President, by and with the advice and consent of the Senate, for a term of 4 years. He would have much the same power within his parent agency as is provided the Administrator of the Agency for Consumer Advocacy in S. 200.

Most important of all, each Office of Consumer Counsel would have independence. My amendment provides that each consumer advocate be appointed for a 4 year term by the President, with the advice and consent of the Senate. Each Office is provided with a budget authority of $500,000 each year, with such budget to be submitted directly to the Congress. Finally, each Consumer Counsel has full authority to sue the parent agency if, in his judgment, such suit is in the best interests of the consumer.

POWERS OF CONSUMER COUNSELS

Of all consumer advocacy functions, the most important is the representation of consumer interests in administrative and judicial proceedings. Section 7 of the substitute amendment grants each Consumer Counsel full authority to participate in administrative proceedings, if the interest of consumers in such proceedings, in his judgment, is compelling.

Section 7 of my amendment also grants authority to a Consumer Counsel to initiate any civil proceeding involving the review of an action taken by the relevant Federal agency of jurisdiction, which in his determination substantially affects the interest of consumers. However, if the Consumer Counsel has not participated in the formal administrative proceedings which led to the agency's decision, he must petition the agency for review or rehearing prior to initiating a court action. The agency is given 60 days to act on such petition, after which time the Consumer Counsel may file an appropriate action in a Federal district court. This procedure parallels comparable provisions of S. 200.

Mr. President, as previously noted, I do not believe that a separate Agency for Consumer Advocacy, as envisioned in S. 200, will have resources adequate to meet the demands of the consumer interest.

In implicit recognition of this fact, proponents of S. 200 have conferred upon ACA information-gathering authority over and above that normally granted to an agency of the Federal Government. I believe such authority is inappropriate in this instance.

Accordingly, I have deleted from my substitute the section 10 "dragnet" authority to elicit information from business on business activities. Independent consumer counsels, under my substitute, would have the same access generally to business records as their parent agencies of jurisdiction. If Congress believes that Government needs more information about business, then Congress ought to authorize the responsible agencies to secure such information directly.

Mr. President, by providing Federal agencies with independent Offices of Counsumer Counsel, we can assure that attention will be focused on all aspects of those agencies' work which relate directly to the interests of the consumer. Under the substitute, the independent Consumer Counsels, in the case of the 24 enumerated Federal agencies, would have the powers and the opportunity to insure effective advocacy. Those Consumer Counsels, in the final analysis, would become specialists in their parent agencies' work, and they could be truly effective.

In conclusion, Mr. President, the goals I seek are not dissimilar to those which proponents of S. 200 have set out in their proposal. The proposal I have submitted, in my judgment, is a more efficient and less costly alternative.

I would hope that those who recognize the need to provide the American consumer with a voice commensurate with that of other interests would closely examine this proposal, and lend it their considered support.

This is a fundamental recommendation and a change in the provisions of this bill. And yet, that being true, it is simple of explanation. Rather than an independent overall consumer agency, the substitute purports to establish within 24 agencies, bureaus, and administrations an independent Consumer Counsel.

Section 2, paragraph (7) of the amendment, in the nature of a substitute, contains those agencies, and they are identified and made precise. This is distinguished from the bill itself which, as I understand it, provides for the administrator to intervene in any agency proceeding that relates to consumer interests.

The second major and fundamental provision of this substitute provides for a modification of section 10 of the bill itself, in that the very broad powers of acquiring and disseminating information are very much restricted, and that rather than the sweeping authority to go forth and submit interrogatories and acquire information from the business sector, that the Consumer Counsel in each individual agency shall have the power to acquire and use the information that his agency now has the authority to use. If further information is required, then that agency in itself can request such information.

So, Mr. President, with those fundamental changes, we have a Consumer Counsel in each agency identified rather than the new agency. It is the judgment of those who worked on this particular substitute that there would be greater knowledge, greater expertise, greater ability to handle the precise consumer problems that come up if an independent Consumer Counsel were placed in each individual agency rather than having a large agency seeking to not only go into agency after agency.

Each Consumer Counsel is appointed by the President, confirmed by the Senate. He is independent, as I indicated. The budget authorizations are set forth here, to be submitted independently to Congress.

Mr. President, we think this meets a great number of the objectives of S. 200, and we think at the same time it provides those consumer protection elements which are essential and which are good in this particular bill.

So, Mr. President, let me reiterate that each Consumer Counsel has all of the authority, all of the rights and duties and obligations set forth in S. 200, with the exception, as I have mentioned, of the acquisition of information in section 10.

Mr. President, with that explanation, I reserve the remainder of my time.

Mr. President, it is my intention to ask for the yeas and nays on this particular substitute.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second. There is a sufficient second.

The yeas and nays were ordered.

Mr. PEARSON. I yield on my time to the distinguished Senator from Idaho for a unanimous-consent request.

Mr. McCLURE. Mr. President, I ask unanimous consent that Al Timothy and Jim Norell of my staff be accorded the privileges of the floor at all stages of the proceedings on this bill.

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

Mr. RIBICOFF. I oppose this amendment. It sets up a consumer office in each agency. These offices would not be able to have the independence necessary to adequately represent the interests of the consumers. They would be subject to the same pressures that the agency itself would have. It would be wasteful because it would really create perhaps 30 to 35 new burcaucracies in the Government.

There would be duplication without coordination. These offices would lack information-gathering powers, and they could turn out to be at least as costly as the ACA.

The distinguished Senator from Kansas asks for $500,000 for each office. We think there is nothing to be gained by this proposal. The whole idea of an independent agency to look out for the problems of consumers before the other regulatory agencies is absolutely essential. I oppose the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. PEARSON. Mr. President, I shall not respond at length. I think the Senator and I have an understanding of what is involved, and all those interested have an understanding.

I merely recite the fact that on page 11 of the substitute offered the independence is spelled out. I understand the Senator's position, and I do not feel that further debate on this particular proposal is necessary or would add a great deal.

While it is a substantial change, as I have said, the modifications are quite

simple, and I am prepared to vote on this matter.

The PRESIDING OFFICER. Has all time been yielded back on the amendment in the nature of a substitute? The question is on agreeing to Mr. PEARSON's amendment in the nature of a substitute, as modified.

The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. HARTKE) and the Senator from Louisiana (Mr. LONG) are necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from New York (Mr. BUCKLEY), the Senator from Arizona (Mr. GOLDWATER), the Senator from Maryland (Mr. MATHIAS), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The result was announced—yeas 22, nays 70, as follows:

[Rollcall Vote No. 176 Leg.]

YEAS—22

Baker	Fannin	Pearson
Bartlett	Garn	Taft
Beall	Griffin	Talmadge
Bellmon	Hansen	Thurmond
Brock	Hruska	Tower
Curtis	Laxalt	Young
Dole	McClure	
Eastland	Nunn	

NAYS—70

Abourezk	Hart, Philip A.	Moss
Allen	Haskell	Muskie
Bayh	Hatfield	Nelson
Bentsen	Hathaway	Packwood
Biden	Helms	Pastore
Brooke	Hollings	Pell
Bumpers	Huddleston	Percy
Burdick	Humphrey	Proxmire
Byrd, Harry F., Jr.	Inouye	Randolph
Byrd, Robert C.	Jackson	Ribicoff
Cannon	Javits	Roth
Case	Johnston	Schweiker
Chiles	Kennedy	Scott, Hugh
Church	Leahy	Scott, William L.
Clark	Magnuson	Sparkman
Cranston	Mansfield	Stafford
Culver	McClellan	Stennis
Domenici	McGee	Stevenson
Eagleton	McGovern	Stone
Fong	McIntyre	Symington
Ford	Metcalf	Tunney
Glenn	Mondale	Weicker
Hart, Gary W.	Montoya	Williams
	Morgan	

NOT VOTING—7

Buckley	Hartke	Stevens
Goldwater	Long	
Gravel	Mathias	

So Mr. PEARSON's amendment (No. 433), in the nature of a substitute, as modified, was rejected.

Mr. RIBICOFF. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. JAVITS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. RIBICOFF. Mr. President, I would like to just make a comment concerning my friend from Kansas.

Mr. FORD. President, may we have order?

The PRESIDING OFFICER. May we have order in the Senate?

Mr. RIBICOFF. I would not want this vote to be interpreted as a reflection on the consistent efforts that the Senator has made on behalf of the consumers. As a ranking member of the Commerce Committee, the Senator from Kansas has been continuously in the forefront on all matters affecting the consumer. I recognize his sincere belief that his method is preferable to the one that had been advocated by the committee. I differ with the distinguished Senator on this particular proposal, but my respect for him is unbounded when it comes to the problems of the consumer. I do not believe there is a Member of this body who has worked as hard and continuously in behalf of all the consumers of America as Senator PEARSON of Kansas.

Mr. JAVITS. Mr. President, I yield myself 1 minute to make the same statement as my colleague from the majority side. I too, have worked closely with Senator PEARSON in consumer matters. He has no reason to yield to anyone in his concern.

We differ on this particular type of approach, but I am confident that in the future, as he has in the past, he will do his utmost to produce the best kind of consumer protection under whatever we all decide is the proper law. I thank my colleague.

Mr. PEARSON. Mr. President, I thank the distinguished Senator from Connecticut and the distinguished Senator from New York. They are most gracious in their comments. I would have preferred instead a few more votes.

AMENDMENT 452

Mr. KENNEDY. Mr. President, I call up my amendment No. 452 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY) proposes amendment No. 452.

The amendment is as follows:

On page 30, line 16, after "(4)" insert "(A)".

On page 30, immediately below line 25, add the following new subparagraph:

"(B) Nothing in this paragraph shall affect the rights of the public to obtain information under section 552 of title 5, United States Code.".

Mr. KENNEDY. I yield myself such time as I may require.

Mr. President, I have had an opportunity to talk to the floor manager of the bill and the author of the provision in the bill to which the amendment I offer is directed.

What we are attempting to do with this amendment is to insure that certain rights for the public to obtain information, which is guaranteed under the Freedom of Information Act, will not be restricted by any of the language contained in the relevant paragraph of this act.

It seems to me that the various requirements included in this section generally, such as notification to any company or individual whose reputation or goodwill is substantially injured, in order to give them adequate time, not to exceed 10 days to comment or respond, is of significant value.

The other provisions of this section which insure that information released at the Administator's initiative is going to be accurate, disclosures by the Administrator are not going to suggest a rating of products not tested, and that any additional information which would affect the fairness of information previously disseminated to the public shall be promptly disseminated in a similar manner, are valuable and would be retained. They seem to me to be highly desirable.

The purpose of this proposal is to insure, however, that information that could be obtained under the Freedom of Information Act from various Government agencies—recognizing the nine exclusions which are contained in the Freedom of Information Act, involving trade secrets, investigative reports, private medical files, national security issues—can equally be obtained from the Consumer Advocacy Agency. To the extent that the Freedom of Information Act applies to all other Federal agencies, it shall also apply to this particular agency.

It seems to me that this amendment is fully consistent with the whole thrust and the purpose of the proposed legislation.

Mr. President, last fall the Congress strengthened the procedures and reaffirmed the basic principles of the Freedom of Information Act. That act guarantees to every American the right of access to Government information, with the full force of the courts to back up that right.

The purpose of my amendment to paragraph 11(c)(4) of the bill to establish an Agency for Consumer Advocacy is simple and straightforward: to insure and clarify that this paragraph does not undercut, circumvent, or derogate the force or intent of the Freedom of Information Act. My amendment would state in plain language that nothing in the paragraph amended affects the rights of the public—both substantively and procedurally—to obtain information from the Agency under section 552 of title 5, the Freedom of Information Act.

The paragraph I am amending presently requires notice to a person before the Administrator releases information that might adversely affect him. Specifically, if the information to be disclosed is likely to cause substantial injury to the reputation or good will of the person, the Administrator must give him reasonable notice, not to exceed 10 days, before disclosing the information, except where matters of health or safety are involved. The person so notified then has the opportunity to comment on the Administrator's proposed disclosure, or to respond to the disclosure. If the provisions of paragraphs (2) and (3) of this section or paragraph (7) of subsection 10(6) are not complied with, then that person may go to court to enjoin the Administrator's affirmative compliance with those paragraphs.

Mr. President, as I earlier stated, I fully support inclusion of that notice requirement. But the way paragraph (4) now reads, it might be misinterpreted as providing the legal authority for the person notified to obtain an injunction to block

release of the information, even if that information must be released on request under the Freedom of Information Act. Under this interpretation, which I do not believe was intended by the committee or the bill's sponsors, a new exemption would be grafted onto the Freedom of Information Act for the Consumer Advocacy Agency. Such an exemption would not only be unintended; it would be most unwise.

A number of agencies, including, for example, the Food and Drug Administration, the Environmental Protection Agency, and the Defense Department, attempt to give notice to private parties where the agency tentatively proposes to release information obtained from those parties which might constitute trade secrets or confidential commercial or financial data. The Freedom of Information Act presently contains an exemption, in section 552(b)(4), for this type of information. So under the Information Act, notice to the person who submitted the information is designed to protect his interest against substantial harm to his economic interests, his competitive position. This was the pronouncement of a recent case on the subject decided by the D.C. Court of Appeals, National Parks and Conservation Association versus Morton.

But the information included in paragraph (4) of section 11(c) goes beyond trade secrets or information whose release might cause injury strictly to a business' competitive position. It includes injury to "reputation or good will." This category could possibly cover every piece of information which a person does not want released because it may cause some embarrassment or cast some negative light on his business activities or product. It is precisely this kind of information which discloses consumer deception or fraud, or reveals shoddy or unsafe products. And it is precisely this kind of information which the public should have, which the Freedom of Information Act would require to be disclosed, and which S. 200 should not allow to be shrouded in secrecy.

To summarize, Mr. President, my amendment does not derogate the notice provision in paragraph (4) of section 11(c), so long as the procedural time limits provided by the Freedom of Information Act are followed by the Agency. My amendment does not prevent a person from obtaining relief against the Administrator to prevent violation of sections 11(b) (2) or (3) or section 10(b) (7). It does make clear and unmistakable the application of the Freedom of Information Act to information requested from the Agency for Consumer Advocacy. And in so doing, it again indicates Congress commitment to open Government and the free flow of information to the public.

Mr. RIBICOFF. I say, in behalf of the Senator from New York and the Senator from Illinois (Mr. PERCY), who is the author of subsection 4, that we accept the amendment of the Senator from Massachusetts, which would clarify the act with regard to the release of information under the Freedom of Information Act.

This in no way cuts back the protection contained in this section. It makes the paragraph, itself, clear.

However, it should be pointed out that we want to make sure when we go to conference that in no way is there any inconsistency with other limitations on disclosure of information written into the basic act.

I have discussed this matter with the Senator from New York and the Senator from Illinois, and we accept the amendment.

Mr. KENNEDY. Quite clearly, those protections that are guaranteed in this measure and other sections should be respected. It certainly is not my intention to compromise those safeguards in this proposal.

I thank the Senator from Connecticut and the ranking members of the committee.

I yield back the remainder of my time.

Mr. DOLE. Mr. President, will the Senator from Massachusetts yield?

Mr. KENNEDY. I am glad to yield.

Mr. DOLE. I do not believe I have any objection to the amendment, but I am not certain what it would do. Is this already provided for in S. 200? Would the Senator from Massachusetts explain the purpose of the amendment, as to whether it would do anything which is not now in S. 200?

Mr. KENNEDY. Under the Freedom of Information Act, if there is any information dealing with deceptive practices or fraud, or, for example, if you have a refrigerator or other household product that is defective but does not constitute a danger to health or safety, but where the release of information could impugn the goodwill of the company or the corporation, under paragraph (4) of section 11(c) of this legislation an injunction might be obtained. If this information were in one of the other regulatory agencies, however, under the Freedom of Information Act a member of the public could obtain such information on request. So it merely coordinates this particular provision to the requirements of the Freedom of Information Act.

As I said, it would not affect what is the desired end of the committee, to provide notice and insure fairness and equity in terms of the distribution of the information by the Administrator. But there is a host of different kinds of business activities that may be considered by the various government agencies which do not fall into the various categories that are recognized as exclusions under the Freedom of Information Act, although if they were made public, they could fall within the definition of being injurious to the reputation or good will of the business involved.

So it does not seem to me that we want to write in a special exclusion for this agency, restricting it from providing information to the public when, actually, they would be able to obtain it under the Freedom of Information Act if it had been developed in any of the other Government agencies. It is purely to apply this right, which has been recognized under the Freedom of Information Act, to this legislation.

Mr. DOLE. The point that the Senator from Kansas is making is that certain agencies acquire certain information based on the premise or promise that it will remain confidential. My point is that we should not try to expand the Freedom of Information Act. I think the Senator from Massachusetts has made clear that certain areas are so protected and that certain information gathered by certain agencies, if it is gathered on the basis of confidentiality, still would be protected. Is that correct?

Mr. KENNEDY. I want to make it very clear that such information—for example, all trade secrets and confidential financial information—are protected under the Freedom of Information Act from mandatory disclosure and would be protected under this amendment.

All the protections which exist and which have been debated for years by Congress and incorporated into the Freedom of Information Act, would absolutely be protected with this provision.

On the other hand, information recognized to be of legitimate interest for release under the Freedom of Information Act also would be available under this provision. It is really basically to conform this legislation to the provisions of the Freedom of Information Act, not to make more restrictive the burden on the public to obtain information which, if it existed in the other Federal agencies, would be available under the Freedom of Information Act. It seems to me that this is wholly desirable.

I agree with the Senator from Kansas that areas which would fall within the definition of the nine exclusions—like trade secrets, confidential commercial or financial information, law enforcement records, information involving individual privacy, medical files, national security—absolutely would continue to be protected from required disclosure as they are under the Freedom of Information Act.

Mr. DOLE. I thank the Senator from Massachusetts.

I have no quarrel with the amendment. I think I understand its purpose. But I just want to emphasize or underscore that we are not changing the law in any way. The Senator is just trying to underpin the present law and make it very clear.

However, there are times when certain information is obtained by a Federal agency with reference to financial matters or trade secrets, and that still will be protected, as I understand it.

Mr. KENNEDY. The Senator is absolutely correct. Nothing in this amendment would change that.

The PRESIDING OFFICER (Mr. BARTLETT). The question is on agreeing to the amendment of the Senator from Massachusetts.

The amendment was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. RIBICOFF. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BURDICK. I ask the Senator from Connecticut to clarify what effect the bill will have on our vital food export program. I am referring especially to the

Public Law 480 program and private sales of food abroad. Would S. 200 affect these programs?

Mr. RIBICOFF. This bill should in no way affect these programs. The administration of Public Law 480 does not require the agency to conduct formal proceedings. Similarly, it is my understanding that the Government's monitoring of the private sale of food to persons abroad does not involve formal agency proceedings. Consequently the ACA could only present its views in these cases to agencies informally under section 6(a)(3). This section specifically provides that:

Such submissions shall be presented in an orderly manner and without causing undue delay. Such submissions need not be simultaneous with that of any other person.

Thus, ACA will not be able to force delays in administration of these programs. It will just have the same opportunity any other citizen does to present its views to an agency.

Mr. BURDICK. What if these agency actions involve matters of foreign policy?

Mr. RIBICOFF. The ACA will have no authority to tell the Government what our foreign policy should be. The ACA will be concerned solely with consumer interests. Where the State Department determines, in its discretion, that national security considerations require certain action, the ACA cannot require the State Department to act differently.

Mr. BURDICK. Will the ACA have the right to disrupt longstanding contracts Americans have with buyers of food around the world?

Mr. RIBICOFF. The ACA cannot dictate in any way to private businesses or disrupt contracts already made. The ACA can only act as an advocate, presenting its views to Government agencies for their consideration and action.

Mr. BURDICK. Can the Senator then assure me that S. 200 will not disrupt our food export program or make our balance of payment problems critical?

Mr. RIBICOFF. I can wholeheartedly assure the Senator of this fact.

Mr. BURDICK. I thank the Senator.

AMENDMENT NO. 450

Mr. DOMENICI. Mr. President, I call up my printed amendment No. 450.

The PRESIDING OFFICER (Mr. BARTLETT). The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. DOMENICI. I ask unanimous consent that further reading of the amendment be dispensed with.

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

Mr. DOMENICI. Yesterday, we considered this amendment for a few moments and decided to set it aside and try to work out a compromise to be sure those people who were aggrieved and might want to seek injunctive relief would have adequate time. We have now worked out the difficulty, and I send to the desk a modification of my printed amendment No. 450.

The PRESIDING OFFICER. Is there objection to the amendment being modified?

The Chair hears no objection, and it is so ordered.

Amendment No. 450, as modified, is as follows:

On page 27, line 20, delete "days", and add "working days after receipt of such notice".

On page 27, line 20, after "relief", add the following sentence: "Whenever notice is served by mail, such notice shall be considered to be received three days after the date on which it is mailed."

On page 30, line 20, delete "days" and add "working days after receipt of such notice".

On page 30, line 22, after "public" add the following sentence: "Whenever notice is served by mail, such notice shall be considered to be received three days after the date on which it is mailed."

Mr. DOMENICI. Mr. President, my amendment will just clarify the 10 days that parties aggrieved have to get into court to seek injunctive relief. Basically, we have defined notice as being 3 days after mailing, if such is used. Then we have given the party or individual or entity 10 working days from and after receipt of that notice, whether it be the notice described here or actual delivery of notice. I have discussed this with the manager of the bill and others, and it seems to be a compromise that I am willing to accept and I hope they are.

Mr. RIBICOFF. Mr. President, I accept the amendment. I take this opportunity to pay tribute to the Senator from New Mexico for his constructive and cooperative attitude. He has many good ideas. We have been able to work them out, last year and this year, and I am more than pleased to accept his amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 439

Mr. TAFT. Mr. President, I call up my amendment No. 439 and ask that it be read.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 37, after the period on line 4, insert the following new sentence: "The Administrator shall have the right to intervene or participate in proceedings brought within the jurisdiction of the National Labor Relations Board administering sections 8(b) (4) and (7), and sections 10(k) and 10(l), of the Labor Management Relations Act of 1974 in title I thereof (29 U.S.C. 151 et seq.).".

Mr. TAFT. Mr. President, this amendment by myself and the distinguished Senator from Kansas (Mr. DOLE) goes into the whole question of exemptions from the ACA of certain activities of the National Labor Relations Board.

While I voted for the Weicker amendment the other day, which would have eliminated the total exemption in the bill at the present time, I can sympathize with some of the arguments made by those who oppose the Weicker amendment, because there are certain matters within the jurisdiction of the National Labor Relations Board which relate so directly to the closed bargaining process, unfair labor practices, and that type of thing between the employer and the employee groups that it is possible that, had the Weicker amendment passed, the ACA might have involved itself in situations in which the interest in trying to determine and settle labor disputes would have exceeded any likely or possible consumer interest. However, there are a couple of areas in which I definitely do not feel that is true. This amendment is designed to try to deal with those areas.

Specifically, what we are dealing with is the area of secondary boycotts and jurisdictional strikes. Specifically, the secondary boycott provisions of the act as set forth in section 8(b)(4) seek to prevent a labor organization from unlawfully enmeshing neutrals who might be other employers or other persons including employees and consumers from being involved in a labor dispute which is not their own or concerning which they have no interest. Indeed, section 8(b)(4) in the proviso recognizes and permits publicity. other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization that a product or products are being produced by an employer with whom the labor organization has a primary dispute.

I point that out again, "for the purpose of truthfully advising the public." If the consumer advocacy agency has any duty to perform, I wonder if it is not one of truthfully advising the public with regard to a dispute of this kind so that the public may make its own judgment. The public certainly, in that regard, includes consumers and members of a labor organization.

Again, in section 8(b)(7)(c) the statute makes specific reference to the protection of consumer interests. The proviso of this section states:

Provided further, That nothing in this subparagraph (c) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of this employment, to pick up, deliver or transport any goods or not to perform any services.

I submit that the statute makes it abundantly clear that it was the intent of Congress to recognize the existence of public and consumer interests and that there is no logical justification for concluding that labor-management relations are too remote in time, space, and effect to warrant elimination of at least this labor area from the coverage of an ACA.

Mr. RIBICOFF. Mr. President, I oppose this amendment. It is similar in many ways to the Weicker amendment, which was already voted on yesterday.

Mr. TAFT. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the amendment. The yeas and nays are ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from North Carolina (Mr. MORGAN) is necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from New York (Mr. BUCKLEY), the Senator from Arizona (Mr. GOLDWATER), the Senator from Maryland (Mr. MATHIAS), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The result was announced—yeas 36, nays 57, as follows:

[Rollcall Vote No. 177 Leg.]

YEAS—36

Allen	Fong	Nunn
Baker	Garn	Roth
Bartlett	Griffin	Scott, William L.
Bellmon	Hansen	Sparkman
Brock	Haskell	Stennis
Byrd, Harry F., Jr.	Hatfield	Stone
Chiles	Hathaway	Taft
Curtis	Helms	Thurmond
Dole	Hollings	Tower
Domenici	Hruska	Weicker
Eastland	Laxalt	Young
Fannin	McClellan	
	McClure	

NAYS—57

Abourezk	Hart, Philip A.	Moss
Bayh	Hartke	Muskie
Beall	Huddleston	Nelson
Bentsen	Humphrey	Packwood
Biden	Inouye	Pastore
Brooke	Jackson	Pearson
Bumpers	Javits	Pell
Burdick	Johnston	Percy
Byrd, Robert C.	Kennedy	Proxmire
Cannon	Leahy	Randolph
Case	Long	Ribicoff
Church	Magnuson	Schweiker
Clark	Mansfield	Scott, Hugh
Cranston	McGee	Stafford
Culver	McGovern	Stevenson
Eagleton	McIntyre	Symington
Ford	Metcalf	Talmadge
Glenn	Mondale	Tunney
Hart, Gary W.	Montoya	Williams

NOT VOTING—6

Buckley	Gravel	Morgan
Goldwater	Mathias	Stevens

So Mr. TAFT's amendment was rejected.

