operated at a profitable level over any such line.

(b) In conducting the study required by subsection (a), the Office shall solicit the views of carriers, shippers, manufacturers, and other interested persons, and shall give due consideration to the existing and potential industrial and manufacturing activity in the area to be served by the line of railroad being studied.

(c) The Office shall, within 6 months after the date of the enactment of this Act, make its determination as to whether rail service can be operated at a profitable level over any line of railroad studied pursuant to subsection (a). Prior to such determination, any such line may not be abandoned, sold, or otherwise disposed of.

(d) Upon a determination by the Office, pursuant to subsection (c), that rail service can be operated at a profitable level over a particular line of railroad, the Consolidated Rail Corporation is authorized to operate rail service over such line. For purposes of operating such rail service, the Consolidated Rail Corporation shall enter into an operating agreement with the railroad or person owning such line. Such agreement shall be reasonable and equitable with respect to all parties to the agreement.

(e) For purposes of this section—

(1) the term "final system plan" means final system plan as defined in paragraph (6) of section 102 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702(6)); and

(2) the term "region" means region as defined in paragraph (13) of section 102 of such Act (45 U.S.C. 702(13)).

SENATE—*Tuesday, December 16, 1975*

(Legislative day of Monday, December 15, 1975)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by Hon. RICHARD STONE, a Senator from the State of Florida.

PRAYER

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

Almighty God, we thank Thee for prophets and seers who heralded the coming of Him who would be the Light of the World.

We thank Thee for the simple home into which He came, with its gentle yet royal ancestry; for the wise men who knew what to follow and when to stop; for shepherds who not only saw visions but acted on them; for the aged folk who having seen no star waited in patience for the coming of the Messiah.

We thank Thee for the one universal church of all creeds, sects, forms, and cultures, of all races and kindreds of mankind, grouped around the manger in common devotion, and in hope of a new and better day for the whole world.

Grant, O God, to renew in us this simple message and instill within us its higher hope.

We pray in His name. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., December 16, 1975.

To the Senate:

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

JAMES O. EASTLAND,
President pro tempore.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Journal of the proceedings of Monday, December 15, 1975, be approved.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

The Senator from Michigan is recognized.

SELECT COMMITTEE TO INVESTIGATE ABUSES IN THE LABOR-MANAGEMENT FIELD

Mr. GRIFFIN. Mr. President, today I am sending out to my colleagues in the Senate a letter which reads as follows:

DECEMBER 16, 1975.

DEAR COLLEAGUE: As you may know, several weeks ago, I introduced a Joint Resolution (S. Res. 302) calling for establishment of a bi-partisan Select Committee—like the McClellan Committee of the 1950's—to investigate racketeering and other serious abuses in the labor-management field, particularly in light of current widespread allegations relating to the Teamsters Union and investment of its pension funds.

The mystery of what happened to Jimmy Hoffa is intriguing. But even more important to millions of union workers is the question: Why?

Almost all of the reaction to my resolution has been positive. In addition to hundreds of cards and letters from union members across the country, I have received petitions signed by 1,780 Teamsters in the Detroit area alone strongly supporting such a Congressional investigation. Furthermore, an organization, known as the Professional Drivers Council for Safety and Health (PROD), which says it represents 1,600 Teamsters in various States, is openly supporting our effort.

The Detroit Free Press recently editorialized that "a balanced investigative committee of the Senate is the antidote. . . . If the public interest is to be protected, as well as the legitimate pension rights of thousands of truckers, that investigation must be started promptly." The Chicago Tribune has spoken out editorially for the resolution. Indeed, the only significant opposition registered so far has come from Mr. Frank Fitzsimmons, who heads the giant Teamster Union.

Thus far, nine Senate colleagues have joined as cosponsors of the resolution. Others have indicated that they like the idea and may wish to become co-sponsors.

S. Res. 302 is now on the Senate's Calendar. At an appropriate time after the holiday recess, it will be my intention to move for consideration and press for a vote on this measure. In the meantime, if you should decide to become a cosponsor, I will welcome your support and I know it will be appreciated by thousands of rank and file union members.