Mr. RIBICOFF. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. PERCY. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

AMENDMENT NO. 462

Mr. McCLURE. Mr. President, I call up my amendment, No. 462, and ask that the amendment be stated.

The PRESIDING OFFICER. The clerk will state amendment No. 462.

The legislative clerk proceeded to read the amendment.

Mr. McCLURE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 19, between lines 3 and 4, insert the following:

The Administrator may not intervene or otherwise participate in any Federal agency proceeding or activity or in any civil proceeding in a Federal court, if such intervention, initiation, or participation is intended to restrict or limit, or have the effect of restricting or limiting, the manufacture, sale, or possession of firearms, antique firearms, ammunition, or components of ammunition. As used in this paragraph, "firearm" means any firearm as defined in section 921(a)(3) of title 18 of the United States Code. As used in this paragraph, "antique firearm" shall mean any antique firearm as defined in section 921(a)(16) of title 18 of the United States Code. As used in this paragraph, "ammunition" means any ammunition, or components of ammunition, including fixed cartridges and shells, primers, bullets, propellants, cartridge cases, and shells designed for use in any firearm. As used in this paragraph, "ammunition, or components of ammunition", shall also mean commercially manufactured blackpowder, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches and friction primers, intended to be used solely for sporting, recreation, or cultural purposes in antique firearms as defined in section 921(a)(16) of title 18 of the United States Code, or in antique devices as exempted from the term "destructive device" in section 921(a)(4) of title 18 of the United States Code.

The PRESIDING OFFICER. The Senator will suspend. The Senate will come to order.

The Senator may proceed.

Mr. McCLURE. Mr. President, I ask unanimous consent that the following Senators be added as cosponsors to that amendment.

Senators Fannin, Goldwater, Domenici, Eastland, Laxalt, Hansen, Garn, Thurmond, Eagleton, Church, Dole, Helms, Buckley, Schweiker, McGee, Stevens, Hruska, Beall, Packwood, Roth, William L. Scott, and Bartlett.

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

Mr. McCLURE. Mr. President, I yield to the Senator from Georgia (Mr. NUNN) for a unanimous-censent request.

UNANIMOUS-CONSENT AGREEMENT—CONFERENCE REPORT ON HOUSE CONCURRENT RESOLUTION 218

Mr. NUNN. Mr. President, I ask unanimous consent, pursuant to an earlier understanding, although not a formal agreement, that this amendment be set aside for the purpose of having, hopefully, a very short period of time, maybe 15, maybe 20 minutes of debate. I would specifically request 20 minutes of debate and colloquy on the budget resolution conference report which has already passed.

So I ask unanimous consent that this amendment be set aside for a period of 20 minutes to be divided between myself and the Senator from Maine for the purpose of discussing the budget resolution conference report.

Mr. McCLURE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McCLURE. If the unanimous consent is allowed, would the time be charged against the time of the Senator from Idaho?

The PRESIDING OFFICER. No, it would not be charged.

Mr. McCLURE. I thank the Senator.

I have no objection.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Georgia is recognized.

Mr. STENNIS. Mr. President, now, may we have order, Mr. President, I think the remarks are of interest to all the membership.

The PRESIDING OFFICER. May we have order in the Senate?

The Senator from Georgia is recognized.

FIRST CONCURRENT RESOLUTION ON THE BUDGET—FISCAL YEAR 1976—CONFERENCE REPORT

Mr. NUNN. Mr. President, this morning I had understood that the conference report on the first concurrent budget resolution would have a rollcall vote at 12:30 p.m. I arrived at about 20 minutes of 12 to make a speech against this resolution, for reasons which I shall go into in a moment, and I found that the resolution had already passed.

The Senator from Maine, the chairman of the committee, made every effort, I am sure, to notify various people he thought might have objections to get them to appear. He can speak on this point better than I, but he ran into problems with the House and their time frame on this particular resolution. Therefore, there was no rollcall vote.

So, even though I would like to have a rollcall vote to register a "no" vote on this resolution for the reasons I shall delineate, that is not possible at this time and, therefore, the Senator from Maine has agreed to a brief colloquy on a very important point concerning the Department of Defense budget.

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

Mr. NUNN. I am glad to yield to the Senator.

Mr. MUSKIE. I think it might be helpful to Senators to understand the procedural picture this morning.

When I left the Senate yesterday I had an agreement with the leadership that the budget resolution conference report would be the first item of business this morning. There was no understanding with respect to a rollcall vote except that the Senator from West Virginia (ROBERT C. BYRD) made it clear we would not want a rollcall vote called before noon for the convenience of the Members of the Senate. That was agreeable to me, and I had no opinion at that point as to whether a rollcall vote would be desirable.

When I arrived this morning, I came to the floor shortly after 10 for the purpose of proceeding with the business. At that point, the distinguished Senator from Georgia (Mr. TALMADGE) had a special order to make some remarks on the action of the House yesterday on the agriculture bill veto. He had the floor, and Senator BYRD had scheduled a 30-minute morning hour, so it was clear we would proceed about 11 o'clock and we did so.

At that point, no Senators other than myself and the distinguished ranking Republican (Mr. BELLMON) were on the floor. We each made a statement; we in-

quired as to whether other Senators were interested in participating in the discussion. There were none of which the Senate aides were aware. There were none of which my staff was aware, and we did check specifically with the office of the distinguished Senator from Virginia (Mr. BYRD) because of his ongoing interest in these matters. He indicated he was not interested in participating.

At that point, I was advised by the distinguished Chairman of the House Budget Committee that the House ought to have the papers before noon.

I remind Members that the Budget Act requires that final action on the conference report be taken by May 15 and the House had other business scheduled for today which, if it were started at noon, probably would preclude the taking up of the budget resolution today and might put it over until next week when we would be well beyond our statutory deadline.

Since at that point I had no indication that other Senators were interested in being involved in the discussion, and because I had this urgent call from Congressman ADAMS, I checked with Senator BELLMON and we both agreed perhaps we could proceed by voice vote to get the matter over to the House and proceed, and that is what happened.

Now, if I did what I have said, it is in no way critical of Senator NUNN. I know of his long-standing interest in the Defense budget and fully understand why he wants to raise these questions and discuss them. I would have welcomed that discussion this morning, as I do this afternoon.

I simply express my regret to Senator NUNN that somehow we were both caught up in rapidly occurring parliamentary events, and that is where we are.

I am personally happy to engage in any discussion that would serve the Senator's interest.

Mr. NUNN. I thank the chairman, my colleague from Maine, and I certainly have no points to cast on him. I understand the exigencies he was operating under and I certainly understand the circumstances.

I do hope in the future that on matters as important as this conference report and the budget resolution, there would at least be notification by the various members of the committee that are handling the matter even though no rollcall vote is contemplated. I would hope under normal circumstances—and I know this morning's circumstances were not normal—there would be a rollcall vote on something setting the overall level of the Government expenditure for the fiscal year that is forthcoming.

Mr. President, first of all I object to the conference report for a reason that I think many Members share, and that is that the overall deficit is too high. It does go up considerably from the Senate deficit, but I also understand the conferees have to reach a compromise, and that is not the major point I would like to make today.

The major point I would like to make is that when we started this year, the administration requested an outlay ceiling of $94 billion, and at the very beginning of this process Senator MCCLELLAN announced, after due deliberation and study of the defense budget, that he felt we could cut $5.2 billion off budget authority and $2.1 billion out of outlays.

The net result of this budget resolution which has just passed is that we will be cutting out of outlays or we possibly can be cutting out of outlays certainly a minimum of $3.3 billion.

The other point I would like to make is that this is not really the most likely outcome. The most likely outcome is that we are going to be cutting $5.1 billion out of outlays.

The reason for this is, I suppose, a little complicated, but it needs some explanation.

In the report that the conferees passed, they make it clear on page 9 that the conference report sets a total target limit—and this is a target, not an absolutely binding limit—a target limit of $90.7 billion on outlays for the Defense Department—a $3.3 billion cut from the President's request.

But unlike any other department in Government, they have a provision on page 4 in discussing the national defense budget, labeled (a) on page 4, that states as follows:

(a) If Congress should decide not to limit increases in defense salaries and retirement allowances, there are sufficient funds within this total to support that decision.

Mr. President, what this means is that if we do not go along with the request of the President of the United States to put a 5-percent cap on military and civilian salaries of employees of the Federal Government, then that $1.8 billion additional cost, according to the Budget Conference Committee report, can come out of the $90.7 billion in outlays.

If we assume for a moment that the cap will be removed by Congress—in all likelihood it will be, based on the House resolution which has already passed—then that means that instead of a $90.7 billion outlay ceiling, what we practically have as a real target is an $88.9 billion ceiling.

I am not here, Mr. President, to take a position at this time one way or the other about whether these caps are desirable, or whether there should be a full cost-of-living allowance. That is not the purpose of this colloquy. But I think we should assume a couple of things for a moment: No. 1, that this budget resolution is a serious resolution; No. 2, that the targets, even though they are targets, are the basis on which the total has been arrived at. If we start exceeding these targets on various items, like national defense and others, instead of having an estimated deficit of about $68.8 billion, we will have a deficit much larger than that as we proceed through the years.

Mr. HOLLINGS. Will the Senator yield?

Mr. NUNN. I am glad to yield.

Mr. HOLLINGS. I was in a conversation this morning with Senator MUSKIE and Senator BELLMON. The Senator knows, as well as I, serving together on the Budget Committee, our entreaties and considerations during the markup were that we always took the position that the cap did remain. When we were in conference, I was looking at the additional amount. We had an additional $500 million cut. I had talked with the Secretary of Defense and since there had been an end in Vietnam, it was stated that we could have the $500 million cut.

I have to say that in no way did the House want any pay caps on it, but in my mind we were equally adamant and left the pay caps stay. With the additional $500 million cut I could attribute that cut, as a conferee, to the phaseout or the end of the war in Vietnam.

Mr. NUNN. I thank the Senator from South Carolina. I know of his interest in this matter as we have deliberated.

Mr. CHILES. Will the Senator yield?

Mr. NUNN. I am glad to yield.

Mr. CHILES. I associate myself with the remarks of the Senator from Georgia.

Serving on the Budget Committee and also serving on the Appropriations Committee, I took the figures that the distinguished chairman of the Appropriations Committee had set forth as being the amount he felt the budget could be cut, and we started working from there. I believe in all of our deliberations on our side of the Budget Committee we were cognizant of this and had long deliberations between the difference in budget authority and the difference in outlay, how drastic would be the cuts in outlay in order to effect those cuts, and what kind of steps we actually had to take.

On several occasions on our side of the budget we had much deeper cuts than some of the members of our committee moved. Those cuts were defeated on the basis that it could be so severe to the R. & D. portion of the budget, to personnel and to procurement, that, in order to effectuate those cuts, you would have to go so deep that you could really cut not at all fiber but you would cut into muscle and bone.

Our feeling—and the strength of our committee was very strong—was that we could do much more toward budget outlay which would affect future spending and certainly have a drastic effect on future spending, and try to drive the direction of where future spending would go. But when you went too far on outlay, then you ran into a great danger.

I concur with the Senator from Georgia on the proposition we are faced with here that if this does mean that the caps are totally removed, then we have real problems.

I think it is probably good that this is a walk-through process that we are going through. In no way do I want to minimize what I think is the level, the bottom line of spending. We should not hold ourselves to that. I think the Budget Committee staff needs to be on the floor every time we are passing a new kind of money bill to see how that will affect the overall spending. Thank goodness, this is not poured into concrete, or what we did this morning I think drastically would hurt the military.

I again want to thank the distinguished Senator from Georgia for bringing this to the attention of the Senate. I think this is a valuable colloquy in which he has engaged.

Mr. NUNN. I thank my colleague.

I would like to complete my analysis of this matter and then I shall be glad to yield. I hope the Senator from Maine will help me on the time problem because I believe this point should be made.

As the Senator from Florida said, if we follow directly the implications of this budget resolution and adhere to the targets, in my opinion, if the pay caps are removed, what we would be telling the Federal employees, particularly those in DOD, is "We are going to raise your pay but we are going to take your job away."

The analysis that we made in the Armed Services Committee, and I admit it is a hasty analysis, is that we feel that the most likely result of this particular resolution, assuming it is adhered to, and assuming that the pay cap is removed, is that it will cost 700,000 to 800,000 jobs in the Department of Defense. That includes military and civilian jobs. If you take 700,000 or 800,000 jobs in the Department of Defense, you have closed bases all over this country. You have a result, I believe, that no one could logically propose.

I will give my analysis of that. The implications of a $5.1 billion reduction in outlays—again, this is assuming that caps are removed—is $3 billion higher than the $2.1 billion reduction recommended by the Senate Appropriations Committee. It is $3.6 billion higher than the real, actual reductions found after detailed examination of the program by the Armed Services Committee in the authorization bill. The Armed Services Committee reductions were based upon the same kinds of items recommended in the statement of managers. That included an elimination of military assistance in Southeast Asia, reductions in program growth, inflation estimates, and financial adjustments. Yet the Committee on Armed Services, on which I serve, was only able to find $1.5 billion in outlay reductions after a detailed review of all the line items.

Of course, as we know, the authorization bill does not encompass the entire defense budget. In budget authority, the Armed Services Committee exceeded the recommendation of the Budget Committee, if you take this on a proportional basis and allocate it throughout the entire military budget and not just the part of the budget that has been handled by the Armed Services Committee.

The authorization bill that we passed in the Armed Services Committee that will be debated next week does cover all of the research and development, most of the procurement, and all of the military, civilian and reserve strengths. So it is a large part of the overall total.

Let us assume for a moment that other authorizations and appropriations actions could reduce an additional $1 billion more than the Armed Services Committee bill. In other words, that Senator McCLELLAN and the Appropriations Committee can find an additional $1 billion that will be added to the $1.5 billion that we have already cut in terms of budget outlays. This would still leave $2.6 billion in outlays to be cut to achieve the recommendation of the statement of the managers—an additional $2.6 billion.

We made a detailed analysis in the Armed Services Committee. However, the budget outlay recommendation made by the conference committee exceeds any reasonable outlay that can be achieved, in my opinion, by the Armed Services Committee or the Appropriations Committee without damaging the national security of this country.

I have had a brief analysis of this done by the staff, and I have talked to Senator McCLELLAN'S staff, and they also have done a very hasty analysis. This size reduction in outlays most likely will have to be made by cutting military and civilian personnel and by closing bases. A cut of this magnitude in 1 year, in our opinion—assuming that we do not want to do away with research and development and assuming that we do not want to do away with procurement—most likely would require a civilian personnel cut of between 700,000 and 800,000. In my opinion, this massive, undirected cut would create such turmoil and turbulence in our military forces and would require such cuts in forces, bases, and hard military muscle that it would be totally irresponsible.

I think we should be aware of this as we work our way through this admittedly difficult process involving the concurrent resolution.

Mr. STENNIS. Mr. President, will the Senator yield me 1 minute?

Mr. NUNN. I yield.

Mr. STENNIS. Mr. President, I commend the Senator for the work he has done on the Budget Committee. He has been working consistently for reductions. His analysis as to the figures, as I understand them, is undoubtedly correct. Reductions already have been made by the Armed Services Committee in the authorization bill for hardware, weapons, R. & D., and related matters—substantial reductions. Still, it would not meet the requirements of this budget resolution in its present form because of the discriminatory portion that applies to the Department of Defense, and it would be brought right on over into the personnel. Those reductions and outlays would have nowhere else to go. They fall into the category of civilian employees and the uniformed men. It would not apply to retirement; it would not apply to other things. It would have to fall into those categories with respect to reductions. It would be indiscriminate, nationwide, and it would have to be perfected in a short time.

The PRESIDING OFFICER. The Senator's 20 minutes have expired.

Mr. NUNN. Mr. President, I ask unanimous consent that we might have an additional 6 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The time will be equally divided between the Senator from Georgia and the Senator from Maine.

Mr. NUNN. The Senator from Maine has been very kind in allocating to the Senator from Georgia a good portion of his time.

In response to the Senator from Mississippi, I say that I agree completely with his analysis. It might be that we could find some more in R. & D. and procurement by taking out items we have not taken out so far. I feel that we have cut pretty severely already.

Even if we found another billion dollars in R. & D. and procurement, beyond the billion dollars that Senator McCLELLAN is going to find—and this is by approximation—if we are going on with this budget outlay reduction, with massive layoffs of civilian employees of the Department of Defense and with massive base closings, we are going to see the reduction of our forces which are already below the Korean war level; and if we cut some more in committee, we are going to see that number go down beyond what anyone would prudently want for the national security of our Nation.

I thank the Senator from Maine for being most generous with his time.

Mr. MUSKIE. I am more than happy to do so. I still feel defensive about this morning's foul-up, and I am happy to contribute in the way of time and information in any way I can. I am not sure that I can do it in 3 minutes. I hope I can use time out of my hour on the pending measure, in order to cover the matter more thoroughly.

First, let me make this point. The concurrent resolution this year does not contain targets on functional categories. The only numbers in the concurrent resolution this year having to do with the Defense Department budget is the overall outlay target of $367 billion and the overall budget authority target of 395.8 billion as a result of the conference report. How the $367 billion is to be divided among the 16 functions of the budget has yet to be determined finally by Congress and by the committees.

It is our hope that as we move through the appropriations process, the guidelines which the Budget Committee has developed with respect to the functional categories will be examined closely by the authorizing committees and by the Appropriations Committee, so that we can come close to the overall target of $367 billion when our work is completed.

To ignore the functional categories as they have been developed by the Budget Committee, I think, would be to lose a very important disciplinary tool. They are not binding. That should be made clear. We deliberately chose that course this year, because we felt that it would be difficult enough for the Senate and the House to adjust to this discipline with the overall totals, without getting into these 16 functional categories in a binding way. So I make that point.

Second, with respect to the category 050, which is the defense category, there was a difference between the House number and the Senate number, going into conference, of $1 billion. The Senate amendment assumed outlays of $91.2 billion, and the House resolution assumed budget outlays of $90.2 billion. The House conferees, on the basis of a vote which was taken on the floor of the House, took the position that their $90.2 billion was sufficient to absorb the impact of lifting pay caps. They assured us that from their point of view, their $90.2 billion ceiling, which was $500 million lower than ours, was sufficient to absorb the impact of lifting the pay caps.

That number, the staff tells me, is $600 million for retired pay and approximately $1.2 billion for active duty pay, so that the total impact is $1.8 billion. The House took the position—they are very strong about it—that their $90.2 billion ceiling on defense would absorb that.

What other differences were there between the House numbers and the Senate numbers which in their view justify that conclusion? There are two, mainly. One, they had eliminated all military assistance for Southeast Asia. That number was $1.4 billion in outlays in the President's budget base. Only $500 million had been eliminated. Our action had been taken before the collapse of South Vietnam. So the House had eliminated $900 million more in their defense budget total than the Senate budget had done. In addition, the House had deducted $900 million in outlays from so-called financial adjustments.

Mr. President, I ask unanimous consent to have printed in the RECORD the detail on what the House had done with respect to financial adjustments.

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

FINANCIAL ADJUSTMENTS

(a) Receipts from sale of oil from naval petroleum reserves—The House adjusted the estimates provided in the President's budget to reflect the current status of legislation. The Senate did not adjust the President's estimates.	BA	−1,745
	O	− 944
	BA	(+ 277)
	O	(+ 300)
(b) Sale of strategic materials—The House assumed that new legislation required to continue sale of strategic and critical materials would not be approved by the House and adjusted the President's estimate accordingly.	BA	(+ 433)
	O	(+ 443)
(c) Family housing—These funds were included by the House in anticipation of a FY 1976 budget amendment to cover increased costs of maintenance and utility costs in the family housing area.	BA	(+ 295)
	O	(+ 236)
(d) Financial adjustments—Each year certain adjustments are made by the Congress to transfer funds. These result in part from funds made available from the sale of equipment which does not need replacement and funds which are made available by applying a surcharge to direct foreign military sales, and in part from unobligated balances brought forward from prior year appropriations.	BA	(−1,000)
	O	(− 700)
(e) Stock fund cash balances—The DOD budget shows an increase in the stock fund cash balances from $300 million on June 30, 1974, to $1,193 million on June 30, 1975. DOD states that a cash balance of $700 million is sufficient to cover cash flow reasonably. The House reduced the estimate to $700 million.	BA	(− 500)
	O	(− 500)
(f) War reserves and inventory replenishment fund—Inventory replenishment fund of $300 million and war reserve for allies of $201 million require change in legislation which is not probable. In addition, $845 million for U.S. war reserves is requested. This seems to be an overstatement of requirements.	BA	(−1,000)
	O	(− 600)
(g) Foreign military credit sales—This reduction reflects final Congressional action on the 1975 Foreign Military Assistance Appropriation by projecting the approved level into FY 1976.	BA	(− 260)
	O	(− 150)
(h) Rejections of rescissions/deferrals	BA	---------
	O	(+ 27)

Mr. MUSKIE. With those two figures—$900 million in financial adjustments and $900 million more in military assistance to Southeast Asia—they had $1.8 billion, which in their judgment covered the decision they had taken on pay caps. This is where the numbers came out after our discussion.

The House was adamant in its position, because the House had taken a vote, and that vote was critical to passage of the concurrent resolution in the House. The resolution passed by just four votes. So the House conferees were not about to upset that decision on pay caps.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. MUSKIE. Mr. President, may I have 5 minutes out of my time on the pending measure, rather than additional time?

The PRESIDING OFFICER. The Senator from Maine is recognized for 5 minutes.

Mr. MUSKIE. The Senate conferees, on the other hand, did not feel that we were in a position to commit the Senate to a lifting of the pay caps without having had a vote on it in the Budget Committee or a vote on it on the floor of the Senate. So we felt it unresolved so far as the Senate conferees are concerned, and I apologize for the ambiguous language in the report. I shall read it, because it was intended to bridge this gap between the Senate and the House conferees. The only reason we did it this way was that we do not have ceilings on functional categories in this year's resolution. We only have the overall. This is what we put in the report:

> If Congress should decide not to limit increases in Defense salaries and retirement allowances, there are sufficient funds within this total to support that decision.

The first half of that sentence is a gesture toward the Senate; the last half of that sentence is a gesture toward the House.

Next year, we cannot do that sort of thing, because next year we will have ceilings in the resolution on each of these 16 functional categories, and we cannot get that kind of ad hoc compromise between the two groups of conferees.

Mr. President, I must say that I have found the distinguished Senator from Georgia a very useful and effective source of information on the defense budget, in the Budget Committee deliberations. I compliment him for the interest he has taken and for the effort he has made to raise these questions this afternoon. These are matters that the Senate should consider head-on and directly, so that we just do not slide around them. I appreciate that.

Where we are on this point on the Senate side is that a decision has not been taken in any committee, so far as I know, with respect to lifting pay caps. That decision has not been taken. That is yet to be taken.

Second, the decision has not been taken on what should be done with the overall defense number if the cap is lifted. Nobody, so far as the Committee on the Budget is concerned, has made that decision.

Mr. NUNN. On that point, will the Senator yield for one question?

Mr. MUSKIE. Yes, I yield.

Mr. NUNN. I believe the Senator has already made this clear, but to make it abundantly clear, did the conferees intend to make massive cuts in Government DOD personnel, either civilians or military or both, in this report? Was that an intention of the conferees?

Mr. MUSKIE. It was not. As a matter of fact, that subject was not discussed.

Mr. NUNN. I used the word "massive." I ask, for example, did the conferees intend to make cuts as much as 100,000 people in personnel?

Mr. MUSKIE. No such intention was expressed on either side of the conference. Our discussion of the defense number was pretty much limited to—I think totally limited—to the question of the money available from military assistance to Southeast Asia and the financial adjustment item. Those were the only two. We did not take a position with respect to personnel or with respect to the other matters which the Senator has properly raised. Whether or not in the language of the report there are sufficient funds within this total to support that decision would depend upon individual Senators' views on what our total spending ought to be for defense. It is not a position that has been taken so far as the conference is concerned. I am delighted to clarify that point.

Mr. DOMENICI. Will the Senator yield?

Mr. MUSKIE. I yield to the distinguished Senator from New Mexico, who was a very valuable member of the conference for the Senate.

Mr. DOMENICI. I thank my distinguished chairman. I might answer that question also for the distinguished Senator from Georgia.

As he will recall, on the Senate side, throughout the debates on the budget, we discussed only the administration's proposed 50,000, more or less, troop cut in the President's $94 billion outlay budget, and various efforts were made to say we could cut substantially more troops. I think the Senator will remember that on the Senate side, we continually voted, repeatedly voted those down in arriving at our $91-plus billion outlay figure.

There is nothing in the record, in the conference, which would indicate that

in the compromise with the House, where we basically split the difference in outlays, we intended to depart substantially from the position we had taken with reference to troop strength or overall civilian or military strength, other than as it was recommended in either the Senate appropriations recommendations or the President's budget. I think we at no time contemplated massive personnel cuts of the type the Senator has described.

The hangup is a very difficult one, because they were mandated by a resolution on caps, as the Senator knows. We were not. The Senate did not mandate us in that regard.

Basically, I think when we are saying if the caps are put on, there is enough money in the budget, it should not be construed to mean that we are saying that if the Senate feels that the amount herein is needed, and then more is needed for the caps, and the House insists that it be taken out of the meat, muscle, and personnel by the amount described by the Senator, either 1.2 or 1.9 depends on whether we treat retired and all active personnel the same.

Mr. NUNN. I thank the Senator.

Mr. President, I ask for 5 more minutes of my time on the main bill, rather than additional time, for this.

I thank the Senator from New Mexico. I thank the Senator from Maine.

As I have said before, I think the Senator from Maine has done a yeoman job in getting this resolution through in time for the statute. He has done an excellent job on committee, he has spent hundreds and hundreds of hours. This is the most difficult assignment I think anybody could have this year. It is difficult enough in any year, but in a budget year, when we have, no matter what we do, an inevitable deficit, it is difficult. This dialogue today in no way reflects on my admiration for the tremendous job the Senator from Maine has done.

I understand the background and the compromises that were necessitated, in all likehood, in the committee report. But I do think it is important for the Senate and Congress to realize that we think, based on an analysis of this particular resolution, the likely result of it is that we are going to be saying to Department of Defense personnel, we are going to raise your pay, but we are going to take your job away. We think that is the only result that can flow out of this unless there are some changes and adjustments made as we move through the processes, and unless we decide to cut somewhere else in order to prevent a massive loss of jobs by civilians and by military personnel.

In closing, I again would like to emphasize that I am taking no position on the question of caps at this time. We did not ever confront that directly in committee. We have not confronted it in the Committee on Armed Services. I know there are strong arugments on each side. But what I have felt and am prepared to point out in this colloquy is the likely result that could flow from this particular provision.

Mr. MUSKIE. May I say in closing, Mr. President, that I appreciate the remarks of the distinguished Senator from Georgia. I assure him of this: as far as the Committee on the Budget is concerned, we are involved in a learning process. We have much to learn from the Committee on Appropriations, from the Committee on Armed Services, from the other authorizing committees. We shall undertake, through the course of the weeks between now and next September, to follow the deliberations of the authorizing committees closely so that we can become more familiar with the values and the imperatives of all of these programs and all of the 16 functions of government.

We shall particularly monitor this one. With the help of the distinguished Senator from Georgia, who is a member of both committees, I am sure that we shall improve our ability to respond to the national interest in all of these competing fields—and they do compete. That is one thing we see in the Committee on the Budget and so we saw in the conference committee, the intensity of the competition between all these programs, all these interests, for the Federal resources. It is a tough competition to be in the middle of.

I am most grateful to the distinguished Senator from Georgia for raising this subject this afternoon.

Mr. McCLELLAN. Mr. President, I ask unanimous consent that I may use 1 minute of my time on the consumer bill.

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

Mr. McCLELLAN. Mr. President, I have listened with interest to this colloquy. I have prepared a statement that I would have made had I had the opportunity to be here at the time the conference report was considered. I had no notice of it. I did not know it was going to be brought up. Therefore, I ask unanimous consent to have this statement printed in the RECORD at this time.

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

STATEMENT BY SENATOR MCCLELLAN

The FY 1976 budget request for National Defense is $107.7 billion in new budget authority and $94.0 billion in outlays. After careful consideration of all the factors involved in the required March 15 report to the Budget Committee, the Committee on Appropriations recommended a target ceiling in budget authority of $5.2 billion below the budget request and an outlay reduction of $2.1 billion. It was the judgment of the defense Subcommittee that this reduction was the absolute maximum that could be made in defense spending consistent with present national security requirements and the prevailing atmosphere of international tensions. Some Subcommittee members were convinced that this reduction was too great, and they may prove to be right. Anyway, no member at that time indicated that he thought it could be further reduced.

Nevertheless, in its report, the Senate Budget Committee *further reduced* National Defense budget authority by $1.5 billion and outlays by $0.7 billion over the amount of the cut recommended by the Committee on Appropriations. The Conference Committee then further reduced these estimates by $300 million in budget authority and $500 million in outlays.

In summary then, the Conference Committee reduced budget authority $7.0 billion below the President's request with an accompanying reduction in outlays of $3.3 billion.

This further reduction in defense spending I believe can prove hazardous and if this trend continues may soon imperil our national security. The burden of reordered priorities and reduced spending should I believe be borne more equitably by all sectors of the budget and not by National Defense alone.

In addition to my concern over the total magnitude of spending cuts recommended by the Conference Committee, I am also quite concerned that the outlay reductions are not commensurate with either the budget authority reductions made or with the implicit assumption that there will be little if any civilian or military personnel reductions. The Conference Committee report states "If Congress should decide not to limit increases in Defense salaries and retirement allowances, there are sufficient funds within this total to support that decision". In fact, removal of the "pay cap" will require approximately $1.8 billion more in outlays than originally estimated for the Defense Department, and this will be additive to the Conference Committee's reductions. This means that Defense will need to make a total outlay reduction of $5.1 billion. Without *very* substantial personnel reductions, military or civilian or both, I see no way to achieve such a large outlay reduction without making reckless and irresponsible additional reductions in defense spending.

As stated previously, the report of the Appropriations Committee to the Senate Budget Committee suggested that a budget authority reduction of $5.2 billion, coupled with an outlay reduction of $2.1 billion, was at that time deemed feasible. These figures assumed that the "pay cap" proposed by the President would be placed on civilian and military salaries. Quite frankly, after holding the majority of our hearings on the Defense budget for fiscal years 1976, it now appears that it may not now be advisable to meet the spending reductions recommended by the Appropriations Committee and certainly not the additional cuts implicit in the Concurrent Spending Resolution.

Mr. McCLELLAN. I make this further observation: I have tried to take a middle ground on this issue between cutting the military, slashing it $10 billion or $15 billion or so each year, and continuing to spend more than a lot of people think is necessary. I have tried to take a middle ground.

I believe that is the sensible thing to do.

This year, at my urging, the committee, particularly the Defense Subcommittee, reported out and recommended a cut of $5 billion, as I recall it, as we had in the year previous. As we hear the testimony now in these hearings, it is becoming apparent to me that it is going to be most difficult to meet this ceiling, to hold it within the ceiling that we have recommended, unless we are willing, as pointed out here by the distinguished Senator from Georgia, to make considerable slashes in personnel of our military establishment, or to cut drastically in research and development, or to cut drastically in our weapons procurement program. It has to come from somewhere.

We are getting it down to a bare-bones situation, in my judgment, taking into account the dangerous conditions in the world today.

I think we better stop, look, and listen, Mr. President, before we go too far in the wrong direction.

Mr. PERCY. Mr. President, I again commend the distinguished chairman of the Budget Committee and the members of the committee, including the ranking Republican member and the minority members.

I ask one question, and I am sorry I was not able to be here for the beginning of the discussion. As I understand the conference report, it does contemplate an expanded public employment program and includes $2 billion for either countercyclical State and local government fiscal assistance, or new public works projects. It essentially splits the difference between the Senate and the House passed bills; is that correct?

Mr. MUSKIE. In dollars, of course, the Senate provided nothing for either of these approaches. When it was clear that we would have to move toward the House outlay figure, we then undertook to make the case for countercyclical assistance, as contrasted to local public works projects.

Because the House felt very strongly about its local public works approach, what we did, again, was bridge the gap by opening the door to both for consideration of the Senate and the House, but we put in $2.1 billion as the outside figure.

Mr. PERCY. I have one last question to ask our distinguished colleague, because I think his preeminence in this field, his judgment, and his opinion will be a very helpful factor.

As he knows, the Senator from Illinois has been very concerned about our passing a bill which gives back a lot of tax rebates to people who realize that we are giving it back when we do not have it to give. We are just adding to our debt. We are going out to borrow this money that is being given back from taxes already paid in order to stimulate the economy.

The Senator from Illinois hopes that it is going to stimulate the economy, but he has a high regard for the intelligence level of people who are going to wonder why they are getting the money back when they know it is just simply adding to the Federal debt.

It is the opinion of the Senator from Illinois that the people of this country are willing and ready to pay for more of our cost expenditure programs as we go along rather than constantly adding it to the Federal debt.

Would the distinguished chairman of the Budget Committee look with an open mind and with some degree of favor to revenue-raising measures that might be introduced, such as gasoline tax, increased taxes on tobacco and alcohol and other kinds of taxes, including removal of, say, the deductibility of State and local gasoline taxes from our Federal tax return and the dyeing of fuel oil so that it cannot be used in diesel trucks and thereby get around the tax imposed on diesel fuel by State and Federal Governments? We have a tremendous amount of fraud in that area, which could virtually be eliminated, as Canada has done, by simply dyeing the heating oil so that it cannot be used in diesel trucks.

Would the distinguished chairman of the Budget Committee look with favor upon enacting measures now that will help bring in revenue to start to pay for some of these new programs that we have instituted to help offset the recession and also try to bring down the deficit, hold this ceiling that we have now imposed, and possibly give us a little more margin to spare?

Mr. MUSKIE. Of course, the conference report does now commit us to tax reform legislation, which would have the effect of raising revenues on a selective basis in the interest of reform as well as funding some of these outlays.

Apparently there is also in motion something in the order of an energy tax of some magnitude. There is some wide difference of opinion on what that ought to be.

If we really want to begin a program of energy conservation and energy research and development, I think we are going to have to move in that direction. It is a question, in my judgment, of timing.

I would not want to see any substantial increases of taxes of that order at this point, when we are trying to move the economy upwards for the benefit of the stimulus that we have in this budget.

But I think as we recover, as we move out, then we have to begin to look at energy taxes, for example, for the purposes I have described and perhaps beyond.

I would not want to see the reduction in the progressive income tax offset by increases in more regressive kinds of consumer taxes. I think that would be extremely counterproductive, not only in the short term but in the long term.

But I think the Senator is absolutely right in focusing upon the importance of taking at the right time those steps with respect to revenues as well as outlays which would move us toward a budgetary balance in due course, as the result of a rational kind of process, with that target in view.

Mr. PERCY. I thank the Senator for his comments. We thank him for the tremendous devotion he has had to this principle and concept, which is virtually revolutionary to the Congress of the United States.

Think of it: For us to really be now a responsible body, to think in terms of an overall budget, and to relate each of the budget bills that come on board, the appropriation bills as they are voted on, to see how it fits in the context of an overall budget.

I also express great appreciation for the work that has been done by the Appropriations Committee, who have done a Herculean job and who have understandingly looked upon this as a device that can be extraordinarily helpful to them, because they had really been fighting the battle all alone before. Now we are all a part of that process.

So I hope that we will scrutinize very carefully our expenses, make absolutely certain, as to every bill we bring on the floor of the Senate, that we either see that it fits within the guidelines that we have tried to establish or that we produce new revenue for it or drop out other items of lesser priority.

I think it will be a tremendous encouragement to the American people if they see we are running the American family now, in the appropriation, authorization and budgetary process, very much as any well-ordered family must operate for themselves, or a business operates, and the business of government should be run in a businesslike way. I think we have made a giant step forward, with the cooperation of every Member of the Senate.

Mr. MUSKIE. I thank my good friend from Illinois.

Mr. MAGNUSON addressed the Chair.

Mr. MUSKIE. I would like to say just a word, if I may, about the time frame in which we operate.

We found this morning that the 30 days the Budget Act provides for, say, congressional action on the resolution is a very tight period. Each House must act, and the House incidentally must wait 10 days into that period before it can move on the first concurrent resolution, so we may find it necessary to stretch out this period so that we will not be caught in a kind of a bind which regrettably deprived the Senator from Georgia (Mr. NUNN) of the opportunity to make the points he made this afternoon before the Senate finally voted, because the purpose of this is to give every Senator and every committee an opportunity to make an input into this process.

Mr. President, I yield to the Senator from Washington.

Mr. MAGNUSON. Mr. President, I yield myself 2 minutes on the bill. I want the record to show that had there been a rollcall vote this morning I would have voted "aye" on the conference report.

When the Senator from Maine talked about the difficulties timewise yesterday the full Appropriations Committee appropriated some $9.5 million in the supplemental over and above what we would consider. It was after the fact.

We are going down right now to consider almost half a billion dollars for the Vietnam refugees. All of this stuff adds up, and most of it is sent up by the Office of Management and Budget, by the administration, and it is of an emergency nature. So, of necessity, it would be pretty hard, with all of the time spent by the Budget Committee in the past 2 or 3 months, to anticipate these things, and they are going to amount to another $20 billion.

But the reason I want to vote for the conference report, I do think that the conferees and the two committees did a magnificent job in anticipating some of these things. In my own HEW bill how do I know exactly what it is going to be? Usually that is taken up by the budget, by all of us here, but you give us, I think, enough leeway in which to take care of these matters and establish some priorities that are long needed.

There will be a fight about establishing priorities. As the Senator from Maine well knows, everybody competes with everybody else, and even within HEW itself they compete with one another as to who gets what, and this is so in the health research field. But I think this first stab at this budget control was overall a good one, and I want the record to show that I would have voted "aye" had there been a rollcall vote on the conference report.

Mr. MUSKIE. I thank the Senator.

I might say that the consolidated supplemental is covered in our totals.

Mr. MAGNUSON. Yes.

Mr. MUSKIE. And also the humanitarian assistance for the refugees.

Mr. MAGNUSON. Health programs.

Mr. MUSKIE. All of these are covered. But it is difficult to anticipate.

Mr. MAGNUSON. It is difficult to estimate this. You do not know.

Mr. MUSKIE. Yes.

Mr. MAGNUSON. So I think on our first stab at this there is enough leeway to work out these things.

Mr. MUSKIE. We will learn as we go along.

Mr. MAGNUSON. We will have to learn as we go along.

Mr. MUSKIE. I yield the floor, Mr. President.

CONSUMER PROTECTION ACT OF 1975

The Senate continued with the consideration of the bill (S. 200) to establish an independent consumer agency to protect and serve the interests of consumers, and for other purposes.

Mr. McCLURE. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McCLURE. 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. McCLURE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. McCLURE. Mr. President, this amendment, which is numbered 462, is a modification of the earlier amendment which I introduced, No. 410. They both deal with the same subject matter. The purpose is to prohibit the Agency for Consumer Advocacy from intervening in matters that concern the manufacture, sale, or possession of firearms and firearm ammunition.

My amendment affects consumers who in this case are the millions of Americans who daily purchase ammunition and firearms for lawful and constitutional purposes—for sport or for protection in their homes or places of business.

The need for this amendment is clearly exemplified by the current controversy over consideration of a ban on firearm ammunition by the Consumer Product Safety Commission. The CPSC has in the past denied petitions urging a ban because it felt it had no authority under either the Hazardous Substance Act or the Consumer Product Safety Act. But District Court Judge Flannery upon the action of a Chicago-based antigun lobby issued a court order requiring the Commission to consider a total ban of firearms ammunition. The outcry from consumers against any consideration of a ban was overwhelming and remains so.

The consumers of ammunition by the hundreds of thousands inundated the CPSC and Congress with letters and petitions in opposition to a ban, or even any consideration of a ban, of the product they consume. These consumers clearly rejected any call for so-called "consumer protection". The controversy over any CPSC consideration of an ammunition ban indicates the kind of activity that will likely occur under a massive bureaucratic structure that the legislation currently being considered establishes.

The consumers read the situation well, because this attempt to force the CPSC to ban ammunition is nothing more than an attempt to force back-door gun control. An Agency for Consumer Advocacy should not have this power. My amendment denies them the authority and clearly sets forth in statute, definition of firearms and ammunition so the intent of Congress will be unmistakable. Firearms and firearms ammunition are defined in this amendment in the same way they are defined in the 1968 Gun Control Act.

With the list of sponsors and cosponsors of this amendment, I hope the Senate will agree and that we can adopt this amendment and clarify the situation so that we do not get in, in this legislation the same kind of controversy that is embroiling the Consumer Products Safety Commission.

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

Mr. McCLURE. I am happy to yield to the distinguished Senator from Nebraska.

Mr. HRUSKA. Is it not true that the U.S. district court, in ruling on this matter, put it on the one basis—I am speaking about the court's decision in The Committee for Handgun Control, Inc. v. Consumer Product Safety Commission case—that the intent of Congress has not been clearly shown to the extent that it wanted to exclude ammunition from the jurisdiction of the Consumer Product Safety Act?

Mr. McCLURE The Senator is absolutely correct. The legislative history is abundantly clear, however, that the contrary is true and the congressional intent was to specifically exclude firearm ammunition from the act.

Mr. HRUSKA. Is it not also true that the last time the Senate acted on the proposition of banning private ownership of handguns for the general public and had a vote on the subject, which was a substitute amendment to the Handgun Control Act of 1972, the vote was 7 in favor of banning private ownership and 84 against banning of private ownership of handguns?

Mr. McCLURE. The Senator is correct. Of course, the Senate has spoken on that issue.

Mr. HRUSKA. Does the Senator from Idaho agree with the Senator from Nebraska that a vote of 7 to 84 is a very clear expression of the intent of the Senate on the subject?

Mr. McCLURE. Well, it is scarcely possible to get a clearer expression in this Chamber.

Mr. HRUSKA. There is an indication in seven votes, is there not, that it was not a pro forma vote? It was a vote on the merits?

Mr. McCLURE. That is absolutely correct.

Mr. HRUSKA. It is my hope that the amendment of the Senator from Idaho will be agreed to, and that it will become a part of this bill.

Mr. McCLURE. I am mindful of the fact that the Senator from Nebraska has introduced a different amendment which probably, under the terms of rule XXII, cannot be offered. But I would be remiss if I did not comment that the Senator from Nebraska has exercised a great deal of foresight in formulating that broader amendment. I appreciate his support on this amendment.

Mr. HRUSKA. It is my hope that the vote will be overwhelming in favor of the Senator's amendment.

Mr. McCLURE. I thank the Senator from Nebraska.

Mr. THURMOND. Mr. President, I am pleased to cosponsor the amendment offered by the Senator from Idaho to the Consumer Protection Act of 1975. This amendment would prevent the Agency for Consumer Advocacy from intervening in matters affecting the manufacture or sale of firearms and ammunition.

While I am opposed to this Agency for Consumer Advocacy bill as presently written, I would hope that any legislation that might be passed would contain a provision such as the junior Senator from Idaho is proposing. I have always resisted efforts by Congress to impose Federal registration, licensing, or ownership standards on firearms. Moreover, if any form of ammunition or gun control should be considered, I would certainly hope that it would be the elected representatives of the people who have to make that decision, rather than appointed agency officials who can pick and choose the "consumer interests" they desire to pursue.

In my opinion, persons who are willing to break existing laws governing the use of firearms would not be deterred from obtaining weapons by whatever gun control regulations might be proposed by this Agency. A far better deterrent would be tough, mandatory sentences on persons convicted of the use of firearms in the commission of felonies, and I am cosponsoring legislation with Senator DOMENICI to accomplish this.

However, I reiterate that I think it is wise to clearly indicate by law that this Federal Consumer Advocacy Agency is not authorized to engage in any form of firearm or ammunition control. I sincerely hope this amendment will be adopted.

Mr. FANNIN. Mr. President, I am pleased to cosponsor the amendment introduced by Senator McCLURE to exempt firearms and ammunition from the authority of the proposed Agency for Consumer Advocacy.

S. 200, if enacted, would establish a new independent Federal agency to represent the interests of "consumers" in controversies before Federal agencies. For the many reasons I indicated in my Senate statement of May 8, I am opposed to the establishment of yet another level of bureaucracy to the already burgeoning Federal bureaucracy. I am concerned over all of the additional paperwork, effort, costs, and inefficiencies, and the loss of individual freedom that would mean to consumers.

I question the assumption behind this legislation that a single agency can represent consumers as a class. The ACA Administrator will represent certain groups of consumers while ignoring others. That concept makes one wonder who or what is meant by consumers.

Certainly one major group of consumers in my home State of Arizona is the large number of persons who purchase and use firearms and ammunition for hunting and sporting purposes. There are those, including some Members of Congress, who would like to ban all guns and ammunition, as once was tried with alcohol. The Consumer Product Safety Commission, one of the many agencies already in existence which represent the interests of consumers, has been considering a total prohibition on the sale of firearms and ammunition. Such a ban would certainly not be in the best interests of my Arizona constituents who hunt and shoot.

Yet when and if the Agency for Consumer Advocacy is created, I can perceive advocates representing hysterical antigun groups petitioning the ACA Administrator to intervene in controversies involving weapons and ammunition and to recommend banning their sale or use—the very thing that such groups have been unsuccessful in persuading the Congress to do so far.

I certainly would not want the new consumer protection agency to be occupied with protecting consumers out of their right to use firearms and ammunition for legitimate purposes. I do not believe that supporters of the proposed new agency would want that to happen either.

Accordingly, I am pleased to endorse the amendment proposed by my distinguished colleague from Idaho which would protect this important group of citizen consumers. I ask that my fellow Senators join me in this effort to prevent the ACA Administrator from intervening or participating in any proceeding involving the manufacture, sale or possession of firearms or ammunition.

Mr. KENNEDY. Mr. President, I oppose the amendment offered by the Senator from Idaho because it seems to directly counter the most important feature of the Consumer Protection Act.

As I understand it, the Senator's amendment would prohibit the new Agency for Consumer Advocacy from addressing the issue of firearms and firearms ammunition in any way.

Yet, the author of S. 200, the Senator from Connecticut, announced when he introduced this bill last January that the act would establish an independent nonregulatory Agency for Consumer Advocacy. That Agency would advocate the interest of consumers before agencies and the Federal courts and it would provide the public with information about consumer matters.

Senator RIBICOFF said emphatically, that the Agency—

. . . will act solely as an advocate and spokesman for consumer interests.

And now the Senator from Idaho seeks to deny the Agency from responding to one of the most vital interests of concern to every consumer in this country.

The Senator from Idaho would deny to every American information about firearms and ammunition. Such information could very definitely be an important "consumer interest."

Mr. President, the new Agency for Consumer Advocacy will be authorized to provide the public with information about consumer matters.

I wonder if the Senator from Idaho can adequately explain why the public should not have information about firearms and ammunition for firearms.

Can he explain why the public should be denied information about the output of such lethal commodities that are introduced to the American market in such astounding numbers?

Over 7 billion rounds of ammunition are made available for sale in the United States each year. And approximately 5 million new weapons enter the marketplace every year.

I have authored firearms control legislation since 1971. And during the consideration of these measures, one important feature has always been evident: The American people must redefine the role of the firearm in our society. The way to do that is through information and public awareness programs. We cannot expect the public to learn about ways to reduce the dangers and risks from too many firearms by withholding information.

My intention in opposing the amendment by the Senator from Idaho is simply to prevent the closing of any avenue that could possibly aid in restricting firearms violence.

Under no circumstances can I see that the Consumer Protection Act would be a vehicle for imposing controls on firearms. But I strongly feel that this measure can provide a useful and effective way for the American people to obtain essential information about the dangers of arming themselves.

Consumer advocacy is clearly designed to protect buyers against products and commercial practices that can be harmful or fatal.

With over 25,000 gun deaths recorded in 1 year, there is no way to escape the sickening fact that guns are dangerously and recklessly used by too many people.

Gun suicides claim 10,000 lives; and gun accidents account for 3,500 deaths each year. So we know that when guns are in hand, people will use them.

But the steps we take to reduce the violence caused by guns are too often designed more to cater to the interests of munitions producers, rather than to deal with the possible misuse of weapons and ammunition.

I am convinced that the public must receive sufficient information about the dangers of firearms, in order to redirect the national mystique about gun ownership.

For that reason, Mr. President, I strongly oppose the amendment offered by the Senator from Idaho. We must make full use of every method that can provide useful information and guidance about the dangers of firearms and ammunition. Restrictions on such information can only serve to obstruct the public demand for a reduction of firearms misuse.

I believe that the new Agency for Consumer Advocacy should properly be engaged in advocating safe and reasonable firearms usage. At the same time, the Agency should underline the intrinsic dangers to health and safety that prevail in a society with at least 150 million firearms—and with 5 million new weapons added each year.

This amendment to restrict the agency's activity with firearms does not need to be adopted.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. RIBICOFF. Mr. President, I move to table the amendment.

The PRESIDING OFFICER. The question is on the motion to table.

Mr. McCLURE. Mr. President, I ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McCLURE. 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. McCLURE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Connecticut to table the amendment of the Senator from Idaho. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The clerk will suspend. It is a very important rollcall and the Senators are entitled to hear their names when called.

The clerk will not proceed until the Senate is in order.

The Senate is still not in order. The Chair asks that the well be cleared and the Senators take their seats.

The clerk will not proceed until the Senate is in order.

The clerk may proceed.

The assistant legislative clerk resumed and concluded the call of the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Indiana (Mr.

HARTKE), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL) is absent on official business.

I further announce that if present and voting, the Senator from Illinois (Mr. STEVENSON) would vote "yea".

Mr. GRIFFIN. I announce that the Senator from New York (Mr. BUCKLEY) is necessarily absent.

The result was announced—yeas 27, nays 67, as follows:

[Rollcall Vote No. 178 Leg.]

YEAS—27

Brooke	Humphrey	Pastore
Case	Inouye	Pearson
Cranston	Jackson	Pell
Culver	Javits	Percy
Fong	Kennedy	Proxmire
Glenn	Mathias	Ribicoff
Hart, Gary W.	McGovern	Tunney
Hart, Philip A.	Mondale	Weicker
Hathaway	Nelson	Williams

NAYS—67

Abourezk	Fannin	Montoya
Allen	Ford	Morgan
Baker	Garn	Moss
Bartlett	Goldwater	Muskie
Beall	Griffin	Nunn
Bellmon	Hansen	Packwood
Bentsen	Haskell	Randolph
Biden	Hatfield	Roth
Brock	Helms	Schweiker
Bumpers	Hollings	Scott, Hugh
Burdick	Hruska	Scott, William L.
Byrd, Harry F., Jr.	Huddleston	Sparkman
Byrd, Robert C.	Johnston	Stafford
Cannon	Laxalt	Stennis
Chiles	Leahy	Stevens
Church	Long	Stone
Clark	Magnuson	Symington
Curtis	Mansfield	Taft
Dole	McClellan	Talmadge
Domenici	McClure	Thurmond
Eagleton	McGee	Tower
Eastland	McIntyre	Young
	Metcalf	

NOT VOTING—5

Bayh	Gravel	Stevenson
Buckley	Hartke	

So Mr. RIBICOFF's motion to table Mr. MCCLURE's amendment No. 462 was rejected.