Sincerely,

BOB GRIFFIN,
U.S. Senator.

THE OKLAHOMA ELECTION DISPUTE

Mr. GRIFFIN. Mr. President, I was shocked and deeply disappointed by the action along party lines on yesterday when the Committee on Rules failed, in my opinion, to face up and make the right decision for the benefit of the Senate in the dispute raised by Mr. Edmondson concerning the election by the voters of Oklahoma of Mr. BELLMON as Senator.

Mr. BELLMON won that election, not by 2 votes, but by 3,835 votes.

The principal complaint of Mr. Edmondson is that in Tulsa County the voting machines were not equipped with the straight party lever, and voters there had to vote for each candidate of their choice. However, it is very interesting, and somewhat disturbing, that the voting machines there are programed and arranged as they are, primarily because of actions taken, as I understand, by the secretary and chief clerk of the Tulsa County Election Board, both of whom are active Democrats.

In fact, as the testimony discloses, these two officials actually assisted after hours in Mr. Edmondson's election campaign. Furthermore, the machines in Tulsa County were exactly the same machines, operated exactly the same way, 2 years earlier when Mr. Edmondson was defeated in a race for the Senate by Mr. BARTLETT.

Following the election, Mr. Edmondson took his protest to the local county court. The local judge excused himself and an outside impartial judge was brought in to hear the case. He is a Democrat. The judge listened to all the testimony and then dismissed Mr. Edmondson's petition. Thereafter, the case was appealed to the Supreme Court of the State of Oklahoma, a court of nine judges, eight of whom are Democrats. The Supreme Court of Oklahoma received the case very carefully, and unanimously dismissed the petition, and directed that a certificate of election be issued in favor of Senator BELLMON.

This is a frivolous contest, one that should not be taken seriously except by partisans determined to wield raw political power. I am concerned that the handling of this case may reflect adversely

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on the Senate as an institution. I hope it will not be necessary for us to become bogged down in another spectacle in order for the minority to protect the rights of Mr. BELLMON and the people of Oklahoma who elected him.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. The Senator has 7 minutes remaining.

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TODAY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that after the special orders have been concluded, there be a period for the transaction of routine morning business of not to exceed 15 minutes, with a time limitation on statements of 5 minutes attached thereto.

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

Mr. MANSFIELD. Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. MANSFIELD. When the special orders have been completed and morning business is finished, what will be the pending business?

The ACTING PRESIDENT pro tempore. S. 2568 will be the pending business.

Mr. MANSFIELD. Is that Calendar No. 444?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. MANSFIELD. Mr. President, I yield the remainder of my time to the distinguished Senator from California (Mr. TUNNEY).

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

DEPARTMENT OF DEFENSE APPROPRIATIONS

Mr. TUNNEY. I thank the distinguished leader for yielding me time.

I wish to make a couple of points with respect to an amendment that I and a number of others are going to offer tomorrow when the military appropriations bill comes to the Chamber.

Inasmuch as we are going to have a secret session of the Senate for 2 hours prior to the time that we open debate on the bill for a period of a half-hour and inasmuch as we can expect some secret or classified information to be made available during that secret session, I think it is important to lay before the Senate, before I have had an opportunity to be privy to any secret or classified information, what the purpose of the amendment is and the form that it is going to take, so that no one can say at some future point that those of us who are sponsoring this amendment used the secret information that we obtained in a secret session to justify in the Chamber in open session publicly an amendment which perhaps would rely for the expression of opinion as to why it is important on the secret information.

The amendment is going to provide basically that no moneys under the military appropriations bill can be used in Angola for other than intelligence-gathering activities. It will be made very clear that the money can be used for intelligence-gathering, but the purpose of the amendment is to avoid any military or paramilitary support for one faction or the other in Angola. The amendment is not going to require the recommitting of the conference report. The amendment is going to be to a House amendment and will come after the vote on the conference report.