Mr. MCCLURE. Mr. President, I move to reconsider the vote by which the motion to lay on the table was rejected.

Mr. DOMENICI. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from Idaho.

Mr. MCCLURE. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. MCCLURE. Mr. President, is not the question now on the adoption of the amendment?

The PRESIDING OFFICER. It is.

Mr. MCCLURE. Mr. President, the yeas and nays were ordered, were they not?

The PRESIDING OFFICER. That is correct.

Mr. MCCLURE. Mr. President, I ask unanimous consent the order for the yeas and nays be vacated.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The question is on agreeing to the amendment of the Senator from Idaho, amendment No. 462.

The amendment was agreed to.

Mr. MCCLURE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOMENICI. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 404

Mr. TAFT. Mr. President, I call up my amendment No. 404, and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. BROCK). The amendment will be stated.

The legislative clerk read as follows:

Mr. TAFT, for himself, Mr. THURMOND, and Mr. MCCLURE, offers amendment No. 404.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Consumer Representation Act of 1975".

STATEMENT OF FINDINGS AND PURPOSE

SEC. 2. (a) The Congress hereby finds and declares that the interests of consumers are often inadequately represented within the Federal agencies to the detriment of the fair and efficient functioning of a free market economy; that better consumer representation can be achieved in some circumstances if consumers are represented by an advocate; that in other circumstances, representation is better achieved by evaluating multiple consumer views or addressing the impact of actions upon consumers; and that vigorous advocacy of different consumer interests is essential to decisionmaking that is informed, timely, and in the best interests of the public.

(b) The Congress therefore declares that it is the purpose of this Act to establish consumer advocates to engage in active representation of consumer interests where appropriate and to require more systematic evaluation of consumer interests; and this Act should be so interpreted by the executive branch, the independent regulatory agencies, and the courts so as to implement the intent of Congress to protect and promote the interests of consumers.

DEFINITIONS

SEC. 3. As used in the Act, unless the context otherwise requires, the term—

(1) "Director" means the Director of the Office of Consumer Affairs;

(2) "Administrator" means the Administrator of each Office of Consumer Representation;

(3) "agency action" includes the whole or part of an agency "rule", "order", "license", "sanction", "relief", as defined in section 551 of title 5, United States Code, or the equivalent or the denial thereof, or failure to act;

(4) "agency activity" means any agency civil process, conducted pursuant to any authority or responsibility under law, whether such process is formal or informal;

(5) "agency proceeding" means agency "rulemaking", "adjudication", or "licensing", as defined in section 551 of title 5, United States Code;

(6) "commerce" means commerce among or between the several States and commerce with foreign nations;

(7) "consumer" means any individual who uses, purchases, acquires, attempts to purchase or acquire, or is offered or furnished any real or personal property, tangible or intangible goods, services, or credit for personal, family agricultural, or household purposes;

(8) "Federal agency" means any executive department, or independent regulatory agency or commission of the United States;

(9) "individual" means a human being;

(10) "interest of consumers" means any health, education, safety, or economic concern of consumers involving real or personal property, tangible or intangible goods, services, or credit, or the advertising or other description thereof, which is or may become the subject of any business, trade, commercial, or marketplace offer or transaction affecting commerce, or which may be related to any term of condition of such offer or transaction. Such offer or transaction need not involve the payment or promise of a consideration;

(11) "participation" includes any form of submission;

(12) "person" includes any individual, corporation, partnership, firm, association, institution, or public or private organization other than a Federal agency;

(13) "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, and the Trust Territory of the Pacific Islands; and

(14) "submission" means participation through the presentation or communication of relevant evidence, documents, arguments, or other information.

APPLICATION TO SMALL BUSINESS AND AGRICULTURE

SEC. 4. (a) The particular varied needs of small business and agricultural enterprises shall be considered by all levels of government in the implementation of the procedures provided for throughout this Act.

(b) In order to carry out the small business aspect of the requirement set forth in subsection (a), the Small Business Administration shall (1) to the maximum extent possible provide small business enterprises with full information concerning the procedures provided for throughout this Act which particularly affect such enterprises, and the activities of the various agencies in connection with such provisions, and (2) as part of its annual report provide to the Congress a summary of the actions taken under this Act which have particularly affected such enterprises.

(c) In order to carry out the agricultural aspect of the requirement set forth in subsection (a), the Administrator shall, before intervening in any United States Department of Agriculture proceeding, consider (1) the interests of consumers in obtaining an adequate supply of food, and (2) the interests of farmers in maintaining an adequate level of income and production.

(d) (1) To the extent feasible the Director of the Office of Consumer Affairs shall seek the views of small business and agricultural interests in connection with establishing the Federal agency's priorities, as well as in promulgating the rules to implement this Act.

(2) In administering the programs provided for in this Act, each Administrator shall respond in an expeditious manner to the views, requests, and other filing by small business and agricultural enterprises.

(3) In implementing the provisions of this Act, each Administrator shall give due consideration to the unique problems of small business and agriculture in order to avoid unnecessary hardships on those enterprises and activities.

EXEMPTIONS

SEC. 5. This Act shall not apply to the Central Intelligence Agency, the Federal Bureau of Investigation, or the national security or intelligence functions (including related procurement) of the Departments of State and Defense (including the Departments of the Army, Navy, and Air Force) and the military weapons program of the Energy Research and Development Administration.

DISCRIMINATION

SEC. 6. No person shall on the grounds of sex, race, religion, age, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving Federal assistance under this Act. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a person alleging discrimination.

EFFECTIVE DATE

SEC. 7. (a) This Act shall take effect ninety calendar days following the date on which this Act is enacted, or on such earlier date as the President shall prescribe and publish in the Federal Register.

(b) Any of the officers provided for in this Act may (notwithstanding subsection (a)) be appointed in the manner provided for in this Act at any time after the date of the enactment of this Act. Such officers shall be compensated from the date they first take office at the rates provided for in this Act.

SEPARABILITY

SEC. 8. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality and effectiveness of the remainder of this Act and the circumstances shall not be affected thereby.

TITLE I—OFFICE OF CONSUMER AFFAIRS

ESTABLISHMENT

SEC. 101. (a) There is hereby created in the Executive Office of the President an office to be known as the Office of Consumer Affairs (OCA). The Office shall be directed and administered by a Director who shall be appointed by the President, and who shall serve as a Special Assistant to the President for Consumer Affairs. There shall be in the Office of Consumer Affairs a Deputy Director who shall be appointed by the President. The Deputy Director shall perform such functions, powers, and duties as may be prescribed from time to time by the the Director and shall act for, and exercise the powers of, the Director during the absence or disability of, or in the event of a vacancy in the Office of the Director.

(b) No employee of the Office of Consumer Affairs while serving in such position may engage in any business, vocation, other employment, or have other interests, inconsistent with his official responsibilities.

(c) There shall be in the Office of Consumer Affairs a General Counsel and not more than five additional officers. Each such officer shall be appointed by the Director, subject to the approval of the President, under the classified civil service, shall have such title as the Director shall from time to time determine, and shall receive compensation at the rate now or hereafter prescribed for offices and positions at level V of the Executive Schedule (5 U.S.C. 5316).

POWERS AND DUTIES OF THE DIRECTOR

SEC. 102. (a) The Director shall be responsible for the exercise of the powers and the discharge of the duties of the Office of Consumer Affairs, and shall have the authority to direct and supervise all personnel and activities thereof.

(b) In addition to any other authority conferred upon him by this Act, the Director is authorized, in carrying out his functions under this Act, to—

(1) subject to the civil service and classification laws, select, appoint, employ, and fix the compensation of such officers and employees as are necessary to carry out the provisions of this Act and to prescribe their authority and duties;

(2) employ experts and consultants in accordance with section 3109 of title 5, United States Code, and compensate individuals so employed for each day (including traveltime) at rates not in excess of the maximum rate of pay for grade GS–18 as provided in section 5332 of title 5, United States Code, and while such experts and consultants are so serving away from their homes or regular place of business, pay such employees travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently;

(3) appoint advisory committees composed of such private citizens and officials of the Federal, State, and local governments as he deems desirable to advise him with respect to his functions under this Act, and pay such members (other than those regularly employed by the Federal Government) while attending meetings of such committees or otherwise serving at the request of the Director, compensation and travel expenses at the rate provided for in paragraph (2) of this subsection with respect to experts and consultants: *Provided*, That all meetings of such committees shall be open to the public and interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Director may prescribe;

(4) utilize, with their consent, the services, personnel, and facilities of other Federal agencies and of State, regional, local, and private agencies and instrumentalities, with or without reimbursement therefor, and to transfer funds made available under this Act to Federal, State, regional, local, and private agencies and instrumentalities as reimbursement for utilization of such services, personnel, and facilities;

(5) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the provisions of this Act, on such terms as the Director may deem appropriate, with any agency or instrumentality of the United States, with any State, or any political subdivision thereof, or with any person;

(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b));

(7) adopt an official seal, which shall be judicially noticed;

(8) conduct conferences and hearings and otherwise secure data and expression of opinion;

(9) designate representatives to serve or assist on such committees as he may determine to be necessary to maintain effective liaison with Federal agencies and with State and local agencies carrying out programs and activities related to the interests of consumers; and

(10) perform such other administrative activities as may be necessary for the effective fulfillment of his duties and functions.

(c) Upon request made by the Director, each Federal agency is authorized and directed to make its services, personnel, and facilities available to the greatest practicable extent within its capability to the Office of Consumer Affairs in the performance of its functions.

(d) The Director shall prepare and submit simultaneously to the Congress and the President, not later than April 1 of each year beginning April 1, 1976, an annual report, which shall include a description and analysis of—

(1) the activities of the Office of Consumer Affairs;

(2) the major Federal agency actions and Federal court decisions affecting the interests of consumers;

(3) the assistance given the Office of Consumer Affairs by other Federal agencies in carrying out the purposes of this Act;

(4) the performance of Federal agencies in protecting the interests of consumers.

FUNCTIONS OF THE OFFICE OF CONSUMER AFFAIRS

SEC. 103. (a) The Office of Consumer Affairs shall, in the performance of its functions, advise the President as to matters affecting the interests of consumers; and shall protect and promote the interests of the people of the United States as consumers of goods and services made available to them through the trade and commerce of the United States.

(b) The function of the Director shall be to—

(1) communicate with each Office of Consumer Representation established pursuant to title II of this Act for the purpose of encouraging and assisting in development, implementation, and coordination of the activities of the respective Offices. The Director shall endeavor to make available to each such Office, appropriate assistance in the preparation of consumer benefit analysis or in such other functions as the Offices may undertake pursuant to title II of this Act;

(2) conduct and support research, studies, and testing to the extent authorized in section 5 of this Act;

(3) submit recommendations to the President on measures to improve the operation of the Federal Government in the protection and promotion of the interests of consumers;

(4) obtain information and publish and distribute material developed in carrying out his responsibilities under this Act in order to inform consumers of matters of interest to them, to the extent authorized in this Act;

(5) conduct conferences, surveys, and investigations, including economic surveys, concerning the needs, interests, and problems of consumers: *Provided*, That such conferences, surveys, or investigations are not duplicative in significant degree of similar activities conducted by other Federal agencies;

(6) cooperate with State and local governments and encourage private enterprise in the promotion and protection of the interests of consumers;

(7) perform the functions assigned to the President's Committee on Consumer Interests in Executive Order 11566 of October 26, 1970;

(8) receive and act upon consumer complaints in the following manner: Upon receipt of a consumer complaint or other information disclosing a possible violation of (1) any law of the United States, or (2) any rule or order of any Federal agency concerning consumer interests, the Director shall promptly transmit such complaint or other information to the Federal agency's Office of Consumer Representation for appropriate action and may in its discretion also refer such complaint or other information to the private persons or industry against whom the complaint is made;

(9) publish, in language readily understandable by consumers, a consumer register which shall set forth the time and place and subject matters of actions by Congress, Federal agencies, and Federal courts, and other information useful to consumers;

(10) encourage the adoption and expansion of effective consumer education programs;

(11) encourage the application and use of new technology, including patents and inventions, for the promotion and protection of the interests of consumers;

(12) encourage the development of informal dispute settlement procedures involving consumers;

(13) encourage meaningful participation by consumers in the activities of the Office of Consumer Affairs;

(14) promote the consumer interests of farmers in obtaining a full supply of goods and services at a fair and equitable price; and

(15) perform such other related activities as he deems necessary for the effective fulfillment of his duties and functions.

CONSUMER INFORMATION AND SERVICES

SEC. 104. (a) In order to carry out the purposes of the Act the Director shall develop on his own initiative, and, subject to the other provisions of this Act, gather from other Federal agencies and non-Federal sources, and disseminate to the public in such manner, at such times, and in such form as he determines to be most effective, information, statistics, and other data including, but not limited to, matter concerning—

(1) the functions and duties of the Office;

(2) consumer products and services;

(3) problems encountered by consumers generally, including commercial and trade practices which may adversely affect consumers; and

(4) notices of Federal hearings, proposed and final rules and orders, and other pertinent activities of Federal agencies that affect consumers.

(b) All Federal agencies which possess information which would be useful to consumers are authorized and directed to cooperate with the Director in making such information available to the public (to the extent such information is not exempt from disclosure pursuant to title 5, United States Code, section 552).

LIMITATIONS ON DISCLOSURES

SEC. 105. The Director shall not disclose to the public or any State or local agency any information in a form which would reveal trade secrets and commercial or financial information as described in section 552 (b)(4) of title 5, United States Code, obtained from a person privileged or confidential unless the Director determines that the release of such information is necessary to protect health or safety.

STUDIES

SEC. 106. The Director is authorized to conduct, support, and assist research studies, plans, investigations, conferences, demonstration projects, and surveys concerning the interests of consumers.

CONFORMING AMENDMENT

SEC. 107. (a) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following:

"(60) Director, Office of Consumer Affairs.".

(b) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following:

"(100) Deputy Director, Office of Consumer Affairs.".

(c) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(135) General Counsel, Office of Consumer Affairs.

"(136) Assistant Directors, Office of Consumer Affairs.".

TRANSFER OF CONSUMER PRODUCT INFORMATION COORDINATING CENTER

SEC. 108. (a) All officers, employees, assets, liabilities, contracts, property, and records as are determined by the Director of the Office of Management and Budget to be employed, held, or used primarily in connection with the functions of the Consumer Product Information Coordinating Center in the General Services Administration are transferred to the Office of Consumer Affairs and all functions of the Administrator of General Services administered through the Consumer Product Information Coordinating Center are transferred to the Office of Consumer Affairs.

(b)(1) Except as provided in paragraph (2) of this subsection, personnel engaged in functions transferred under this section shall be transferred in accordance with applicable laws and regulations relating to transfer of functions.

(2) The transfer of personnel pursuant to this section shall be without reduction in classification or compensation for one year after such transfer.

AUTHORIZATION OF APPROPRIATIONS

SEC. 109. There are authorized to be appropriated to carry out the provisions of this title not to exceed $4,000,000 for fiscal year ending June 30, 1976.

TITLE II—CONSIDERATION OF CONSUMER INTEREST BY THE FEDERAL AGENCIES

ESTABLISHMENT

SEC. 201. (a) There is hereby established an Office of Consumer Representation within each executive department and independent regulatory agency and commission. Each Office shall be directed and managed by an Administrator who shall be appointed by such agency.

(b) The Administrator of each office is authorized to appoint within his office a Public Counsel and two Assistant Administrators, one for economics and one for complaint handling. The Administrator shall have such other professional and support staff as are necessary to adequately represent within his agency the interests of the consumers.

(c) Each Federal agency is directed to provide sufficient funding within its budget for its Office of Consumer Representation to enable it to carry out its functions under this title. The budget request for the Office of Consumer Representation shall be separately stated.

POWERS AND DUTIES OF THE ADMINISTRATOR

SEC. 202. (a) Each Administrator shall be responsible for the exercise of the powers and the discharge of the duties of the Office of Consumer Representation within his agency, and shall have the authority to direct and supervise all personnel and activities thereof.

(b) In addition to any other authority conferred upon him by this title, the Administrator is authorized, in carrying out his functions under this title, to—

(1) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665 (b));

(2) conduct conferences and hearings and otherwise secure data and expression of opinion;

(3) perform such other administrative activities as may be necessary for the effective fulfillment of his duties and functions.

(c) Each Administrator shall be subject to the Civil Service and classification laws, select, appoint, employ, and fix the compensation of such officers and employees as are necessary to carry out the provisions of this title and to prescribe their authority and duties.

FUNCTIONS OF EACH OFFICE OF CONSUMER REPRESENTATION

SEC. 203. (a) The functions of each Office of Consumer Representation shall be to—

(1) represent and protect the interests of consumers before its agency to the extent authorized by this title;

(2) submit such reports as may be required by the Office of Consumer Affairs or its agency on measures to improve the operation of its agency in the protection and promotion of the interests of consumers;

(3) obtain information and publish and distribute material developed in carrying out its responsibilities under this title in order to inform consumers of matters of interest to them, to the extent authorized in this title;

(4) receive, transmit to the appropriate bureaus, division, and persons within its agency and make publicly available, consumer complaints to the extent authorized in section 7 of this title;

(5) keep the Office of Consumer Affairs fully and currently informed of all its agency's activities substantially affecting consumer interests, when asked or on its own initiative;

(6) encourage meaningful participation by consumers in the proceedings of its agency; and

(7) perform such other related activities as it deems necessary for the effective fulfillment of its duties and functions.

CONSUMER REPRESENTATION

SEC. 204. (a) Each Federal agency shall keep its Administrator informed of all major proceedings and activities pending before the agency which may substantially affect an interest of consumers.

(b)(1) Whenever an Administrator finds that the result of any proceedings or activity before the agency may substantially affect one or more interests of consumers, he may (i) represent an interest of consumers as an advocate in the proceeding or activity pursuant to section 5 of this title and (ii) request the agency for and assist in the preparation of a consumer benefit analysis pursuant to section 6 of of this title.

(2) When the Administrator makes such determination, he shall issue publicly a written statement setting forth concisely the reasons for his determination. Notwithstanding the foregoing, the Administrator shall, upon petition in writing in a proceeding by a substantial number of persons, request his agency for and assist in the preparation of a consumer benefit analysis whether or not he has determined to represent an interest of consumers pursuant to section 5.

(c) The Administrator shall have access to all the information, data, and other materials customarily made available by his agency to its staff: *Provided*, That where the Administrator appears as a party in a proceeding under section 5, he shall be subject to the agency's rules of practice and procedure generally applicable to other parties to the proceeding. The Administrator may obtain information from other agencies through his agency or by independent request. When the Administrator makes an independent request, he shall be deemed a "person" within the meaning of section 552, title 5, United States Code. The Administrator shall be subject to laws governing public disclosure of information applicable to any officer or employee of his agency.

CONSUMER ADVOCACY

SEC. 205. (a) In any agency proceeding or activity in which the Administrator has determined pursuant to section 4, to represent an interest of consumers as an advocate, the Administrator may:

(1) Pursuant to the agency's rules of practice and procedure of general applicability, intervene as a party, appear as amicus, or otherwise participate for the purpose of representing an interest of consumers in any proceeding which is subject to the provisions of section 553, 554, 556, or 557 of title 5, United States Code, relating to administrative procedure, or which involves a hearing pursuant to the administrative procedural requirements of any other statute, or which is conducted on the record after opportunity for an agency hearing, or which provides for public notice and opportunity for comment. In any such proceeding, the Administrator may request the agency to issue and the agency shall issue such orders as are authorized by the Federal agency's statutory powers and rules of general applicability, for the copying of documents, papers, and records, summoning of witnesses, production of goods and papers, and submission of information in writing. The participation of the Administrator in any proceeding shall not affect the obligation of the agency conduct-

ing such proceeding to assure procedural fairness to all participants.

(2) With respect to any proceeding of this agency not covered by paragraph (1) of this subsection, or any other activity of his agency which the Administrator determines may substantially affect an interest or interests of consumers, the Administrator may participate by presenting written or oral submissions.

(b) The Administrator may in the manner prescribed by law apply for leave to intervene as a party or otherwise participate in any civil proceeding in a Federal court which involves the review or enforcement of an action of his agency.

(c) When the Administrator determines it to be in the interests of consumers, he may request his agency to initiate such proceeding or activity as may be authorized by law with respect to such agency. If the agency fails to comply with his request, it shall promptly notify the Administrator of the reasons therefor, and such notification shall be a matter of public record.

CONSUMER BENEFIT ANALYSIS

SEC. 206. (a) If the Administrator determines to request a consumer benefit analysis in a proceeding, he shall promptly transmit his request to the appropriate official in the agency, who shall comply with the requirements of this section.

(b) The consumer benefit analysis requested by the Administrator shall assess in detail—

(1) the short- and long-term costs and benefits to consumers, if any, of the agency proceeding;

(2) the short- and long-term costs and benefits, if any, to other relevant interests;

(3) the real costs to the public, if any, of developing and administering or enforcing action taken by the agency in the proceeding;

(4) alternative means, if any, for achieving the same or similar result sought by the agency in the proceeding, and a comparison of their benefits and costs to consumers as well as other competing interests; for purposes of this subsection, "alternative means" shall include realistic alternatives, including those which require further action by a Federal agency or Congress;

(5) effect on productivity, competition, employment, and supply and demand of important materials, including energy;

(6) the relationship of the action taken to Federal, State, or local regulatory programs or actions (including those not directly involved in the proceeding), and the need, if any, for more interagency coordination; and

(7) any other criteria specified by the Administrator or the Office of Management and Budget or the General Accounting Office.

(c) When published in final form as specified by subsection (f), the evaluation must be a product of the agency's independent analysis of all relevant data, and shall discuss the reasons for failing to take into account any responsible data submitted by the Administrator and interested persons (at the hearing or otherwise) which is not included within the analysis of the body of the consumer benefit analysis, or for failing to choose a proposed alternative course of action less damaging to a significant consumer interest.

(d) A draft of the consumer benefit analysis shall be published no later than thirty days after such time as public notice of the proceeding is given, except that a draft of an evaluation requested pursuant to section 4(b) shall be published within twenty days of the request.

(e) Each agency shall establish procedures pursuant to which—

(1) the Administrator may publicly request views in specific matters identified by him, and

(2) all interested persons (including interested Federal, State, and local agencies) may have reasonable time to submit comments and data to be considered by the agency in its preparation of the consumer analysis.

(f) The consumer impact evaluation shall be published in final form no later than twenty days after announcement of the final action taken by the agency; and the consumer benefit analysis shall be subsequently updated upon request by the Administrator.

(g) The Administrator shall assist in the preparation of the consumer impact evaluations and shall provide information to the agency with respect to subparagraphs (1), (4), and (6) of subsection (b) of this section.

CONSUMER COMPLAINTS

SEC. 207. (a) Whenever the Administrator receives from the Office of Consumer Affairs or from any person any complaint or other information which discloses—

(1) an apparent violation of any law administered by his agency or of any rule or order of the agency relating to an interest of consumers; or

(2) a commercial, trade, or other practice within the jurisdiction of his agency which is detrimental to an interest of consumers; he shall, unless he determines that such complaint or information is frivolous, promptly transmit such complaint or information to the appropriate bureau, division, or person within the agency which has the authority to take appropriate action. The agency shall keep the Administrator informed to the greatest practicable extent of any action which it is taking on complaints transmitted by the Administrator pursuant to this section.

(b) The Administrator shall promptly notify producers, distributors, retailers, lenders, or suppliers of goods and services of all complaints of any significance concerning them received or developed under this section unless the Administrator determines that to do so is likely to prejudice or impede an action, investigation, or prosecution concerning an alleged violation of law.

(c) Each agency, with the assistance of the Administrator, shall maintain a public document room containing, for public inspection and copying (without charge or at a reasonable charge, not to exceed cost), an up-to-date listing of all consumer complaints of any significance which the Office of Consumer Representation or agency has received, arranged in meaningful and useful categories, together with annotations of actions taken in respect thereto. Unless the agency, for good cause, determines not to make any specific complaint available, complaints listed shall be made available for public inspection and copying: *Provided*, That—

(1) the person complained against has had a reasonable time to comment on such complaint and such comment, when received, is displayed together with the complaint;

(2) the bureau, division, or person of the agency to which the complaint has been referred has had a reasonable time to notify the Administrator what action, if any, it intends to recommend with respect to the complaint.

PUBLIC PARTICIPATION

SEC. 208. (a) Each Federal agency shall review its rules of procedure of general applicability, and, after consultation with the Administrator, issue any additional rules which may be necessary to provide for the Administrator's orderly intervention or participation, in accordance with this section, in its proceedings and activities which may substantially affect the interests of consumers. Any additional rules adopted pursuant to the requirements of this subsection shall be published in proposed and final form in the Federal Register.

(b) Any rules of procedure issued by any Federal agency pursuant to this section shall be published in a form and disseminated in a manner that is designed to inform, and that is able to be understood by, the general public.

JUDICIAL REVIEW

SEC. 209. Nothing in this Act shall be construed as altering or affecting in any way either the law governing the substantive standards or the scope of judicial review otherwise applicable to the agency proceeding or activity involved.

AUTHORIZATION FOR APPROPRIATION

SEC. 210. For purposes of this title, existing resources should be utilized to the greatest extent possible. However, there are authorized to be appropriated such sums as are necessary, not to exceed $300,000 per Office of Consumer Representation for the fiscal year ending June 30, 1976.

Mr. TAFT. Mr. President, I advise the Senate at the outset that the yeas and nays have been ordered on this amendment.

I do not expect to speak for more than 5 or 10 minutes at the most. I am sure Senator MCCLURE will have some few remarks, and perhaps Senator THURMOND, another cosponsor, will have some remarks as well.

Mr. MCCLURE. Will the Senator yield for a unanimous-consent request?

Mr. TAFT. I yield.

Mr. MCCLURE. I ask unanimous consent that the name of Senator BARTLETT be added as a cosponsor of the amendment just passed.

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

Mr. TAFT. Mr. President, we have witnessed for more than 10 years the struggle of this deliberative body with a simple idea. How can we proceed to have governmental bodies made more responsive to the needs and desires of consumers in the marketplace? This seemingly obvious question has spawned an endless series of proposals, vehement arguments, and highly divisive views. The continuing debate on S. 200 has been no exception.

This Chamber now has S. 200 before it. That bill responds to the question by once again proposing to establish a new independent bureau that will make its views felt throughout the land by force of litigation with all other agencies. The new response—as the old ones—perpetuates the divisions of the Chamber that have plagued us before. To some of my distinguished colleagues the new bureau is a Pariah. To others, it is a Dodo bird. To me—and I believe to all of us—this vehement polarization of the issues must be a source of grave concern.

If it is the will of the body to respond meaningfully to the basic question of service to consumers, then let this be done. But let it be done in a way that resolves the acrimonious debate and deals realistically with our current problems in the curent world. I, for one, believe there is such a way. It lies in the substitute that I place before you today, only after careful study and deliberation.

The key to this new proposal—like the question—is a relatively simple one. If the goal is to make the governmental bodies—in their myriad forms—responsive to consumer needs, then the governmental bodies must be dealt with directly. The solution cannot lie in the creation

of still another new bureaucracy, nor in the concept that we can litigate ourselves into a consumer utopia. Nor can it lie in the spectacle of a monolithic mythical Mr. Consumer authorized to speak on all questions for all people—and therefore intelligently to no one. Rather, the solution lies in finding simple ways to cause agencies—all of the agencies which deal with consumer interests—to consider and balance service to our myriad needs in the marketplace.

I want to emphasize that the best solutions to problems are often the simplest and most direct. The advantage of my proposal is that it goes directly to the source of the problem—each of the agencies themselves. If all or even some of the agencies have failed to give adequate consideration to consumers, then these agencies—not just those targeted by some distant bureaucrat—should be required to focus the proper attention on consumer interests. The overwhelming majority of American consumers expect this course of action and their expectations ought to prevail.

My proposal seeks to focus proper attention on consumer interests in three basic ways. First, title II would establish within each agency an independent office of consumer representation. Each office would have two ways to focus its agency on consumer concerns: First, to advocate in agency proceedings, and second, to demand that the agency address consumer issues by a consumer impact evaluation. Impact statements have proved enormously valuable in requiring adequate consideration of environmental issues. A similar discipline in the consumer field should prove equally valuable. Impact statements together with advocacy where that is appropriate should provide a more balanced, flexible and considered approach to consumer protection. Some circumstances may call for a balanced consumer evaluation. Some for advocacy of more narrowly and clearly identified goals. The flexibility of the consumer offices to meet different problems in different ways is essential if we are to avoid treating consumers as a bunch of sheep willing to be spoken for by one super Government litigator.

Second, my proposal would create consumer representatives who will be familiar with the problems of each agency, as well as the industries they regulate. I simply do not believe that one agency—no matter how well funded or even well staffed—can obtain sufficient familiarity with each agency's procedures, problems and expertise to do consumers justice and to avoid massive mix-ups even if we were willing to face the horrendous thought of a single bureaucracy with individuals divisions specializing in the work of every part of Government. The advantage of creating the representative within each agency itself is twofold. It will have full access to all internal agency information and will thus not have to wage war to get it. And it will be free of the bureaucratic entanglements of a super agency and thus be motivated as an independent entity to do the best job as it sees fit.

Third, my proposal would benefit the course of agency litigation affecting consumer interests without at the same time making litigation the sole avenue for benefiting consumers. I think it obvious that the present bill—no matter how well-intentioned—will inevitably convert much of Government into a litigation free-for-all—a bonanza for lawyers, but a nightmare for the agencies, the consumers—and, indeed, the public.

About the only people who really are going to benefit by it, in my opinion, are the attorneys hired by the Agency for Consumer Advocacy and those hired on the other side by the various agencies already in existence, to answer the charges brought by the Agency for Consumer Advocacy. That is an element of the budget that has not been dealt with in the authorizations and the discussion of the cost of this bill.

Some consumer issues no doubt will require litigation for resolution. But let us limit that kind of confrontation to the circumstances that call for it. Life is too short and government too complex to look to litigation for solutions except as a very last resort.

There is, of course, one possible advantage to a single agency. It should theoretically, be able to avoid duplicate or conflicting efforts. Title I incorporates this advantage by creating a lean and efficient Office of Consumer Affairs to serve as a coordinating and policy body. There are sound reasons for having some entity with enough perspective and distance not to lose the forest for the trees.

The substitute is a responsible and effective one. Those of us concerned with recession, inflation and budget deficits, will agree, I think, that it carries a sufficiently small price tag—under half of the cost of the other one at the outset, and I think the ultimate cost of the bill which is not the substitute will be enormously in excess of the original authorization we are talking about.

Those of us concerned with the long-range problems of regulatory reform will agree, I think, that it will do the least damage to the regulatory process while that reform is under study. It would, I think, be a tragedy for study commissions to come to a workable set of recommendations only to find them inapplicable to the chaos that a new bureaucracy will create. And those of us genuinely concerned with agency sensitivity to consumer problems, I think, will agree that my proposal gives consumers the voices—and I mean the plural voices—they need and should have.

Finally, it is important, in closing my remarks, to say something about accountability. A large bureaucracy has difficulty being accountable to anyone—including consumers. That, I believe, is what the discontent with agency action is all about. Under the substitute bill, each office would be accountable to the agency head, who would have the ultimate responsibility to see to it that the office did its job no matter how discomforting that might become at times. Each office would also be accountable to consumers—and this is just as important—because each office would have fewer interests to represent and would have a reasonable measure of independence.

This substitute bill will not make everyone happy in every respect. Perhaps no bill on this subject ever could. But it does accomplish the major goals that may properly be sought—and it does so without disruption and exhorbitant cost. I would commend it to each of the Senators as a way to a middle ground that will permit this body to resolve and rest this perennial issue with responsibility and community of purpose.

Let me make clear at this point, too, that this bill is in no way a proposal of this administration. The President has indicated that he is against setting up, even within the various respective 34 agencies that we have studied, which in some way affect the consumer interest, what I would set up, a consumer agency for this responsibility, with any aditional personnel for this purpose. He may be right, but I am afraid that, practically, he is not, because these agencies are simply not doing the job today of properly representing the consumers in many instances. I think this aproach can do it and should do it.

In regard to the administration's position, many of the objections that I have to the bill which is not the substitute are voiced in a letter from the Honorable Casper Weinberger, Secretary of Health, Education, and Welfare, dated May 12, written to the distinguished Senator from New Jersey, the Honorable HARRISON A. WILLIAMS, chairman of the Committee on Labor and Public Welfare.

Mr. President, I ask unanimous consent that this letter be printed in the RECORD, along with a comment on the particular effect of the Food and Drug Administration of the legislation, as a part of my remarks.

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

SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., May 12, 1975.

Hon. HARRISON A. WILLIAMS, Jr.,
Chairman, Committee on Labor and Public Welfare, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: As you know, the Senate is considering S. 200, a bill to establish an agency for Consumer Advocacy. I wish to express my strong opposition to this measure since I feel such an agency is not only an unnecessary layer of bureaucracy but it also has the potential for adversely interfering with the work of the Food and Drug Administration (FDA) and its efforts to protect consumer interests. In view of the government's increased awareness of consumer issues and the extensive changes recently introduced in our methods and procedures to involve consumer advocates, there is no need for such an agency.

Enclosed is a description of the major efforts underway in the FDA to be responsive to the needs of consumers. It indicates that consumer representation and participation is extensive throughout the operation of the Agency. It further describes how the establishment of a consumer agency would tend to interfere with the efforts of the FDA.

What most would-be intervenors are complaining about is that the institutions of government are not presenting or considering original propositions which are being developed among private groups; the answer is not to create another institution, but to see to it that the barriers to private participation are eliminated and that there is adequate public participation and consumer

representation within the governmental decision making process.

In recognition of this, President Ford has directed the heads of all departments and agencies of the Executive Branch to review their procedures to make certain that consumer interests receive full consideration in all Government actions. His guidelines for this review are two: that all consumer interests should receive a fair chance to be heard in the Government decision making process; and that the costs and administrative requirements of Federal rules and regulations on the private sector should be held to a minimum.

If a consumer agency is established, I am fearful that it would inject itself into proceedings without regard to the program responsibilities of other agencies and would have adverse effects on the work we are attempting to accomplish.

I therefore urge that we be given an opportunity to proceed instead along the lines of regulatory reform outlined by the President in his October 8, 1974, Economic Message to the Congress and his letter of April 17, 1975, to Congressional Leaders.

Sincerely,

CASPAR W. WEINBERGER,
Secretary.

THE FOOD AND DRUG ADMINISTRATION AND CONSUMER ADVOCACY AGENCY LEGISLATION (S. 200)

An Agency for Consumer Advocacy is not needed.

The consumer movement of the 1960's and 1970's has made Federal agencies fully sensitive to the interests of consumers in their proceedings. There is now under way an effort to reform those Federal rate-making agencies—such as the Interstate Commerce Commission and the Civil Aeronautics Board—whose decisions in the past have sometimes tended to increase prices for consumers. Such reform is more effective than merely providing an institutional spokesman for consumers to try to counteract the forces promoting higher prices.

Many other Federal agencies, including FDA, have done much to involve consumers in their programs and improve exchanges of information with consumers. The following are among many developments in FDA which have helped bring consumers into its decision making processes:

1. Private citizens, consumer organizations, and consumer advocates participate directly in FDA proceedings. This involvement will be made even more meaningful by the agency's new procedural regulations, which clarify the ground rules for participation in our proceedings by all interested parties, including consumers. All citizens can petition FDA to take action and, as interested parties, are eligible to make appearances before the Agency and participate in its proceedings.

2. Each of the classification panels for FDA's massive product reviews—over-the-counter drugs, biological products, and medical devices—has as a nonvoting member a representative of consumers interests, as well as a nonvoting representative of industry interests, who play an important role in the deliberations of these committees. These consumer and industry representatives may attend even the closed session of the panels. FDA established a unique procedure for selection of these representatives whereby the consumer groups make nominations and assist in selecting the representative.

3. The new National FDA Advisory Committee is another important mechanism for obtaining views of the public in FDA actions. This Committee was a consolidation of several prior advisory committees and can give FDA guidance on difficult benefit-risk judgments the agency must make in which consumer views are important.

4. At FDA's request, the Department of Justice does not challenge the "standing" of citizens to challenge FDA actions in court. We are willing to allow our actions to be tested upon the merits and believe that any citizen has the right to take us to court and secure such a test.

5. The FDA is closely monitored by consumer advocates and the press. FDA's freedom of information policy and open calendar have made it quite easy for consumers to question agency decisions. An extensive number of consumer advocates watch FDA on a full-time basis and take full advantage of their rights to participate in FDA proceedings and to obtain information about FDA activities.

6. The Federal Advisory Committee Act has helped open advisory committee proceedings to consumers. This provides a significant opportunity for consumer participation in FDA proceedings.

7. The FDA's official publication, *FDA Consumer*, has become a more consumer-oriented magazine in which many articles appear presenting information directly useful to consumers. Similar efforts have been made to make FDA's pamphlets and publications more understandable by consumers. The agency's films, such as the award-winning "Read the Label," have further enhanced FDA's consumer education and information programs.

8. FDA has long had consumer affairs officers in its regional offices who work directly with consumer groups around the country. Any consumer can complain directly to FDA, and many complaints are the subject of follow-up investigations. In this manner, FDA has been a pioneer in its use of consumer input to aid the agency in carrying out its mission.

DELETERIOUS IMPACT OF BILL ON FDA ACTIVITIES

1. Section 4(c) of the bill provides that upon request by the administrator of the agency each Federal agency is authorized and directed to make its services, personnel, and facilities available to the greatest practicable extent within its capability to the Agency for Consumer Advocacy. FDA would probably be a leading target for requests by the Agency and it should be emphasized that FDA sometimes lacks adequate staff and facilities to perform its own mission, much less to take on extra work on behalf of the Agency for Consumer Advocacy. Such redirection of staff effort would seriously and adversely affect FDA operations.

2. An Agency for Consumer Advocacy should not be given any special rights above and beyond any other citizen or group that wants to participate in an FDA preceeding. For the most part, S. 200 grants the Agency only the same rights that any other party would have. However, section 6(f) seems to authorize the Administrator of the Agency to request a Federal agency to issue subpoenas on behalf of the Agency in cases where other private parties may not have such a right. This seems to give extraordinary rights to the Agency.

Mr. TAFT. Mr. President, I ask unanimous consent that there also be printed at the close of my remarks a section-by-section analysis of the bill.

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

[See exhibit 1.]

Mr. TAFT. I also wish to call to the attention of the Senators that there has been put on their desks a copy of the amendment before them, in the nature of a substitute, called the Consumer Representation Act of 1975.

I yield the floor.

EXHIBIT 1

CONSUMER REPRESENTATION ACT OF 1975

(Section-by-section analysis)

TITLE I

Section 1

Section 1 creates an Office of Consumer Affairs (OCA) in the Executive Office of the President, and provides for staffing consisting of a General Counsel and not more than five additional officers.

Section 2

Section 2 is basically a housekeeping provision, granting OCA, among other things, the power to hire employees, employ experts and consultants, appoint advisory committees of private citizens and federal and local government officials, and to designate representatives to serve on liaison committees coordinating federal and local consumer programs and activities. Section 2 also directs the OCA to prepare for Congress and the President an annual report describing the activities of the OCA, the major federal actions affecting consumers, the effectiveness of the federal agencies in protecting the interests of consumers and the consumer-related assistance given by the OCA to the federal agencies.

Section 3

Section 3 sets forth the basic responsibilities of the OCA. Aside from giving consumer advice to the President, the most important of these responsibilities, set forth in § 3(b)(1), is to oversee and coordinate the activities of the individual Offices of Consumer Representation established by Title II in each of the federal agencies. This Section also directs the OCA to act as a clearinghouse for consumer complaints (§ 3(b)(8)), and to publish a consumer register setting forth the time, place and subject matters of actions by Congress, the federal agencies and the federal courts affecting consumers. The Section sets forth numerous other oversight activities—including a direction to encourage application of new technology (§ 3(b)(11)) and development of informal dispute mechanisms—which underscore the policy-making as opposed to the detailed administrative role to be played by the OCA.

Section 4

Section 4 establishes a separate authority and direction for the OCA to act as an information coordinator, collecting, assembling and digesting for consumers information affecting them as it can be gathered from all sources.

Section 5

Section 5 limits the authority of the Director to disclose trade secrets and other commercial or financial information except when he determines disclosure to be necessary to protect consumer health or safety.

Section 6

Section 6 authorizes the OCA to conduct and support consumer research and investigations.

Section 7

Section 7 contains housekeeping conforming amendments for other statutes.

Section 8

Section 8 transfers the functions of the Consumer Product Informations Coordinating Center in GSA to the OCA.

Section 9

Section 9 authorizes an appropriation of $4 million for the first fiscal year.

TITLE II

Section 1

Section 1(a) establishes an Office of Consumer Representation within each agency. The definition Section in the beginning of the bill (§ 3(8)) defines federal agency to mean any executive department or independ-

ent regulatory agency or commission of the U.S. This means in effect that there will be only one Office of Consumer Representation (OCR) in each of the major executive departments to act as the consumer representative for all the activities of each individual agency acting within the major departments. For example, the OCR for the DOT would have responsibility for the FAA, the NHTSA, etc.

Section 1(b) authorizes each OCR to hire a Public Counsel and two assistant administrators, one for economics and one for complaint handling. Section 1(c) requires the major executive departments and the independent regulatory agencies to provide sufficient funding—to be specifically requested in budget requests—within their budgets for the OCR. In this connection, Section 10 directs the departments and regulatory agencies to utilize existing resources as much as possible, and in addition authorizes an appropriation not to exceed $300,000 for each OCR.

Section 2

Section 2 is a housekeeping provision authorizing the OCR to hire officers and employees, to conduct conferences and hearings and to perform such other administrative activities as may be necessary for the effective discharge of the OCR's duties and functions. It is contemplated that the OCR will be held accountable for the performance of its duties by the head of the executive department or independent agency in which it is established.

Section 3

Section 3 sets forth in general terms the functions of each OCR—

To represent and protect the interests of consumers before its agency;

To publish information of interest to consumers;

To submit reports to the executive department or agency in improving consumer protection activities, and to transfer to the appropriate divisions and bureaus therein all consumer complaints received;

To coordinate with the OCA and keep it fully informed of its own activities; and

To encourage consumers to participate in the proceedings of its department or agency.

Section 4

Section 4 constitutes what is essentially the core provision of Title II and indeed the entire bill. It establishes the basic framework within which the OCR is to operate to provide consumer representation before the executive departments and independent regulatory agencies.

Section 4(a) requires at the outset that each department and regulatory agency inform the OCR of all major proceedings and activities which are pending before them and which may substantially affect an interest of consumers. Because the OCR resides within each agency, it is in effect privy to activities of the agency which affect consumers.

Section (b) establishes this basic independence by granting the OCR two basic tools—authorizing the OCR to represent an interest of consumers as an advocate and to demand that the agency prepare a consumer benefit analysis. This provision requires that the OCR carefully consider in light of all the circumstances which tool it will use by publishing the reasons for any action it takes. The provision also provides that on application by interested persons—private interests or public interest groups—the OCR shall in any event require and assist in the preparation of a consumer benefit analysis.

Section 4(c) provides specifically that each OCR shall have complete access to all information made available to the staff of the agency itself. Section 4(c) also provides, however, that if the OCR chooses to intervene as a party in a proceeding before the agency, it will lose this complete access and will be treated as any other party for purposes of discovery and litigation. The provision thus assures that the OCR will have no greater rights than any other litigant and the agency proceedings. Finally, subsection (c) authorizes the OCR to request information from any other federal department or agency in the same manner as any private person—thus having "discovery" rights vis-a-vis the rest of government that are no less or greater than individuals outside the agency—again whether they be private or public interest groups.

Section 5

Section 5 spells out the OCR's advocacy role in greater detail.

Section 5(a), for example, authorizes the OCR to intervene as a party in any public hearing pursuant to its agency's general rules of practice and procedure, and directs the agency to grant any discovery requests of the OCR that are appropriate under its general rules of practice. This provision thus ensures parity of treatment. The provision also (§ 5(a) (2)) authorizes the OCR to participate in informal activities that are not public hearings and that affect consumers by presenting written or submissions.

Section 5(b), the judicial review provision, authorizes the OCR to apply for leave to intervene as a party or to participate in some lesser status (such as an amicus) in court actions brought to review an action of its department or regulatory agency. This provision does not permit the OCR to initiate a review action itself, and it preserves the reviewing court's inherent power to refuse intervention where inappropriate, as in a situation where the OCR had not participated as a party in the agency proceeding on review.

Section 5(c) authorizes the OCR to request its agency or department to initiate proceedings and activities, and to be given notice of the reasons for failure to do so.

Section 6

Section 6 sets forth the consumer benefit analysis provisions in more detail. Essentially, the provision requires an executive department or independent agency to commence preparation of a consumer benefit analysis on demand by the OCR (§ 6(a)) and to assess in that analysis the short- and long-term costs and benefits of the action proposed to consumers, the real costs of enforcement and administration, alternate means for achieving the same goals, the effects on productivity and competition, and the relationship of the proposed action to other governmental activities. The provision requires further that the analysis be published first in draft form (§ 6(d)) so that all interested persons can comment (§6 (d)), and that it be published in final form no later than 20 days after announcement of the final agency action (§ 6(f)).

Section 7

Section 7 makes provision for the handling of consumer complaints and for establishment of public document repositories. Each OCR is to take responsibility for complaints relating to its agency or department.

Section 8

Section 8 deals with public participation, authorizing departments and agencies to issue additional rules of practice to provide for orderly participation in its proceedings and activities by the OCR (§ 8(a)) and by the public at large (§ 8(b)).

Section 9

Section 9 provides that the bill itself is not intended in any way to alter the governing law and standards otherwise applicable to agency actions.

Section 10

Section 10 is the appropriation provision discussed above in connection with § 1 of Title II.

Mr. THURMOND. Mr. President, I rise in support and am pleased to cosponsor the amendment of the senior Senator from Ohio, which is in the nature of a substitute for S. 200.

This proposal is a sound and responsible one, unlike S. 200, which I cannot support in its present form. The amendment of the Senator from Ohio recognizes the diverse nature of consumer interests. Furthermore, it does not create an all-powerful super-agency, which could arbitrarily pick and choose the consumer interest it desires to pursue.

I am backing this proposal because it is far more fiscally responsible than S. 200, which would cost the taxpayers an additional $60 million over the next 3 years. It is my understanding that this amendment carries a price tag for fiscal year 1976 of approximately $4.3 million, of which more than half is already in the President's budget. I think the President would be far more willing to accept this proposal, because of its much lower cost and because it does not have many of the other objectionable features of S. 200.

The concept contained in this amendment of a consumer representation office within each existing Federal agency is a good one. These various consumer representation offices would be coordinated by the Office of Consumer Affairs, which would be given statutory authority within the executive office of the President.

Each consumer representation office would have the advantage of thoroughly understanding the unique functions and programs of the Federal agency with which it is alined. Yet, each consumer office would be free to vigorously advocate the position of consumers in any proceeding of the parent agency. Furthermore, the offices of consumer representation would be empowered to request an economic analysis of proposed agency actions to determine the benefit or cost to the public. If necessary, the offices could petition to participate in Federal civil court proceedings involving actions of the parent agency. Additionally, the consumer representation offices would be able to act on consumer complaints and resolve consumer problems.

I think this proposal is a major step in the right direction to make the consumer voice heard within the Federal bureaucracy. Significantly, it would accomplish this desirable end without greatly adding to the Federal bureaucratic complex, without creating an expensive, all-powerful new agency, and without treading on the rights of private businesses.

I sincerely hope that my colleagues in Congress will see the wisdom of this proposal and the many faults of S. 200. If they carefully evaluate both, I believe they will wisely choose to support this amendment.

Mr. MCCLURE. Mr. President, I rise in support of the substitute which has been offered by the Senator from Ohio and was cosponsored by Senator THURMOND and myself. I do not think any of us questions the fact that consumer interests sometimes have not been adequately represented before some of the Federal agencies. I am certain, as has been said before, that the pending legislation is a move in the direction of making certain that Federal agencies

take adequate notice of the consumer interest in the decisions that are pending before those Federal bureaus and agencies. What many of us fear in the pending legislation is the creation of an independent administrator in an independent agency accountable to no one at all.

I think the people of this country are getting sick and tired of a government bureaucracy which operates without any lines of authority or responsibility. They are sick and tired of writing to their congressmen to find out why something happened to them or did not happen to them in the inner workings of a Government agency whose civil servants are almost faceless and oftentimes cannot be found.

I know that before I was elected to Congress, some 9 years ago, I always assumed that those decisions which were not made at the local level were made upstairs somewhere, and I, as an individual citizen, could find the local people where those local decisions were made. But if it were more than just a simple little question to be asked and answered, it was referred somewhere in the bureaucracy and I could never find out where. I assumed that, once I got elected to Congress, I would go to the top of the agency and I would find out where those decisions were made.

It will come as no surprise to any Member of this body that that is not the way it works, either. If it is a broad, general policy decision, yes, we can find out who made that policy decision by going to the head of the agency or the bureau. But if it is one of those difficult questions that is neither a broad policy question nor a simple individual question that is answered on the local level, it is neither decided at the top nor at the bottom; it is decided somewhere in that great mass of the Federal Civil Service, which has no visibility and no accountability to the people that it governs.

That is why many of us are concerned about creating not just another bureaucracy, but another bureaucracy that is accountable to no one. The problems that we have had in terms of the service of this Government to the people that it is supposed to be concerned with and serving become even more remote, even more mysterious. I think the people of our country have had enough of that. They want us to move in the other direction, not move in terms of building less accountability into the system. They want to know what their Government is doing and why. They want to get to the civil servant who made the decision and discuss their problem. We are building here, under the pending bill, a bureaucracy that removes Government even farther away from them.

If we need a couple of examples of what I am talking about, if one says, it cannot happen because this is consumer representation, well, who was it who decided that we ought to have a seatbelt interlock. It was not Congress. Congress mandated safety. We made the broad, general policy decision, and some bureaucrats mandated the seatbelt interlock. And what did the consumers of this country say? "We don't want it."

Congress had to come back in, then, afterward, and on a very specific and very narrow issue repeal the action that had been taken under a delegation of authority from Congress.

That will be multiplied a hundred times over if the pending legislation is passed.

Another example was the one we sought to correct, and I hope did correct, in the amendment just adopted which I offered with regard to ammunition. Congress had specifically said, "We will not, under consumer product safety, get into the business of firearms or ammunition controls." Yet in spite of that specific decision by Congress, the bureaucracy, under the prodding of a court interpreting the language, I think, erroneously, but nevertheless under the prodding of a court, looked into an area where Congress had said, "You will not go," and the result was that again Congress had to act to remove an abuse of the authority which was gathered unto itself by a bureaucracy, under the prodding of a court in this particular instance.

I think the issue is that of accountability. How do we find the person responsible for a decision in a bureaucracy that has grown like Topsy?

There are problems in consumer safety. There are problems in consumer responsibility, and in the responsibility of businesses and Federal agencies toward the consumers of this country.

What we seek under the amendment is a different approach to that problem, and I think a more responsible approach to the problem, by seeking to see that the agencies themselves live up to their inherent responsibilities by directing and structuring their own internal machinery to do the job that ought to be done.