I think that it is clear to those of us who have been working on this amendment, Senators CLARK, CRANSTON, KENNEDY, BROOKE, and others, that we feel strongly that the issue is one of basic principle. Should the United States become involved once again in military activities in an undeveloped part of the world, perhaps being dragged into ever-increasing commitments such as occurred in Vietnam?

But I strongly emphasize that the Senator from California has no secret information at this time as to what is in that appropriations bill.

I only have rumors and all the others that I have spoken to only have rumors with respect to funds that may be made available to the CIA to support covert paramilitary or military activities in Angola.

I hope that the points that are brought out in the secret session will convince a majority of our colleagues that this amendment is meritorious and deserves to be supported, but it should be clear that the support for the amendment should not be dependent upon secret information being used in a fashion which is unlawful or which is contrary to the accepted principles that all of us have come to believe is necessary for the handling of top secret or classified information in our Government. I, for one, do not want to be a party to releasing confidential top secret information but, on the other hand, I do not want moneys that I am going to vote for to go to Angola.

I thank the distinguished leader for making the time available.

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

Mr. TUNNEY. Yes, I yield to the distinguished leader.

Mr. MANSFIELD. Mr. President, I have been somewhat disturbed at various aspects of our foreign policy in recent weeks.

I commend the distinguished Senator from California for raising a warning signal at this time.

I did not vote for the 200 U.S. technicians to be stationed on the Sinai Desert, because it brought to my mind memories of 1954 when exactly 200 U.S. technicians were sent to Vietnam.

I do not want to see another Vietnam under any circumstances, and I am concerned not only about the stationing of 200 U.S. technicians in the Sinai, which in my opinion typifies a direct involvement or a possible direct involvement, but I am also concerned, in another sense, about the amount of money and the use of that money in Angola through the use, as I understand it, and this is only public knowledge on my part—I have no secret information either—of something on the order of five spotter planes, something on the order of various types of hardware being sent in, and rumors to the effect that Americans are being recruited to take sides in Angola.

So, I hope that this warning flag will be heeded.

I have requested the chairman and the ranking member of the Committee on Foreign Relations to call a full committee meeting at which time I hope it will be possible to hear the testimony of Secretary Kissinger and Mr. Colby, the Director of the CIA.

I also hope, furthermore, in line with the War Powers Act and other instrumentalities passed by Congress, that Congress will be kept better informed so that as the direct representatives of the American people we shall be able to establish the facts as we understand them and when necessary report to our people thereon.

So I commend the distinguished Senator, and I am delighted this matter is coming to a head before it is too late.

Mr. TUNNEY. Mr. President, will my leader yield to me for a question?

Mr. MANSFIELD. Yes, indeed.

Mr. TUNNEY. Does he not feel that there is a substantial difference between making funds available in a military appropriation bill or foreign aid bill, or whatever, for intelligence-gathering activities, which we recognize that Congress is not going to be totally informed of those activities, and the use of moneys for the purposes of carrying on military or paramilitary activities in a foreign land?

Mr. MANSFIELD. Yes, I agree. I am somewhat disturbed at the parallelism between the present situation developing in the Congo and what had developed in Vietnam and for which we paid a terrible price.

To me the Vietnam disaster is the most tragic episode in the history of the Republic: 55,000 died, 303,000 wounded, a cost up to this time of something of the order of $150 billion and, according to the estimates of the Bureau of the Census, Department of Commerce—I have not the figures ready, but they are in the Statistical Abstract of the United States—1973—we will be paying for that war into the end of the first half of the next century, about 2045, and the ultimate cost has been calculated, and I think it is going to be much more, at somewhere between $350 and $375 billion. We cannot afford these misadventures.

Again I commend the distinguished Senator.

Mr. President, I ask unanimous consent to have printed in the RECORD a table showing estimates of the total cost of American wars, by rank.