I have a great deal of respect for the sponsors of this legislation, the concerns that they express, and the concerns that they are responding to, but I really believe that the attempt to create a new bureaucracy to oversee the old bureaucracy is a recognition of the failure of the Congress of the United States to do its job; because if the regulatory agencies are not doing their jobs, if these independent bureaus and agencies of the Government are not properly responding to the consumer interests in this country, that is our fault because we are so busy passing new laws we will not take the time to find out how the old ones are working.

Now, rather than try to find out how the old ones are working, we are going to pass a new one and pass the buck to a whole new bureaucracy, to take the responsibility which the people of the United States elected us to discharge.

That is why I support the amendment in the nature of a substitute which has been offered by the Senator from Ohio, because I think it is our responsibility and within the area of our own responsibility and accountability to the millions of people who individually voted for those of us who serve here to see that the regulatory agencies work, rather than saying, "We give up; we cannot make them work; we are going to create a new bureaucracy to take over our responsibility so that once again we can duck the issue; when a consumer has a problem, we can say, 'That is not our fault, we have no responsibility, take it to the Consumer Advocacy Agency.'" It is a neat way for us to shirk our own responsibility.

The substitute does not offer that. It simply provides that we, in the discharge of our own responsibilities, are going to try to see that the agencies and bureaus function as they were intended to, and if they do not, then to come back to us; it is our fault. That I believe the voters have a right to expect of us, and I hope when the Senate acts upon this substitute it will keep that fact in mind, and that we will not, then, create another layer of bureaucracy outside of the checks and balances of this Government, but stay strictly within them—at least, certainly, no farther outside than they are already.

For that reason, I hope that the Senate will adopt the proposed substitute.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Ohio.

Mr. RIBICOFF. Mr. President, basically the Taft amendment is similar to the Pearson amendment, that the Senate voted on and defeated overwhelmingly an hour or so ago. I would set up a consumer office in each and every agency and department. These offices would not be able to have the independence necessary to adequately represent the interests of consumers. As part of an agency or department they would be subject to the same pressures and problems which prevent the agencies themselves from representing consumer interests.

Further, it would be very wasteful because it would create perhaps 30 to 35 new bureaucracies in the Government, and there would be great duplication with no coordination.

The ACA will be able to get an overview of consumer problems that these individual officers would not. These officers would lack information-gathering powers.

The Senator from Ohio asks $300,000 for each office and an addition $1.5 million for the Office of Consumer Affairs. In fact, a $300,000 budget is really too small to accomplish anything meaningful. A meaningful sum would have to be about $1 million in each and every agency or bureau. This would be far more costly than the ACA.

Mr. President, I oppose the Taft amendment.

Mr. TAFT and Mr. McCLURE addressed the chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. McCLURE. Mr. President, will the Senator from Ohio yield to me for a minute,

Mr. TAFT. I will be glad to yield to the Senator from Idaho.

Mr. McCLURE. Mr. President, I yield time from my own time on the substitute.

I think is only one other factor that might be mentioned, and that is that while we speak now as though we are acting for the consumers, a recent independent survey indicates that 75 per cent of the people of the United States are opposed to the action that we are taking.

Just as they said after the fact they did not want the seatbelt interlock, just as they have said after the fact that they did not want the Consumer Product Safety Commission involved in the ammunition ban, they are telling us now before we act they do not want us to do what we are about to do.

They have indicated in the same survey that 80 percent are in favor of regulatory reform as an alternative to the creation of a new bureau, and that is exactly what the Taft substitute does.

I think we would be acting in concert with what the people want in this country if we adopt the substitute, and I think the opposite of what they want if we adopt the pending bill.

Mr. TAFT. Mr. President, I do not want to get into a protracted debate at this late hour on this issue. I think that Senators have thoroughly examined it.

Replying to the remarks of the distinguished chairman of the committee, I would point out that really it is not a question of getting way from activity relating to consumers in the various departments. Either way we are going to have it.

The only question is whether we are going to have the various respective departments, which are now charged with an area of regulation and responsibility in our Government, acting for the consumers or against them.

We would have an agency for consumer advocacy to look into the respective departments to oppose them on the positions they are taking, and to tell them they have to take a certain stance. They are going to build up a bureaucracy within their own house anyway with a whole bunch of lawyers, as I mentioned before, all designed to answer and to defend themselves against the attacks of the consumer advocacy agency.

This, to me, is a totally futile process. Inevitably it is going to lead to budget expenditures in the neighborhood of what we are talking about in setting up the various respective offices within the already existing Government departments.

The total cost, of course, of the bill in the authorization that is already admitted, as I understand, by the committee, because of the amendment they accepted yesterday, is a $68 million figure over a period of 2 years.

The cost by any calculation of the figures that we have given on the setting up the agencies within the various departments already existing, plus the independent office in the White House, would be something in the neighborhood of $11 million per year. So that we do have, even at the outset, half of that cost.

I do not say that all of that has to actually come out of the current budget or be added onto the current budget. I believe in many of these departments existing responsibilities within the agencies can be cut back, and ought to be cut back, and that we ought to force the various departments involved which have, in some instances, excessive budgets in the regulatory field, or that are carrying out duties that are totally unnecessary and meaningless insofar as consumers are concerned, in fact, sometimes inimical to the consumers, such as my criticism of the ICC to use their budgets to set up the independent actor for the consumers within their own agency from already existing budgets.

So I do not think the cost picture is exactly as has been represented, and I feel we have here a viable substitute and one that would in the long run be far greater in the interests of the consumers than the bill that is before us without the substitute.

What I fear is, and I do not see any reason why it should not be true, if we set up this independent Consumer Advocacy Agency and it does not work the way we think it should, then within 3 or 4 years we will see it back here in the Congress trying to set up another agency so it can police the Agency for Consumer Advocacy.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to Mr. TAFT's amendment (No. 404) in the nature of a substitute.

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 Indiana (Mr. BAYH), the Senator from Indiana (Mr. HARTKE), the Senator from Illinois (Mr. STEVENSON), and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL) is absent on official business.

I further announce that, if present and voting, the Senator from Indiana (Mr. BAYH), and the Senator from Illinois (Mr. STEVENSON) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from New York (Mr. BUCKLEY), and the Senator from Maryland (Mr. MATHIAS) are necessarily absent.

The result was announced—yeas 28, nays 64, as follows:

[Rollcall Vote No. 179 Leg.]

YEAS—28

Allen	Eastland	McClure
Baker	Fannin	Nunn
Bartlett	Garn	Scott, William L.
Beall	Goldwater	Stennis
Bellmon	Griffin	Taft
Brock	Hansen	Talmadge
Byrd, Harry F., Jr.	Helms	Thurmond
Curtis	Hruska	Tower
Dole	Laxalt	Young
	McClellan	

NAYS—64

Abourezk	Hatfield	Nelson
Bentsen	Hathaway	Packwood
Biden	Hollings	Pastore
Brooke	Huddleston	Pearson
Bumpers	Humphrey	Pell
Burdick	Inouye	Percy
Byrd, Robert C.	Jackson	Proxmire
Cannon	Javits	Randolph
Case	Johnston	Ribicoff
Chiles	Leahy	Roth
Church	Long	Schweiker
Clark	Magnuson	Scott, Hugh
Cranston	Mansfield	Sparkman
Culver	McGee	Stafford
Domenici	McGovern	Stevens
Eagleton	McIntyre	Stone
Fong	Metcalf	Symington
Ford	Mondale	Tunney
Glenn	Montoya	Weicker
Hart, Gary W.	Morgan	Williams
Hart, Philip A.	Moss	
Haskell	Muskie	

NOT VOTING—7

Bayh	Hartke	Stevenson
Buckley	Kennedy	
Gravel	Mathias	

So Mr. TAFT's amendment (No. 404) in the nature of a substitute was rejected.

Mr. RIBICOFF. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. PERCY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 431

Mr. HRUSKA. Mr. President, I call up my amendment No. 431.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. HRUSKA. Mr. President, I ask that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 42, between lines 7 and 8, insert the following:

(c) Notwithstanding any other provision of law, authority and jurisdiction to restrict, limit, regulate or condition, or any measure having the effect of restricting, limiting, regulating or conditioning the manufacture, sale, possession, or use of firearms, ammunition, or any components of ammunition, including (without limitation) black powder and gun powder, shall be vested only upon and by legislation expressly and specifically providing for its applicability to such firearms, ammunition, or any component of ammunition, including (without limitation) black powder and gun powder.

Mr. HRUSKA. Mr. President, amendment No. 431 to S. 200, would provide that any measure having the effect of restricting, limiting, regulating, or conditioning the manufacture, sale, possession, or use of firearms, ammunition, or any components of ammunition, including black powder and gun powder, can be vested only by specific and express legislation enacted by the Congress.

My amendment would go beyond that of the amendment offered by the Senator from Idaho in that it would require positive legislative action by the Congress before any measure, including the pending bill, can confer authority to regulate the sale or manufacture of firearms or firearm ammunition, or ammunition, or ammunition components. Absent affirmative action by the Congress, no regulatory action by any Federal agency in this area, notwithstanding existing law, could be exercised contrary to express statutory authority and the intent of the Congress.

The Consumer Product Safety Commission, established by the Congress in May 1973, has recently become involved in the regulation of handgun ammunition. Its involvement is fraught with difficulty and controversy, and at the present time is subject to judicial interpretation and administrative review. Let me briefly summarize the status of this matter.

In June 1974 the Consumer Product Safety Commission received a petition from the Committee for Handgun Control, Inc., to ban the sale of handgun am-

munition to the general public. The Commission decided on September 5, 1974, to deny the petition on the grounds that it did not have technical jurisdiction over handgun ammunition. In denying the petition of the Committee for Handgun Control, Inc., the Commission stated:

Nevertheless, the Commission does not believe that Congress, in establishing the Commission and transferring to it the authority to administer the FHSA, *intended* to confer upon the Commission the authority to ban handgun bullets as requested by and for the reasons cited by the petitioner. This belief is based upon a careful review of the provisions of the Federal Hazardous Substances Act and its legislative history. The practical effect of the requested ban on handgun bullets, if successful, would be a virtual ban of handguns. There is clearly no authority under any act which the Commission administers to regulate handguns.

U.S. District Judge Flannery, however, overruled this decision and held, on December 19, 1974, that the Commission must consider the petition on its merits. See *Committee for Handgun Control, Inc. v. Consumer Product Safety Commission, et al.*, Civil Action No. 74–1387 (D.O.C.). In reaching his decision Judge Flannery allowed that—

If the Commission remains convinced that Congress would object to the Consumer Product Safety Commission giving consideration to the merits of plaintiff's petition, the proper course is for the Commission to seek clarification from Congress. (supra)

In addition, the Office of General Counsel, Consumer Production Safety Commission, in responding to a request by the Commission for a memorandum on the question of handgun bullets as a "hazardous substance," recommended that the Commission decide that it has jurisdiction over handgun bullets. The Commission, however, meeting on September 6, 1974, rejected that recommendation and stated that in its view, Congress had not "intended" to confer upon the Commission the authority to ban handgun bullets as hazardous substances.

As I have indicated, however, Judge Flannery rejected the Commission's finding and looked to a "plain reading of the statute" test to decide against the Commission. He also ruled that the Commission reconsider the petition on its merits. To comply, the Commission, on February 14, 1975, published the petition in the Federal Register and solicited written comments from all interested persons and groups for a period of 60 days. In the period between February 14 and April 15, 1975, the Commission was inundated with letters and comments from respectable citizens who registered their opposition to the court's decision on handgun ammunition regulation. I know this is true because I have received hundreds of letters and postcards expressing opposition to the decision and also copies of letters sent to the Commission. I am sure that many of my colleagues in the Senate have received similar letters, both in number and in opposition to this ruling.

Mr. President, subsequent to Judge Flannery's December 19 ruling, Congressman JOHN D. DINGELL of Michigan, Senator TED STEVENS of Alaska, and the National Rifle Association, filed motions with the court seeking to intervene as parties to the action. The Consumer Product Safety Commission did not file papers concerning these motions.

Additional motions filed by the three parties included those which would have had the court vacate the order that the Commission undertake a consideration of the merits of the petition. The motions to intervene were denied on February 14, 1975, by Judge Flannery. The motions to vacate were not considered since the intervention was denied.

In addition, a number of bills have been introduced in the Congress to prohibit the Consumer Product Safety Commission for restricting the sale or manufacture of firearms or ammunition. These bills include S. 143, sponsored by the Senator from Idaho (Mr. MCCLURE), and S. 1007, sponsored by the Senator from Kansas (Mr. DOLE). Each of these measures prohibits the Consumer Product Safety Commission from issuing any regulations or orders restricting the sale or manufacture of firearms, firearm ammunition or ammunition.

Mr. President, I want to register strong opposition to the rulings of Judge Flannery that: First, the Consumer Product Safety Commission has jurisdiction and authority to ban handgun bullets, and second, that Congress has failed to express its clear intent not to confer this authority on the Consumer Product Safety Commission by enactment of the Consumer Product Safety Act—Public Law 92–573. It is only through a tortured interpretation of the statutory provisions and legislative history that Judge Flannery reaches these conclusions.

OBJECTION TO THE COURT'S RULING

With regard to the first finding of Judge Flannery that the Consumer Product Safety Commission has jurisdiction over handgun bullets, I must respectfully object to that conclusion. In his opinion, Judge Flannery pursues the following line of reasoning to reach his result. First, under the Federal Hazardous Substances Act—Public Law 86–613—specifically 15 U.S.C. 1261(f)(1)(A), a hazardous substance is defined as:

(A)ny substance or mixture of substances which . . (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children. (15 U.S.C. 1261(f)(1)(A)).

Utilizing section 1262 of the Hazardous Substances Act, the court then concludes that the administrator of the act, formerly the Secretary of Health, Education, and Welfare but now the Consumer Product Safety Commission, has authority to determine which substances meet the definition of "hazardous substance" pursuant to the statute.

The court then proceeds to reason that the administrator of the act, on his own initiative, investigated the question of whether small-arms ammunition qualified as a hazardous substance, and determined that it did. He then issued a regulation to the effect that a narrow labeling requirement was in order containing the usual name of the ammunition, a warning regarding the danger to children, and the name and place of business of the manufacturer. This regulation is still in effect. See 16 C.F.R. 1500.83(a)(6).

The court finally sums up its line of reasoning thusly:

Hence, it is without dispute that small-arms ammunition does constitute a hazardous substance with the Act's definition and that the administrator of the Act has jurisdiction to regulate the hazardous substance.

In short, the court concluded that because the general definition of "hazardous substance" under the Federal Hazardous Substances Act appears to include handgun ammunition, and the administrator also decided it did, issued a regulation under the labeling requirement authority and then, in fact, the Consumer Production Safety Commission has jurisdiction.

Mr. President, it is my contention that the Consumer Product Safety Commission Act expressly exempts firearms and firearms ammunition from the jurisdiction of the Consumer Product Safety Commission. Section 3(a)(1)(E) of the Consumer Product Safety Act—Public Law 92–573—states:

Any article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (determined without regard to any exemptions from such tax provided by section 4182 or 4221, or any other provision of such Code), or any component of any such article.

Furthermore, section 4181 of 26 U.S.C. provides as follows:

§ 4181. Imposition of tax.

There is hereby imposed upon the sale by the manufacturer, producer, or importer of the following articles a tax equivalent to the specified percent of the price for which so sold:

Articles taxable at 10 percent—
Pistols.
Revolvers.
Articles taxable at 11 percent—
Firearms (other than pistols and revolvers).
Shells, and cartridges.

Mr. President, it seems clear to me that the items contained in section 4181 of the Internal Revenue Code are, indeed, exempt from the jurisdiction of the Consumer Product Safety Commission. Unfortunately, Judge Flannery did not take occasion to address these statutory provisions in his written opinion. It is because of these conflicting and almost, far-reaching conclusions by the court that I have introduced my amendment.

LEGISLATIVE INTENT EXPRESSED

In addition, Mr. President, I cannot agree with the judgment of Judge Flannery that the Congress has not expressed itself with regard to the applicability of the Consumer Product Safety Act to firearms or firearm ammunition.

Legislative intent is not then an item to be considered separate and apart from the language of the statute in determining the meaning of the statute as to jurisdiction or anything else. Among the aids used to determine proper statutory construction of statutes are: Statements at committee hearings, legislative debates—where the statements reflect a common agreement among the legislators—and legislative action on a proposed amendment.

Among the most telling of actions in the legislative history of the Consumer Product Safety Act surrounds an amendment offered in the House of Representatives by Mr. BINGHAM of New York. The purpose of his amendment was to restore to the bill the coverage of firearms and ammunition.

Mr. Moss, of California, a principal sponsor of the bill, spoke in opposition to the amendment because "neither the Committee on Interstate and Foreign Commerce nor the special Commission on Consumer Product Safety made any kind of an inquiry into firearms." He also stated:

I do not believe we should here attempt to mislead the public. I am afraid that is what would happen if we were to suddenly have a firearms act without any kind of history as to what we intended. I believe it is an important enough subject to be dealt with as a separate subject.—(*Congressional Record*, at p. 31406, September 20, 1972)

Congressman WIGGINS also opposed the amendment, stressing that if it were passed:

What we (would) have, no more or less, is a gun control bill by administrative rule rather than by act of Congress. (Supra, at p. 31406)

Congressman RANDALL concluded the debate just prior to the rejection of the Bingham amendment with this observation:

We all know, of course, that the Consumer Product Safety Commission created by this bill will have the power and authority to lay down standards as to what products are safe and what products are hazardous. If the amendment of the gentleman from New York should pass, there would be nothing to keep the Commission from declaring that all guns of any and every type, and ammunition of all sorts, are dangerous and hazardous products and thereby achieve through indirection what the antigun lobby has never been able to enact directly—their avowed objective to outlaw all guns and ammunition. (Supra, at p. 31407).

Mr. President, Congress may take on to itself regulatory authority over a particular area of Federal concern, and where Congress has occupied the field, there is no place for supplementary much less conflicting requirement. Congress expressed an intention to preempt decisionmaking with respect to a ban on ammunition as evidenced in the Gun Control Act of 1968. That legislation responded to widespread national concern that existing Federal control was inadequate, recognizing the use of firearms in violent crimes increased. The House Judiciary Committee was persuaded that "the proposed legislation imposes much needed restrictions on interstate firearms traffic and at the same time not interfere with legitimate recreational and self-protection uses of firearms by law-abiding citizens."

CONCLUSION

In summary, Mr. President, based on the questionable interpretation of the statutory provisions surrounding handguns and handgun ammunition jurisdiction by the Consumer Product Safety Commission, and the expression of legislative intent of the Congress in this area, I feel compelled to offer my amendment.

Mr. President, I modify my amendment in this massive bureaucracy of ours. ment by the insertion, in line 7, after the word "powder", the following words: "as defined in 18 U.S. Code section 921".

The PRESIDING OFFICER. Is there objection?

Mr. RIBICOFF. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. RIBICOFF. Mr. President, I raise a point of order that the amendment of the Senator from Nebraska is not germane.

The PRESIDING OFFICER. Does the Senator from Nebraska wish to be heard?

Mr. HRUSKA. Mr. President, I did not hear the ruling.

The PRESIDING OFFICER. Under the rule of germaneness, there is nothing in this bill that relates to the sale of firearms or ammunition, those specific products. Therefore, the Chair holds the point of order to be well taken.

Mr. HRUSKA. Mr. President, I regret that that is the ruling of the Chair. I shall not contest it, call it to a vote, or appeal it. It is to be regretted because, of course, this amendment could have been taken up prior to the cloture motion. It was not. But there will come another day when we can go into it in more detail and on its merits. I thank the Chair.

Mr. RIBICOFF. I thank the Senator for his courtesy.

The PRESIDING OFFICER. The bill is open to further amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 437

Mr. DOLE. Mr. President, I call up my amendment No. 437, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. DOLE. Mr. President, I ask that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 51, between lines 22 and 23, insert the following new section:

"BUDGET REPORTS

"SEC. 25. (a) The Director of the Office of Management and Budget and the Director of the Congressional Budget Office shall each transmit annually to the Congress a report containing an estimate of the amount of funds expected to be allocated for each fiscal year to any office representing consumer interests located within any department or agency other than the Agency for Consumer Advocacy.

"(b) Such estimate shall be included in any committee report accompanying any bill making appropriations for the Agency for Consumer Advocacy.".

On page 51, line 24, strike out "25" and insert in lieu thereof "26".

On page 52, line 11, strike out "26" and insert in lieu thereof "27".

Mr. DOLE. Mr. President, this amendment would require the Directors of the Congressional Budget Office and the Office of Management and Budget to report annually to Congress the estimated amount of funds to be allocated each year to any office representing consumers in any Government agency other than the Agency for Consumer Advocacy.

The amendment further requires that these estimates will be included in any committee report accompanying any appropriations bill for the ACA.

This provision will enable the Congress to determine precisely how much money the Government is allocating to consumer protection each fiscal year. By monitoring total Government spending for consumer programs, Congress will be able to gauge more accurately the efficiency of all such programs. Moreover, these annual reports will be of benefit to the Congressional Budget Committees in analyzing expenditures in the various functional categories of Federal spending.

Mr. President, this amendment will demonstrate further the determination of the Congress to provide fiscally responsible programs to assist consumers throughout the Government.

Mr. President, this amendment has been discussed with the ranking minority member, with the chairman, and with staff members, and I think the amendment is acceptable.

Mr. RIBICOFF. Mr. President, I accept the amendment of the Senator from Kansas.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 435

Mr. DOLE. Mr. President, I call up amendment No. 435.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes an amendment numbered 435.

On page 12, line 23, strike out the word "and".

On page 12, between lines 23 and 24, insert the following new paragraph:

"(15) coordinate its activities with the activities of other executive departments and agencies with respect to consumers; and".

On page 12, line 24, strike out "(15)" and insert in lieu thereof "(16)".

Mr. DOLE. Mr. President, I read the pertinent section, which would insert a new paragraph:

Coordinate its activities with the activities of other executive departments and agencies with respect to consumers;

The purpose and the intent of this amendment is to qualify the working relationship of any future Consumer Advocacy Agency with already established executive offices having similar responsibilities.

Specifically, this amendment would require that the ACA coordinate its activities with those of consumer divisions within other Federal departments and agencies. In that way, we could avoid some of the duplication of effort and waste of man-hours which is so preva-

While the sponsors of the bill might contend that such a mutuality of purpose among governmental units with "consumer interest" labels is implicit throughout the legislation, I think those of us who have reservations about a new independent bureaucracy are entitled to that reassurance in actual language form. That is, this is not something we can take for granted.

There is good reason to be concerned, also, that without the "coordination" stipulation, competition—and even adversity—are likely to develop between the ACA and another element of the Federal organization having supposedly a common, if not identical objective: that of protecting consumers. Accordingly, we should act to incorporate into the law this provision to forestall such an undesirable intragovernmental conflict.

If we are truly seeking to represent consumers, we must do so in a way that will foster cooperation and unanimity throughout the rather large proconsumer community at the executive level. It is my hope that the adoption of this amendment will contribute to that objective.

This is another amendment that has been discussed with the chairman of the committee, with the ranking minority member, and with the members of the staff, and I believe the amendment is acceptable in its present form.

Mr. RIBICOFF. Mr. President, I accept the amendment.

The PRESIDING OFFICER (Mr. BUMPERS). The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 419

Mr. BROCK. Mr. President, I call up amendment No. 419.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Tennessee (Mr. BROCK) proposes an amendment numbered 419:

On page 51, strike out lines 20 through 22, and insert in lieu thereof: "are authorized to be appropriated to carry out the provisions of this section not to exceed $2,000,000 for each of the fiscal years 1976, 1977, and 1978.".

Mr. BROCK. Mr. President, this is simply a funding amendment to allow the agency to conduct such support activities as it desires, under section 24, without depleting the resources of the agency from the essential purpose of consumer protection, which the bill was designed to achieve.

I believe the amendment is acceptable to the ranking member of the committee as well as the committee chairman. I will be delighted if they will comment.

Mr. RIBICOFF. Mr. President, the amendment is acceptable to the manager of the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 424

Mr. BROCK. Mr. President, I call up my amendment No. 424.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Tennessee (Mr. BROCK) proposes an amendment numbered 424:

On page 47, line 1, strike out "first".

Mr. BROCK. Mr. President, this is a very simple amendment which deals with some confusion that has arisen with regard to the cost-benefit statement prepared.

On page 47, it refers to the fact that it shall be first published at the end of the year in the Federal Register.

We are not trying to delay, and I do not think that was the intent of the language, but just in order to clarify the language and be sure we understand this is an annual requirement, and as soon as they can come up with these publications, that is what they are intended to do, I am striking the word "first" simply for clarification purposes.

Mr. RIBICOFF. Mr. President, the amendment is acceptable to the manager of the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 422

Mr. BROCK. Mr. President, I call up my amendment No. 422.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Tennessee (Mr. BROCK) proposes an amendment numbered 422:

On page 48, line 1, strike out the period at the end thereof and insert ", and shall issue regulations implementing this subsection within one hundred and eighty days of the effective date of this Act.".

Mr. BROCK. Mr. President, this is simply a clarifying amendment. The purpose of the amendment is to insure that we have regulations to implement the purposes of the section in a specific time frame.

Last October, the President said that he was going to require executive agencies to implement an inflation impact statement, and here it is, 6 months later. Some agencies have complied; others have not. Others are in specific disagreement with OMB on what the language meant.

All I am trying to do is to put a limit of 6 months on the issuance of regulations, sufficient to promulgate the effect of this particular section. I hope the amendment is acceptable.

Mr. RIBICOFF. Mr. President, the amendment is acceptable to the manager of the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 460

Mr. BROCK. Mr. President, I call up my amendment No. 460.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Tennessee (Mr. BROCK), for himself and Mr. NUNN, proposes an amendment numbered 460:

On page 32, after line 24, insert a new section (d):

(d) Nothing in this Act shall be construed to affect the duty of the Small Business Administration to aid, counsel, assist, and protect the interests of small business concerns, pursuant to section 631(a) of the Small Business Act of 1958 (15 U.S.C. 631(a)), and the Small Business Administration remains the sole executive advocate for the interests of small business concerns.

Mr. BROCK. Mr. President, here, again, we have what I perceive to be a need for clarification. I do not believe it is the intent of the committee or of Congress in any way to limit access to the Small Business Administration on the part of the small business community. What we are saying in this amendment is that nothing in the act should so limit SBA in their desire to aid, counsel, assist, or protect the interests of the small business concerns.

Mr. RIBICOFF. Mr. President, the amendment is acceptable to the manager of the bill and ranking minority member.

Mr. PERCY. I am very happy to accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 458

Mr. BROCK. Mr. President, I call up my amendment No. 458.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 45, line 6, strike the period and insert a semicolon and add two new sections on the following lines:

"(4) the estimated cost of compliance for small business concerns with the agency rule; and

"(5) the effect on the competitive position of small business concerns if the proposed rule is implemented.".

Mr. BROCK. Mr. President, here we have a section on page 45 which deals with the cost and benefit assessment statements. We have, at the moment, three criteria. One is estimated costs that are foreseeable as a result of the effective implementation of such a rule; two is estimated benefits; three is the apparent relationship, if any, between such costs and benefits. What we are attempting to do here is add the estimated cost of compliance for small business concerns as distinct from business in general and the effect on the competitive position of small business concerns if the proposed rule is implemented.

Here we desire to single out the small business community again, as we have done several times in the bill, with additional protective devices to see that they are not abused or unfairly disadvantaged by action of their own Government. They have sufficient competition now, and any step that we can take to support their contribution to the competitive free enterprise system, I think, is well founded.

Mr. RIBICOFF. Mr. President, this amendment is not acceptable to the manager of the bill. I wonder if the distin-

guished Senator from Tennessee would defer consideration of this amendment at this time to see if it is possible to work something out overnight.

Mr. BROCK. Then, Mr. President, I ask unanimous consent to withdraw the amendment without losing my right to resubmit it in similar form.

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

The amendment was withdrawn.

Mr. BROCK. Mr. President, I yield the floor.

AMENDMENT NO. 463

Mr. DOLE. Mr. President, I call up amendment No. 463.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 5, immediately below line 24, add the following new subsection:

(e) There is established within the Agency for Consumer Advocacy an office to correspond with each executive department and multiheaded independent regulatory agency of the Federal Government, to include as a minimum, but not be limited to, the Departments of Agriculture; Commerce; Defense; Health, Education, and Welfare; Housing and Urban Development; Interior; Justice; Labor; State Transportation; and Treasury, and the Civil Aeronautics Board; Consumer Products Safety Commission; Federal Communications Commission; Federal Maritime Commission; Federal Power Commission; Federal Trade Commission; Interstate Commerce Commission; Nuclear Regulatory Commission; and Securities and Exchange Commission. Each such office shall be under the direction of an office administrator appointed by the Administrator and responsible to him. Such office shall be administered in accordance with the provisions of section 4 of this Act.

Mr. DOLE. Mr. President, the Senator from Kansas does not intend to press this amendment. I do hope to discuss it briefly and then ask the chairman, or perhaps the ranking minority Member, to respond.

The intent of the amendment is to lay out some specific guidelines relative to the internal structure of any newly established Agency for Consumer Advocacy.

Very briefly, the amendment would add a new subsection calling for the ACA to have, within its own organizational framework, an office to correspond with certain executive departments and independent regulatory agencies of the Federal Government. Such offices would, thus created, be under the direction of an office head responsible to the Administrator.

What we are concerned about is that we do not, in the new agency which will be created, devote 90 percent of the time and resources to one Federal agency and zero to the others.

Because of the broad interpretation which could be applied to the requirement for separate offices, I am specifying that 11 executive departments—with Army, Navy, and Air Force being grouped under Defense—and at least nine independent commissions or boards be included in the definition. The named agencies would be determined according to their rulemaking and enforcement capacity, as well as their character of being multiheaded.

The purpose of this amendment—for which I think there has been some support in both the committee hearings and the minority views—is two-fold. Primarily, it is to insure that consumers will be represented in all areas of the Government, but it is also to guard against the possibility of the ACA's concentrating all its resources in one special sphere.

In my opinion, we need to build into the act, if not through the amendment which I understand is objectionable, at least through some informal colloquy, that this is the intent of the committee, this is the intent of the legislation, to make certain that we represent consumers in all areas of Government; and second, that there is not any effort to concentrate all the efforts or a lion's share of the efforts in one area of Government.

There should be some provision for internal agency structuring that will be consistent with the bill's purpose of protecting all consumers uniformly. That is, there should be within the ACA organization a separate office to correspond with at least the major elements of our bureaucracy—preferably with some expertise to handle the consumer problems which are unique to each.

While it is perhaps premature to suggest that a zealous administrator could focus his agency's attention on one particular Federal activity with the notion of "doing it in," it seems to me that the potential would be there without some provision for decentralized authority and responsibility. My amendment would establish the breakdown necessary to satisfy such a concern.

Mr. RIBICOFF. If I may respond to the distinguished Senator from Kansas, who has made many, many substantive contributions to this legislation, I am very sympathetic with what the Senator is trying to achieve. My feeling is that the agency should be structured along the lines suggested by the Senator from Kansas. I do feel, though, that it would be unwise at this time to freeze in such a structure, because we do not know from time to time what problems in the economy and the country will take precedence over other problems.

I say that it would be our intention on the Committee on Government Operations, should this become law, to be very zealous in our oversight of this agency. We have provisions in the bill that, after 3 years, it has to come back to Congress for a new authorization. At that time the Congress can take a thorough look at it. The GAO has duties here to monitor this agency.

I would be surprised, personally, if the agency were not structured along the lines suggested by the distinguished Senator from Kansas, but I do believe it would be unwise at this time to freeze such a structure in by way of amendment.

Mr. PERCY. Mr. President, if the distinguished Senator will yield for just a moment, just as a matter of legislative history, I wish to associate myself with the remarks of Senator RIBICOFF.

I think it would be unwise to structure it in law, but I think it would be wise for the agency to consider establishing and using this amendment as guidelines. It would probably be good organization for them to follow the suggestion of the distinguished Senator from Kansas, but I think if we do it as a matter of legislative history rather than as a part of law in this case, it will provide a little more flexibility.

Mr. DOLE. I appreciate the comments of both the chairman and the ranking minority member. I share the view that it is difficult to legislate how the resources and manhours of any new agency shall be used. There are agencies—the FTC, for example—where there are more consumer-related problems and cases and hearings than other agencies. Therefore, based on the colloquy with the chairman and the ranking minority member, I believe we have offered at least some guidelines and some hope and some direction to the Administrator and to those who will be responsible for the direction of the new Agency.

Mr. President, I withdraw the amendment.

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

The amendment was withdrawn.

Mr. RIBICOFF. 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. PERCY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 407

Mr. PERCY. Mr. President, I call up amendment No. 407.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 7, line 2, after the word "citizens" insert a comma and add the following new language: "including consumers and business representatives,".

Mr. PERCY. The purpose of the amendment, Mr. President, is simply to make certain that with respect to the advisory committees already provided for in the bill, in addition to officials of the Federal, State, and local governments, and so forth, we clearly provide for consumers and business representatives alike to allow that there is a good dialog conducted among the various interested participants.

Mr. RIBICOFF. Mr. President, the amendment of the Senator from Illinois is acceptable to the manager of the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment (No. 407) of the Senator from Illinois.

The amendment was agreed to.

AMENDMENT NO. 408

Mr. PERCY. Mr. President, I call up my amendment No. 408.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Illinois (Mr. PERCY), for himself and Mr. JAVITS, proposes an amendment as follows:

On page 3, beginning on line 20, add the following new subsection:

"(C) price and adequacy of supply of goods and services;".

Reletter the following subsections.

Mr. PERCY. Mr. President, the intent of this amendment, to be incorporated in the bill on page 3, is to clarify the fact that price and adequacy of supply of goods and services should be taken into account along with such matters as safety, quality, purity, potency, healthfulness, durability, et cetera, of the product; and preservation of consumer choice and a competitive market, and other purposes to be promoted by the Agency for Consumer Advocacy.

We have inserted here that ACA should take into account the protection of consumers with respect to price and adequacy of supply of goods and services, which certainly is important to consumers.

Mr. RIBICOFF. Mr. President, the amendment of the Senator from Illinois is acceptable to the manager of the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. BROCK. Mr. President, may I take just a minute to ask the Senator a couple of questions?

I think I understand the intent of the amendment. Obviously price and availability are important factors in consumer needs. I am not quite sure what the effect of this amendment is on, apparently, the application of the Agency for Consumer Advocacy dollar. Is it the intention of the Senators to underscore the fact that sometimes price has a great effect on supply, such as wage and price controls, that can result in shortages, or is something else involved that I have not thought of?

Mr. PERCY. No, I think these are two factors of deep interest and concern. After all, we are interested, as we say in this particular section, in the quality of the product, in the purity of the product, in the safety of it, in its performance, in its repairability—all of those are important. But obviously the consumer is interested in price also; and supply, to. For instance, in the whole field of pharmaceuticals, the question of the cost differential between generic pharmaceuticals and brand name products, has been of major concern to the Congress of the United States, particularly when the U.S. Government is a very big procurer of such products. We certainly want specifically to indicate to the Administrator of this act, that price is a critical factor in assessing and promoting the interests of consumers.

Further, if the price is reasonable and the product is good, durable, repairable, and safe, but it is unavailable and is in very short supply, this adversely affects consumers, because it could, by the artificial nature of the shortage of the product, have an impact on price. So that to have the Agency for Consumer Advocacy inquire as to why a product or product line that has been offered and afforded to consumers is not available to them and cannot be procured in adequate quantity, once the market is established and the demand is there, is once again a question we feel is quite germane to the responsibility of an Agency for Consumer Advocacy.

Mr. BROCK. One of the things that has bothered me, and I understand what the Senator is saying, is that quite often our regulatory agencies, rather than achieving a competitive effect, have achieved an anticompetitive effect. The ICC is an example. I think the Senator would agree that there has been some inhibition to the competitive process under that particular regulatory agency.

When they limit competition, and then they put a floor under prices, as they do, they do so under the justification that it will allow them to maintain a quantity of supply. I do not want us getting into a situation where the Consumer Protection Agency is supporting that kind of illogic. I hope that is not the effect of the amendment. I am sure it is not the Senator's intention.

Mr. PERCY. Staff points out that businessmen themselves have raised the question that when regulations have been issued which require safety adjustments to be made on a product, that in itself may make the product unavailable for some time.

Mr. BROCK. Yes.

Mr. PERCY. That might be a matter of concern to the agency.

Mr. BROCK. All right. I accept that.

Maybe it would help if I pose a hypothetical case for the Senator which would very quickly resolve this Senator's question.

I pray that the good Lord will give us the wisdom never to repeat the excesses of the past, particularly with regard to something like the wage and price controls. But if some future Congress were to exercise such lack of wisdom again, would it not be within the scope under the Senator's amendment for the Consumer Protection Agency, or the Agency for Consumer Advocacy, if you will, to protest an imposition of a price so low as to inhibit the adequacy of supply?

Mr. PERCY. Absolutely. That is a perfect example of where the Senate and the House enacted laws which regulated price, that overly restricted demand. In the city of Chicago, we had to have 250 meat inspectors added to the payrolls to try to stamp out the black market that developed overnight because the price was so unrealistically low. The price factor just put all of the meat that was above the counter down below the counter, because shops simply refused to sell it at a price at which they could not replenish their inventories.

This is the very kind of case where it appears as though legislating a price at an artificially low level is not in the interest of the consumer. It restricts supply, it cuts down production, and, in the long run drives prices up.

Mr. BROCK. The Senator and I are in full agreement. If this agency can protect the American people from the excesses of their legislative branch I am all for it.

Mr. PERCY. I do not think the floor manager of the bill can promise that it will do all of those things, but what it can be is an articulate voice. I can only hope that the Members of the Senate and the House of Representatives would listen to that voice. Sometimes in the heat of an issue we rush ahead emotionally to try to resolve a problem with a piece of legislation when someone who is really looking at the balanced overall view of the consumer would come back and say: Wait a minute. You had better take a look at what you are doing because you are really harming the consumer, you are not helping the consumer, even though on the surface it may look to the contrary.

I thank very much, indeed, the distinguished Senator, who has had a long and deep business experience and yet is alined with the consumer and knows as a good producer that the producer grows as he benefits the consumer.

I think this colloquy has certainly helped explain and expand on this particular amendment which, I trust, is ready for adoption.

Mr. RIBICOFF. Mr. President, the amendment is acceptable to the manager of the bill.

The PRESIDING OFFICER (Mr. STONE). The question is on agreeing to the amendment (No. 408) of the Senator from Illinois.

The amendment was agreed to.

AMENDMENT NO. 406

Mr. PERCY. Mr. President, finally I call up amendment No. 406.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read the amendment as follows:

The Senator from Illinois (Mr. PERCY), for himself and Mr. JAVITS, proposes an amendment as follows:

On page 34, line 24, after the word "consumers" insert a comma and add the following new clause: "including but not limited to the factors enumerated in section 2(b)(3),".

Mr. PERCY. This amendment, Mr. President, inserts at the bottom of page 34 of the bill, in subparagraph 11, a phrase which refers back to the section that we have just discussed and amended and would, therefore, incorporate that amendment by reference at this particular point in the bill.

Mr. RIBICOFF. Mr. President, the amendment of the Senator from Illinois is acceptable to the manager of the bill.

The PRESIDING OFFICER. Is all time yielded back? The question is on agreeing to the amendment of the Senator from Illinois.

The amendment was agreed to.

The PRESIDING OFFICER. Who yields time?

Mr. PERCY. Mr. President, I would just like to address one question to the manager of the bill, Senator RIBICOFF.

Some persons have claimed that the Agency for Consumer Advocacy might get involved in matters impinging on the foreign trade policies and actions of the United States.

Could the manager of the bill elabo-

rate on this point for purposes of clarification?

Mr. RIBICOFF. Yes. In answer to your question, foreign trade policies and actions of the United States are an inherent part of its foreign affairs function. As such, they clearly affect relations between the United States and other governments. Any interference with our foreign policy would clearly provoke undesirable international consequences which the United States has a right to avoid.

If allowed, interference in such areas would cause an impracticable and unnecessary interference with actions taken by the United States in the public interest.

Accordingly the bill specifically exempts the national security functions of the Department of State from the bill's provisions. Of course, the views of the public, including those of the consumers in the ACA, can readily be given to agencies concerned with developing policies and actions involving foreign trade.

For example, in the case of issues affecting international trade in textile products, consumers as well as other interested parties are given full opportunity to let their views be known to the agencies involved, following the publication of appropriate notices in the Federal Register.

Section 2(b)(2) of the proposed legislation is specific, however, that nothing in this act is to be construed to supersede, supplant, or replace the jurisdiction, functions, or powers of any agency to discharge its own statutory responsibilities. This would, of course, include the power and responsibility of other agencies to regulate the trade or commerce of the United States.

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

Mr. RIBICOFF. I am pleased to yield to the majority whip.

ORDER FOR RECESS UNTIL 8 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 8 o'clock tomorrow morning.

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

ORDER FOR THE RECOGNITION OF CERTAIN SENATORS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow after the two leaders or their designees have been recognized under the standing order, the following Senators be recognized, each for not to exceed 15 minutes and in the order stated: Messrs. HARRY F. BYRD, JR., HELMS, TOWER, GARN, FONG, CURTIS, STONE, THURMOND, DOMENICI, FANNIN, BUCKLEY, BARTLETT, TAFT, WILLIAM L. SCOTT, LAXALT, MCCLURE, and NELSON.

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

Mr. PERCY. Mr. President, may the Senator from Illinois be added to the debate in the morning?

Mr. ROBERT C. BYRD. Yes.

Mr. PERCY. For a period of not to exceed 5 minutes.

ORDER FOR THE RECOGNITION OF SENATOR PERCY TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that prior to routine morning business, and following the order for the recognition of Mr. NELSON tomorrow, the distinguished Senator from Illinois (Mr. PERCY) be recognized for not to exceed 10 minutes.

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

ORDER FOR THE TRANSACTION OF MORNING BUSINESS AND RESUMPTION OF CONSIDERATION OF S. 200 TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that tomorrow following the conclusion of the orders for the recognition of Senators, there be a period for the transaction of routine morning business of not to exceed 15 minutes with statements limited therein to 5 minutes each, at the conclusion of which period the Senate resume consideration of the pending business, S. 200.

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

CONSUMER PROTECTION ACT OF 1975

The Senate continued with the consideration of the bill (S. 200) to establish an independent consumer agency to protect and serve the interest of consumers, and for other purposes.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENS. Mr. President, it is with great reluctance that I have opposed enactment of S. 200 as presently drafted. For reasons which are peculiar to Alaska and which I shall enumerate hereafter, I find myself forced to conclude that creation of an Agency for Consumer Advocacy would be directly contradictory to the most fundamental interests of Alaska and, therefore, must be resisted.

As my colleagues know, Alaska is a State blessed with a great bounty of natural resources—resources which in the years to come may make the 49th State a focal point in the achievement of our national goal of energy and mineral self-sufficiency.

Sensible development of these resources in an efficient, expeditious, and environmentally sound fashion has become one of the goals of Alaska's citizens. Indeed, the future economic viability of our State and the Nation is dependent upon our sensible, but aggressive, use of these resources.

We in Alaska are confident that the necessary technical and scientific skills to accomplish this monumental job are currently available. We are sure that North Slope oil can be tapped and safely transported over a trans-Alaska pipeline to the benefit of all citizens of this Nation and with only negligible environmental impact. In fact, we are now engaged in that great undertaking as we all know.

How we got this far is a difficult story to tell, but one that bears some repeating here for the lessons it can teach us as we consider this legislation.

Those of you whose privilege it has been to visit our State know that there are few, if any, areas of the globe which can match it for natural and untainted beauty. The heavy hand of industrial pollution and the ravages of urbanization have not yet touched Alaska, and Alaskans are proud of that fact.

We take a back seat to no American in our dedication to maintaining the purity of our landscape.

Yet we will not allow that concern to prohibit the economic development of our State in a way which will guarantee Alaska's citizens the same standard of living that other Americans now have.

What we propose to do, and what we are doing, is to balance these often conflicting interests so that the best of both may be achieved with minimal adverse impact on either. We believe that the trans-Alaska pipeline case is an ideal example of this "Alaskan solution" and we are proud that we have been able to provide national leadership in this area.

Because environmental protection has always been a cornerstone of Alaskan life we did not oppose enactment of the National Environmental Policy Act and the creation of the Environmental Protection Agency. Both the act and the Agency have provided us with a high standard of conduct by which we can assess our own environmental protection efforts. Make no mistake about it, they have not made our lives any easier, but they will make our lives and the lives of our children better in the long run.

This brings me to the reason why I feel compelled to register my strong objection to the legislation now before us. I believe, based on a considerable amount of study of the hearing records and background of S. 200 and its predecessor S. 707, that the enactment of this type of legislation will jeopardize the significant environmental and economic achievements which Alaskans have made over the years.

S. 200 proposes to create an agency which would be empowered to intervene and participate in every formal or informal action of the Federal Government where an "interest of consumers" is thought to exist. More than that, the Agency for Consumer Advocacy is given the extraordinary authority to employ interrogatories, use host agency subpena power and appeal Federal agency decisions to the courts.

Now, these powers would perhaps be tolerable were it not for the fact that the bill's proponents have refused to confine the consumer advocate to a jurisdiction clearly related to consumer concerns. Rather, they have said that virtually anything may be considered an "interest of consumers" and thereby have created an agency without bounds.

There can be little question that the framers of this legislation long ago wanted a consumer advocate who could become deeply involved in environmental issues.

I would urge you to pay particular attention to a comment made by Lee C. White, chairman of the Energy Policy Task Force of the Consumer Federation of America. Mr. White, who was formerly the Chairman of the Federal Power Commission, said the following on March 27, 1973, during Senate committee hearings on this bill's predecessor, S. 707:

I think it is possible for consumer groups and for environmental groups to be in total disagreement on whether it (the pipeline) ought to come down through Alaska or whether it ought to come down through Canada, or whether it should come down at all.

It seems to me in those circumstances that it is possible that the consumer advocate can be very useful and very helpful to the Government in assigning different teams to be advocates within the same proceeding and through as much light and information and analysis and argumentation into the process as is possible.—Lee C. White, Chairman of the Energy Policy Task Force of the Consumer Federation of America, Hearings Transcript, p. 362.

The conclusion I necessarily draw from this testimony, and from the fact that the Environmental Protection Agency is clearly covered by S. 200 as an agency over which the ACA will have jurisdiction, is that we are being asked to create yet another layer of bureaucracy to complicate and compound the administration of Federal environmental legislation. This I am unwilling to do, and my reasons are several.

First, anyone who has dealt with the EPA knows there is little cause to fear that it is not doing the job Congress gave it. In fact, many of my colleagues frequently seem to think it is doing too good a job. Certainly, in this complex and delicate public interest area over which it has jurisdiction, the EPA does not need badgering by another agency concerned only with the consumer interest.

I must confess that I do not regard S. 200 as a simple little bill which will cause a few ripples. I am mindful of a recent comment of Judge Henry J. Friendly, chief judge of the U.S. court of appeals for the second circuit, which is referred to in the minority views on S. 707. In commenting on the problems raised by certain "simple" provisions of the National Environmental Policy Act, he states:

One must wonder whether the framers of the seemingly simple formulation (in NEPA) that any Federal Agency which proposes any action that "would have a significant effect upon the quality of the human environment" must prepare an impact statement, could have remotely conceived the volume of litigation it would spawn. In practical effect it has come to mean that any proposed federal action having a conceivable effect on the environment will become the subject of a suit, whether successful or not.

NEPA-generated litigation will not even hold a candle to the volume of litigation which an ACA can be expected to create. Remember, one of the ACA's main purposes is to litigate the decisions of other agencies.

The only result of all this for Alaskans is delay and disruption of Federal decisionmaking processes upon which so much of our State's future depends, and I for one am not willing to wager that future on an untried and unprecedented legislative experiment.

This is not an idle fear when one studies the above-mentioned testimony and reads the news releases and study the compilation of voting records of some of the consumer associations. In the 1973 voting record compilation of the Consumer Federation of America, 13 votes were identified as key rollcall votes on consumer issues for the first session of the 93d Congress. Three of these votes concerned amendments to S. 1081, the bill to authorize construction of the Alaska pipeline. While at least two of these votes were concerned with issues of importance to consumers, I was seriously troubled by a third vote flagged as a key consumer vote. This concerned an amendment to delay authorization of the trans-Alaska pipeline pending further study of the Canadian alternative. The Consumer Federation states that "(a) yes vote is a right vote for consumers." The vote for a further delay in construction of the pipeline, in my opinion, if anything, was an anticonsumer vote because of the delay which would have been caused in the delivery of new oil to the American consumer.

The vote on the Canadian route versus the Alaskan route, in my opinion, was not a consumer issue. I am afraid that unles the language in S. 200 is amended, the concepts of environmental protection and consumer protection will become blurred with the average American coming out the loser. With the debate regarding the routing of the gas pipeline now going on as well as the unque position Alaska now finds itself in relation to the sensible development of its natural resources, I must insist upon the following amendments before I can support S. 200.

My first amendment would limit the authority of the ACA in the following way. It is necessary to exempt the routing of the Alaskan pipeline. I must insist that the Agency for Consumer Advocacy be specifically excluded from this area. I am afraid that if this is not the case, the Federal Government would be intervening in pipeline routing decision in Alaska representing consumers located in the heavily populated areas in the Midwest and Eastern States.

My second amendment would restrict the activities of the ACA to prevent it from becoming involved in lobbying activities on the local, State, or Federal level. I believe this amendment is necessary to keep the employees of the ACA directed toward the task of their agency would be created for and not allow them to get involved in lobbying on such matters as resource problems which affect the State.

Mr. President, unless both my amendments are accepted, I cannot support S. 200.

AMENDMENT NO. 411

Mr. STEVENS. Mr. President, I would like to call up my amendment 411.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk proceeded to read the amendment.

Mr. STEVENS. Mr. President, I ask unanimous consent that the further reading of the amendment be dispensed with.

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

Mr. STEVENS. Mr. President, I ask unanimous consent to strike all of the amendment on page 2, line 3, that is, all following line 3 on page 2.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. STEVENS. Now, Mr. President, I would also ask to strike the numbering of (1) on line 4, page 1, and I ask unanimous consent to strike that. It is surplusage now.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The amendment, as modified, is as follows:

On page 37, between lines 11 and 12, insert the following new section:

(c) Notwithstanding the preceding provisions of this Act, the Administrator shall not intervene in any agency or judicial proceeding or activity with respect to—

The grant or enforcement of any right-of-way, permit, lease, or other authorization that is necessary for, or related to, the routing or construction of any oil or natural gas pipeline system located in whole or in part in the State of Alaska, or the enforcement of any environmental law relating to routing or construction of any oil or natural gas pipeline located in whole or in part in the State of Alaska;

Mr. STEVENS. I thank the Chair.

With those deletions, the amendment is identical now to the amendment offered by Senator PERCY for himself and Mr. JAVITS. It was actually offered on my behalf in my absence and this amendment now is identical to the amendment that was agreed to at the time this bill was before the Senate in the last session.

Its impact is to remove from the authority of the administrator the right to intervene in agency or judicial proceedings with regard to the enforcement of rights of way, permits, leases, or other authorizations necessary for the routing or construction of any gas pipeline located in whole or in part in the State of Alaska.