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

NO. 408.—ESTIMATES OF TOTAL COST OF AMERICAN WARS, BY RANK

[In millions of dollars, except percent]

War	Estimated ultimate costs	Original war costs [1]	Veterans' benefits: Total costs under present laws [2]	Veterans' benefits: Percent of original war costs	Veterans' benefits: Total costs to 1973 [3]	Estimated interest payments on war loans: Total	Estimated interest payments on war loans: Percent of original war costs
World War II	664,000	288,000	290,000	100	96,447	86,000	30
Vietnam conflict [4]	352,000	[5] 128,000	[6] 220,000	[6] 200	7,271	[7] 22,000	[7] 20
Korean conflict	164,000	54,000	99,000	184	16,960	11,000	20
World War I	112,000	26,000	75,000	290	52,411	11,000	42
Civil War (Union only)	12,952	3,200	8,580	260	8,572	1,172	37
Spanish-American War	6,460	400	6,000	1,505	5,526	60	15
American Revolution	190	100	70	70	70	20	20
War of 1812	158	93	49	53	49	16	17
Mexican War	147	73	64	88	65	16	14

[1] Based on expenditures of Departments of the Army and Navy to World War I and major national security expenditures thereafter. Usually the figures begin with the year the war began but in all cases they extend 1 yr beyond the end of the actual conflict. See "Historical Statistics of the Units States, Colonial Times to 1957, series Y 351–352 and Y 358.

[2] To World War I, estimates are based on Veterans' Administration data. For World War I, World War II, and Korean conflict, estimates are those of the 1956 report of the President's Commission on Veterans' Pensions plus 25 percent (the increase in the average value of benefits since the Commission made its report).

[3] Source: U.S. Veterans' Administration, "Annual Report of Administrator of Veterans Affairs."

[4] Estimates based on assumption that war would end by June 30, 1970 (except for original war costs and for veterans benefit costs to 1973).

[5] Estimated Department of Defense expenditure in support of Southeast Asia for fiscal year 1965 to 1972.

[6] Medium-level estimate of 200 percent (high, 300; low, 100) based on figures expressing relationship of veterans' benefits payments to original costs of other major U.S. wars.

[7] Medium-level estimate of 20 percent (high, 30; low, 10) based on figures showing interest payments on war loans as percentage of original costs of other major U.S. wars.

Source: Except as noted, U.S. Congress, Joint Economic Committee, "The Military Budget and National Economic Priorities, pt. 1, 91st Cong., 1st sess. (Statement of James L. Clayton, University of Utah.)

The above estimates are contained in the Statistical Abstract of the United States—1973. It is published by the U.S. Department of Commerce, Social and Economic Statistics Administration, Bureau of the Census.

ORDER OF BUSINESS

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

Mr. FANNIN. Mr. President, I ask unanimous consent that the order be changed, so that the distinguished Senator from Utah may proceed before the Senator from Arizona.

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

The Senator from Utah is recognized.

Mr. GARN. Mr. President, I thank the distinguished Senator from Arizona for switching with me so that I can make another appointment.

THE HIDDEN TAX ON OUR ECONOMY CAUSED BY GOVERNMENT OVERREGULATIONS

Mr. GARN. Mr. President, today I should like to talk about the hidden tax on our economy and on our people that is caused by Government overregulation—the bureaucracy.

The cost to every American, of excessive and wrongheaded Federal regulations, is placed from a conservative estimate of $60 billion per year to an estimated $130 billion per year, or $2,000 per American family as recently reported by President Ford. The number of Federal employees needed to man this regulatory Frankenstein monster is estimated to be from 63,000 to over 100,000 Government bureaucrats, and the number is growing year to year.

Congress is considering and passing new legislation placing more controls on our daily lives. From about the 1870's laws affecting or regulating commerce were passed with great care and up into the middle of the 1960's only about 15 laws were enacted to regulate our lives. However, since the midsixties there has been an explosion of regulatory legislative activity, with about 60 laws having been enacted to hamstring and hinder the dynamic, but fragile force known as the free enterprise system.