Mr. President, my reason for offering this amendment is that my State will produce, we believe, at least one-third of the oil that is to be produced in the future from lands in the United States and probably 50 percent of the new natural gas.

The construction of our pipelines, in and of themselves, become cause celebres, and we believe that with the proceedings that will take place before the Federal Power Commission, before the Department of the Interior, under the protection of the National Envionmental Protection Act, and also under the Rights-of-Way Act that was passed by Congress in the last session, many of them will actually, finally, have to be approved by the Congress iteself.

We just do not see any reason to insert the jurisdiction of another agency into the review of the questions.

I have discussed the matter with the managers of the bill. I am hopeful that in accordance with the action taken the

last time the bill was on the floor that the managers of the bill will accept the amendment.

Mr. RIBICOFF. Mr. President, the amendment of the Senator from Alaska is acceptable to the manager of the bill and the ranking minority member, Mr. PERCY.

The PRESIDING OFFICER (Mr. STONE). Is all time yielded back?

Mr. STEVENS. I yield back any time I have.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alaska (Mr. STEVENS).

The amendment was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. RIBICOFF. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 412

Mr. STEVENS. Mr. President, I call up my amendment No. 412.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read as follows:

On page 17, line 23, strike the word "courts." and substitute the words "courts, or to engage directly or indirectly in lobbying activities before State or local agencies, or the Congress, in the manner prohibited by section 1913 of title 18, United States Code.".

Mr. STEVENS. Mr. President, this is also the amendment I offered the last time the bill was before the Senate.

I think it is probably the intent of the primary managers of the bill, in any event, because of the prohibitions already contained in section 1913 of title 18, United States Code, but just to make certain that all those connected with this agency realize that they are bound by this provision, I offer this amendment again.

I hope that the managers of the bill will accept this amendment. It will prevent lobbying activities on the State or local level by the consumer advocates.

I think they are not intended to be involved in that type of activity, but just to make sure, I offer the amendment.

Mr. RIBICOFF. Mr. President, the amendment of the Senator from Alaska is acceptable to the manager of the bill.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the amendment of the Senator from Alaska.

The amendment was agreed to.

Mr. RIBICOFF. Mr. President, on Monday, the Senate adopted an amendment to S. 200 put forward by the Senator from North Carolina (Mr. MORGAN).

The amendment provides that the Administrator shall not participate or intervene in any agency or judicial proceeding at the State or local level, and that it shall provide information to State, or local officials only at their request.

Mr. President, this amendment modified a provision worked out with the Senator from Montana (Mr. METCALF) during full committee markup of S. 200. Accordingly before accepting the amendment of the Senator from North Carolina, I checked with the Senator from Montana and he indicated that he would not oppose adoption of Mr. MORGAN'S amendment. However, I do not want to leave the implication that the provision which was adopted on Monday has the enthusiastic approval of the Senator from Montana. The Senator from Montana would prefer that the ACA have full authority to intervene or participate at the State or local level at the request or of State or local officials. I understand that Senator METCALF still strongly holds this position, notwithstanding any action the Senate took this past Monday on this provision.

Mr. JACKSON. Mr. President, the Senate has invoked cloture on the Consumer Protection Act of 1975 by an overwhelming margin and we are about to vote on final passage of this vitally important legislation. This is a proud moment for those of us in the Senate who have labored for many years to produce a consumer protection bill that will assure an effective voice for consumers in Federal regulatory proceedings, and at the same time prevent delay or undue burdens for business in the regulatory process.

During the years this legislation has been under consideration there have frequently been scare stories and alarmist objections that the Agency for Consumer Advocacy (ACA) will bring the regulatory process to a halt, that it will operate to harass businessmen, that it will impose excessive burdens on business, and other charges. There is a growing understanding that these charges are simply false.

The Consumer Protection Act is intended to be a "pro good business" as well as a "pro consumer" bill. I believe that as the interests of consumers are articulated by the ACA under this legislation it will become apparent to all businesses that the interests of consumers and the interests of business need not be inimical to each other. This is already understood by a growing number of major American corporations which have expressed support for S. 200. The list includes: Montgomery Ward, the Polaroid Corp., Zenith, Inc., United Artists, the Atlantic Richfield Co., and Gulf & Western, Inc. to name just a few.

During Government Operations Committee consideration of S. 707 last year and S. 200 this year, 34 major changes have been made to assure that the Agency for Consumer Advocacy does not cause delay in the regulatory process or undue burdens on business. These include special protections for small business against burdensome interrogatories, provision for GAO review of ACA activities, a provision that all Federal agencies must make a cost benefit analysis of proposed regulations prior to issuance, and many other changes.

I believe that these changes have satisfied the legitimate concerns of businessmen without impairing the overall effectiveness of the Agency. Rarely is a piece of legislation subjected to the detailed analysis and scrutiny which the Consumer Protection Act has been subjected to over the years. I am pleased that we have now arrived at a solution to the problems of balancing consumer, regulatory, and business interests in a constructive manner.

I would also note that the ACA will be, at least in its early years, a very lean organization. S. 200 provides the Agency with an authorized budget of $15 million. This budget limitation itself will serve to focus the ACA on those Federal regulatory proceedings in which there are truly vital consumer interests involved. The Agency simply will not be able to waste resources by frivolous interventions in unimportant cases. During these early years, the Congress will be especially concerned to see that the ACA develops as an effective and responsible consumer advocate and future authorization levels will be directly related to the ACA's performance.

The need for an agency to act as an advocate for consumers during the course of the Federal regulatory process has been well demonstrated and documented over the past 5 years of Senate and House consideration of this legislation. The major factor giving rise to this need is the unique nature of consumer interests, which is largely responsible for the absence of effective consumer representation before Federal agencies. Consumers are usually poorly organized and ill-equipped to effectively present their point of view to a Federal agency. This occurs because regulatory decisions which may make the difference of only a few dollars to an individual consumer do not make it worthwhile for an individual or even a relatively large group of individuals to present their views in the course of a Federal agency proceeding.

The Consumer Protection Act does not establish a new regulatory agency or any new regulatory process. It does not create any lew legal remedies. S. 200 merely creates an agency which can serve as an advocate for consumers in the course of otherwise authorized regulatory activities which affect millions of consumers. The legislation does not provide for intervention in every Federal agency proceeding, but only proceedings where "substantial consumer interests" are involved. Specifically the act seeks to protect consumer interests in "marketplace" transactions in which consumers are participants. The act assures that existing legal rights and remedies which consumers already have can be more effectively raised by the Agency in their behalf. In addition, the ACA will transmit factual information about consumer interests to the attention of regulatory agencies for consideration in connection with pending proceedings. Much of the problem of adequately representing consumer interests will be solved by simply improving the flow of relevant information to agencies so that this information can be taken into consideration. These simple improvements in the existing mechanisms for considering the impact of agency decisions on consumer interests will not impair or impede the regulatory process, and they will greatly enhance the goal of providing the Ameircan people with a better quality of goods and services at reasonable costs.

I am pleased by the resounding support

which the Senate gave this legislation yesterday in the cloture vote, and I urge my colleagues to give this measure their continuing support as we move toward final Senate passage of S. 200.

CONSUMER AGENCY NEEDED TO IMPROVE GOVERNMENT

Mr. ABOUREZK. Mr. President, the establishment of an Agency for Consumer Advocacy is long overdue. As a cosponsor of S. 200, I urge the Senate to approve the bill promptly and restore some of the confidence which the public has lost in the processes and decisions of Government.

I am not surprised that polls show the public distrusts the Government, and believes that special interests have too much influence. When groups have huge lobbying budgets for their Washington offices and law firms, they get their point across to the rulemakers. In Washington, where a voice and a budget and a spokesman can mean influence, the consumer loses out.

If any evidence were needed of the ability of business to mobilize for lobbying, I would point to the mail that has been arriving in Senate offices about this very bill. I am not belittling the people who wrote. The letters are well written, sincere, and timely. They are, however, an example of how business, labor, and other well-organized interests make their wishes known, and do so very effectively.

The average family is simply unable to regularly gather information, notify fellow citizens, and apply pressure at the right place at the right time to be equally influential. For 14 years Congress has been trying to rectify the situation. I believe that an independent, nonregulatory consumer advocate within the Government is the proper approach.

When the Congress or a court or an executive agency makes a decision of public policy, the precondition should be maximum discussion, input, and argument among diverse interests and public scrutiny of the process and result. Unless people can see that all sides have been fairly heard, that officials have acted on the best information available about the consequences of a decision, the public is justified in suspecting that the Government has not served the public interest.

Often consumers do not even know that decisions on the price and supply of fuel, the safety of food and drugs, the cost of an airplane ticket, or the closing of a veterans hospital are being considered. Representing consumers where they have not been adequately heard will be the responsibility of this Agency at the dozens of Government hearings and offices every day.

Public policy which is more far-sighted, equitable, and credible will be the result. I urge the Senate to approve the Consumer Protection Act of 1975.

Mr. BROOKE. Mr. President, the business community has lost public confidence in large measure.

In 1965 less than 50 percent of the public showed a low measure of approval for business. Today it is more than 67 percent.

In 1965, only 52 percent believed that too much power is concentrated in a few large corporations. In 1973, 75 percent believed that.

A recent Harris poll reported that 77 percent believed that Federal regulatory policies should be more restrictive toward businesses. Only 1 percent thought that there was too much Government regulation.

Another survey showed that 75 percent believed that Government should set minimum quality standards for all consumer products. Seventy-seven percent believed that a Federal department of consumer affairs was needed. And 68 percent believed that there should be greater Government control over advertising, sales, and market activities.

These strong antipathies toward business have contributed to the present consumer movement, a movement which has been gaining momentum since the late 1960's.

The consumer has come to feel that his legitimate interests are ignored if not conspired against. The consumer has become aware of a wide range of questionable and often unsafe consumer practices by the business community and by the Government. And these practices have cost him dearly.

The worsening economic condition, the onslaught of double-digit inflation and a deepening recession, have added further fuel to the consumer cause. In the past 7 years, the cost of living has spiraled by almost 50 percent. Inflation raised prices by 12.2 percent last year, the highest inflation rate since price controls were removed at the end of the Second World War. Significantly, the public feels that many of these price increases are unwarranted.

It is, therefore, not an overstatement to say that American business is in serious trouble. David Rockefeller of the Chase Manhattan Bank has warned that unless business becomes more responsive to complaints and criticism, "we may expect to see many aspects of free enterprise drastically altered by an enraged society."

If then we are to avoid destruction of the free enterprise system, if we are to avoid increasing regulation of business by Government, we—the Congress and the business community—must act now, together, to restore public confidence. Delaying or obstructionist tactics by either Congress or the business world will only lead to a further deterioration of public confidence.

The need for a Consumer Advocacy Agency is great. The American consumer, and virtually everyone is a consumer, has never been formally represented in the Federal Government.

The President has had a consumer adviser for some years now, but this person has never had the legal authority to take action on behalf of aggrieved consumers. Establishment of the proposed Consumer Protection Agency would provide that authority.

Too often in the past, the interests and concerns of the product-and-service-buying public have been lost in the bureaucratic shuffle involved with the proposal, debate, passage, and implementation of new legislation. The ACA would act as an advocate for these formerly unrecognized interests.

As a cosponsor of the Agency for Consumer Advocacy bill, I believe it is excellent legislation. It would benefit all concerned.

It would focus consumer concern in one agency for the first time. Right now, when consumers are faced with unsafe or shoddy merchandise, or a service that does not live up to its promise they are unsure of who to write to for assistance. Letters of consumer concern have been scattered among the Members of the House and Senate, and among the various Federal agencies and commissions. Often little or no action is taken in behalf of these worried consumers. With the establishment of the ACA, consumers would have people who are working specifically on their problems. The sometimes weak, half-hearted consumer efforts by agencies which are mainly concerned with other areas would become concerted efforts that would produce results.

The agency, if established, is bound to receive thousands of letters a year from consumers who are unhappy with certain goods or services. The Administrator is instructed to follow up on these letters, which, in effect, would become the consumer's link to the Federal Government. The ACA Administrator would: First, keep a tally of letters directed at specific businesses and then, at certain times, pass these complaints along to that business along with suggestions to prevent future complaints; second, pass along all relevant complaints to the proper Federal agency and, again, submit suggestions for the protection of consumer interests; third, watch for any complaints that seem to point out a violation of Federal or State law in relation to consumer interests, and then to take the appropriate action to end this unlawfulness; fourth, make sure other Federal agencies also "follow up" on complaints submitted to them by the ACA; and fifth, to make available for public inspection all complaints and replies to these complaints. The Administrator may also, under his informational powers, authorize the research and publishing of a report in a particular area of consumer complaint.

Establishing an Agency for Consumer Advocacy would help insure that Federal agencies are familiar with the views and interests of the consumer, thereby enabling such agencies to carry out responsibly their statutory obligations.

Another important function of the ACA is its ability to represent the consumer in the courts. The Administrator would be able "to obtain judicial review of any Federal agency action reviewable under law." Critics of the ACA have charged that the Administrator would be "meddling" in many court cases and holding up important court decisions. This is an unjust charge. I believe that this judicial function would simply mean

that consumer interests would be properly represented for the first time. This would, hopefully, prevent any court decision from being overly protective of business interests. And, through its informational function, the ACA would inform the public of all relevant decisions affecting consumers. Of course, this Agency and its Administrator would have no authority to enact any regulations or enforce any sort of a decision.

I also believe the information-gathering and dissemination powers of this new Agency would benefit the consumer. The surveys, investigations, and conferences that the ACA would initiate in the field of consumer affairs would provide important information to other agencies on the concerns and needs of consumers.

Critics of the proposed structure of the Agency for Consumer Advocacy argue that establishment of independent nonregulatory, special interest agencies is a poor way to run the Government. However, this country has traditionally relied on the adversary system to produce governmental and judicial decisions that are as fair and as consistent with the public interest as possible.

This act does no more than to make this adversary process more complete by including representatives of interests heretofore largely neglected. Neither Federal agencies nor businesses can fairly object to permitting all sides to be heard.

Other critics feel that the Agency will create interagency confusion and interfere in affairs that are irrelevant to consumers. I believe that the ability to participate in the so-called informal activities, as well as "formal" proceedings of Federal agencies is absolutely necessary to the effectiveness of this Agency. The presence of the consumer advocate would not create any confusion in the Federal Government, it would only help to make an important voice be heard. We all know that a great number of important decisions are made in the informal activities of Federal agencies. It is often said that as much as 90 percent of all agency activites are "informal." If this Consumer Advocacy Agency cannot participate in these informal activities, its power would be greatly reduced.

Despite its potential effectiveness, however, the Consumer Protection bill is relatively modest in size and cost. The cost would be $15 million the first year or 1/60th of the budget of the Department of Commerce, the Department charged with promoting commerce and industry. The Agency would cost approximately 17½ cents per person. It would be a wise buy.

Yet, despite all these benefits, Congress has now spent more than half a decade trying to enact an effective consumer advocacy and protection agency.

Last year the House of Representatives passed the Consumer Protection Act of 1974 by an overwhelming vote of 293 to to 94. But in the Senate, we fell one vote shy of cutting off a filibuster and bringing the issue to a vote.

However, with the continued endorsement of progressive business concerns, the recent change in the filibuster rules, and increasing consumer awareness, the prospects for passage of a Consumer Protection Agency are considerably brighter this year. I hope that the Congress will procrastinate no longer in passing this essential legislation. I urge all Senators to vote for the passage of S. 200.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that a statement and a resolution by the Senator from Alaska (Mr. GRAVEL) on the bill be printed in the RECORD.

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

STATEMENT BY SENATOR GRAVEL
AGENCY FOR CONSUMER ADVOCACY

The bill to establish an Agency for Consumer Advocacy, which we have been considering in the Senate these past several days, embodies a fundamental principle of our constitutional form of government. Our government of checks and balances is an adversary system which derives its strength and vitality from its technique of pitting various elements against one another, but with all working for the common public good. The Agency for Consumer Advocacy is an extension of this basic idea. It will assure the American public an even greater voice in the operation of their government by establishing an advocate for the people vis-a-vis the already existing agencies.

The support of the people of Alaska for the creation of an Agency for Consumer Advocacy was recently expressed by the unanimous passage in the Alaska State Senate of Senate Joint Resolution No. 29, expressing its endorsement of S. 200, and calling for early and affirmative action on this legislation. I ask that the resolution be printed in the RECORD.

The resolution is as follows:

SENATE JOINT RESOLUTION NO. 29

Be it *Resolved* by the Legislature of the State of Alaska:

Whereas S. 200, the Consumer Protection Act of 1975 is currently pending before the United States Congress; and

Whereas if this legislation were enacted it would establish an independent, nonregulatory Agency for Consumer Advocacy to speak for consumers in our Nation's capital; and

Whereas the proposed agency would be authorized to advocate the interests of consumers before federal agencies and courts and would provide the American public with information about consumer matters; and

Whereas the agency would act as a clearinghouse for consumer complaints and would maintain an up-to-date file of complaints for public inspection; and

Whereas passage of the proposed legislation would benefit each and every citizen of this great country; be it

Resolved by the Alaska State Legislature that it staunchly supports passage of S. 200 and urges the United States Congress to take early affirmative action enacting the proposal.

Copies of this resolution shall be sent to the Honorable Abraham Ribicoff, Chairman, Senate Government Operations Committee; the Honorable Jack Brooks, Chairman, House Government Operations Committee; and to the Honorable Ted Stevens and the Honorable Mike Gravel, U.S. Senators, and to the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

Mr. BAYH. Mr. President, I am pleased that cloture was invoked yesterday on S. 200, the legislation which would create an independent, nonregulatory Agency for Consumer Advocacy. This landmark bill, the product of many months of hard work and compromise during this Congress as well as past Congresses is aimed at assuring a voice for American consumers in matters affecting their own health, safety, and pocketbooks.

Proposed legislation to create a consumer protection agency has been exhaustively considered by the Congress since it was proposed in 1969. The Senate has considered this legislation three times before—it passed a consumer protection bill in 1970 by a vote of 74 to 4, and in 1972 and 1974 votes on similar bills were blocked by filibusters. In each of those instances, I supported this legislation. Now, once again, the Senate has the opportunity to properly protect the interests of consumers within the Federal Government. I am looking forward to the 94th Congress as the Congress which at last sees the enactment of the Agency for Consumer Advocacy.

The most important function of the Agency for Consumer Advocacy under this legislation will be to represent consumer interests before Federal agencies and courts, and to provide the public with information about consumer matters. It will participate as an advocate in Federal agency proceedings, speaking for the financial, safety, and health interests of consumers. The ACA will also be authorized, where necessary to protect consumers' interests, to seek judicial review of an agency proceeding which by prior law is subject to review.

Over the years there have been some who have voiced reservations about the creation of a Consumer Protection Agency, fearful that it would encroach upon the legitimate prerogatives of both Federal agencies and the business community. For those critics I would like to stress that the ACA will in no respect have the power to regulate the activities of business. It will have no authority to force other Federal agencies to take any particular regulatory actions. On the contrary, the ACA will act solely as an advocate and spokesperson for consumer interests.

The need for such a consumer spokesperson is self-evident. Ten to fifteen percent of the consumer's purchasing power is said to be wasted because consumers are unable to get the information they need to find the best buy. An estimated $14 billion annually is wasted in supermarkets alone through deceptive and confusing packaging and labeling practices, which prevent the consumer from finding the best buys. Additional billions are wasted on ineffective drugs, nonnutritious foods, and cosmetics.

Other statistics point to an even more urgent need for a Consumer Protection Agency. About 20 percent of deaths and injuries throughout the country during the last year are said to have been related to household consumer products:

The U.S. Public Health Service estimates that toys injure 700,000 children annually. According to the Toy Manu-

facturers Association, 15 percent of the toy related accidents are caused by faulty toys;

The National Commission on Product Safety reports that 60,000 people annually are injured by cosmetics severely enough to restrict normal activity or require medical attention;

Approximately 1,500 recall campaigns involving 45,453,823 motor vehicles were initiated by the Department of Transportation over the last 7½ years.

Whenever we experience skyhigh mortgage rates or highly inflated price rises or fare hikes, whenever we have a political milk deal or an international wheat deal, the consumer is usually the first to feel the squeeze and often the last to be heard.

In part the consumer experiences these misfortunes because the agencies and departments of the Federal Government have failed to adequately consider the needs and concerns of consumers in the course of the decisionmaking process, and in part consumers experience these misfortunes because there is no agency responsible for the dissemination of consumer-oriented information.

While I feel that the consumers of this country deserve to have their own advocate in the halls and meeting rooms of the Federal Government, I have also been concerned with the objections raised by members of the business co mmunity to the creation of a new layer of Federal bureaucracy. Particular concern was raised by a number of small businessmen, concerned with the financially burdensome provisions of the disclosure requirements under the legislation. In response to this legitimate concern, S. 200 provides an exemption for any company with assets of under $7.5 million, net worth of under $2.5 million, or average net income of under $250,000 from the interrogatory section of the bill.

Another legitimate concern that has been expressed to me be members of the business community has related to the potential for the ACA to engage in fishing expeditions by seeking unnecessary information from businesses. The ACA is given only limited powers under this legislation to gather consumer related information by sending out questionnaires to those engaged in business activities which substantially affect consumers' interest. Business can challenge these requests in court and they will be enforced only if the recipient shows that they are excessively burdensome. Moreover, the ACA cannot use this power if the information is already available publicly or from another agency. The ACA has no independen. subpena power, but it does have the same right to ask a host agency to use its subpena power as any other party under the Administrative Procedure Act.

Another legitimate concern expressed by the business community has related to trade secrets. The ACA would be prohibited from obtaining trade secrets under S. 200. It would be subject to the same criminal liability for the exposure of trade secrets or any other confidential information acquired from another agency if that agency stated that the information is exempt from disclosure under the Freedom of Information Act.

There has also been concern expressed over the effect of the ACA on informal negotiations between government and business. I should like to point out that under this legislation, the ACA may not request to appear at the same time a member of the business community is making his presentation.

The ACA does have the right to participate in agency proceedings by presenting written or oral submissions in an orderly manner and without causing undue delay.

A majority of businesses have nothing to fear from this legislation. The ACA will help a majority of American businesses to keep their good name, and will help promote the consumers' faith in both American business and the governmental process. I feel strongly that this legislation deserves the support of the business community, as well as all other segments of our society which will receive direct benefit from a spokesperson for consumer interests.

Mr. President, I support the fundamental principles of the consumer advocacy bill, and hope that the Senate, will enact this much needed legislation.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene tomorrow at 8 a.m. following a recess. After the two leaders or their designees have been recognized under the standing order, the following Senators will be recognized, each for not to exceed 15 minutes, and in the order stated: Messrs. HARRY F. BYRD, JR., HELMS, TOWER, GARN, FONG, CURTIS, STONE, THURMOND, DOMENICI, FANNIN, BUCKLEY, BARTLETT, TAFT, WILLIAM L. SCOTT, LAXALT, MCCLURE, and NELSON; to be followed by Mr. PERCY for not to exceed 10 minutes.

At the conclusion of these orders, there will be a period for the transaction of routine morning business of not to exceed 15 minutes, with statements limited therein to 5 minutes each.

At the conclusion of routine morning business, the Senate will resume consideration of the pending business, S. 200. Rollcall votes will occur thereon.

ORDER FOR ROLLCALL VOTES TO OCCUR AFTER 12:30 P.M.

I ask unanimous consent that no rollcall votes occur before 12:30 p.m. so as to allow committees to perform their work without interruption.

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

Mr. ROBERT C. BYRD. Mr. President, there will be rollcall votes on amendments to S. 200. Hopefully, final passage of that measure will occur tomorrow—hopefully, I say again—and there will be rollcall votes on final passage.

Then, following the action on S. 200, it is the intent of the leadership to call up the bill, S. 1661, to enable the United States to render assistance to or in behalf of certain migrants and refugees.

Following the action on that bill as of now it would appear that the Senate will probably take up S. 1730, a bill to improve the reliability, safety, and energy efficiency of transportation and to reduce unemployment by providing funds for work in repairing, rehabilitating, and improving essential railroad roadbeds and facilities.

Also waiting in the wings and scheduled for action very soon are the following measures: The supplemental appropriations bill which was reported from the Committee on Appropriations yesterday; S. 522, a bill to implement the Federal responsibility for the care and education of the Indian people; S. 182, a bill to authorize the appointment of Alexander P. Butterfield to the retired list of the Regular Air Force; S. 846, a bill to authorize the further suspension of prohibitions against military assistance to Turkey; the military authorization bill which has been reported from the Committee on Armed Services. These measures are not necessarily listed in the order in which they will be taken up.

There is a conference report on the housing bill that is coming along. Next Tuesday will be the 10th day and the last day for the President under the Constitution to veto the surface mining bill if he decides to veto it. If so, at some point next week, the Senate may be confronted with a possible override of that measure.

As to the disputed election in New Hampshire, the committee report hopefully will be coming along in the very near future, but I doubt that the Senate will be able to take up that matter, until after the recess.

Mr. President, it looks as though we have plenty of action ahead of us tomorrow, Friday, Monday, Tuesday, Wednesday, and so on, with rollcall votes occurring daily.

RECESS UNTIL 8 A.M. TOMORROW

Mr. RIBICOFF. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until the hour of 8 a.m. tomorrow.

The motion was agreed to; and at 5:45 p.m. the Senate recessed until tomorrow, Thursday, May 15, 1975, at 8 a.m.

NOMINATION

Executive nomination received by the Senate May 14, 1975:

IN THE AIR FORCE

The following officer under the provisions of title 10, United States Code, section 8066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 8066, in grade as follows:

To be lieutenant general

Maj. Gen. Martin G. Collada[illegible] XXXX XXX-...FR (major general, Regular Air Force), U.S. Air Force.