The cost of this rapid and unnecessary expansion of regulatory bodies is seen in our everyday lives from the cost of heating our homes, driving our cars, and cooking our meals, have increased because of Government interference in the energy market, by their setting artificially low prices for natural gas, which hindered new exploration, and by the slapping on of price controls on oil that we desperately need to run our factories. The sudden oil shortage of 1973 was brought about by shortsightedness, on the part of Government, by requiring import quotas on foreign oil—during the 1960's—which encouraged foreign development of oil sources to the detriment of new American sources.

The cost in terms of wasted manpower, loss of productivity, use of scarce capital to meet regulatory requirements, instead of putting it into use to produce more and better products and the immeasurable effect upon the economy, can scarcely be quantified, but certainly the loss is tremendous.

There are many agencies regulating our lives: Let us take a look at some of the costs of their regulating our economy.

When Congress jumped on the pollution bandwagon, it paid little attention to the inflationary costs. It is estimated that industry will spend more than $127 billion between 1972 and 1976; which means—additional costs which must be passed to consumers.

Restrictive rate policies of the Interstate Commerce Commission add $5 billion per year in excess freight rates, according to a recent economic study. Although paid by shippers, the ultimate costs are passed on to consumers.

Moreover, the Bureau of Domestic Commerce says that unnecessary National Labor Relations Board regulations that lead to featherbedding are costing Americans up to $3 billion in railway shipping costs, $400 million more at the supermarket, and more than $275 million in truck shipping costs.

A study by George Douglas and James Miller III, for the Brookings Institution, estimates that for the year 1969 alone, passengers paid excess fares ranging between $366 million and $538 million attributable to the lack of competition in air fares, for which passengers received service improvements valued between $118 million and $182 million. The difference between the fare and service figures represent one of the costs of the inefficiency in the airline industry which is promoted by CAB regulation.

The cost of buying a new auto has skyrocketed because of Federal mandated equipment. For example, new car buyers in 1974 paid over $3 billion more for Government-required safety equipment. Of course, the Congress recently saw the light on one issue and overturned the requirement for seat belt interlock system for starting one's car.

The Government's agencies also cause delay, which is often fatal to an industry or company. The agencies were established to expedite matters but, unfortunately, instead of expediting action, one of the largest parts of the hidden cost to the public of regulation is regulatory delay. This inherent delay in agencies set up for the purpose of speeding decisions is certainly one of the most serious deficiencies of regulatory agencies today.

An example of such delay is the merger case before the Interstate Commerce Commission—which was filed in 1963 to merge the Rock Island with various western rail carriers.

The Rock Island and the western railroads had been waiting since 1963—waiting through 274 days of hearings, lasting over 27½ months waiting for the administrative law judge to issue three volumes of an initial decision 10 years later, on February 15, 1973; and waiting for nearly a year after the ICC heard final oral argument on this case, for a Commission decision. On November 8, 1974, the Chairman of the ICC made a public announcement that a majority of the Commission had approved the merger of the Rock Island and Union Pacific Railroads, with certain conditions, but that the Commission's

decision would not be available for distribution for an additional "several weeks."

The Commission's decision came 5 years after the ICC reported on the status of the Rock Island merger case at the Senate Commerce Committee "oversight" hearings.

Eleven years ago, before this merger case was filed, the Rock Island was a profitmaking railroad. Since 1965, while the case has been pending, the Rock Island lost approximately $90 million, with 1974 estimated losses of $17 million—up approximately 14 percent from 1973.

Another measure of change—in the last decade while the Rock Island and other Western railroads were waiting a merger decision, in order to change their plant facilities, Sears, in the retail market served by the Rock Island, opened approximately 110 new stores, and closed or relocated 70 old stores.

The Jones Act—which requires shipments of cargo from one port in the United States to another to be made by American vessels—also illustrates the conflict between two or more objectives. The staff of the Senate Finance Committee estimates that it costs 8 to 10 cents more per million cubic feet to transport liquified natural gas—LNG—between Alaska and the West coast by American-flag vessels than by foreign-flag vessels.

Attempts to avoid this 8 to 10 cents "tax" results in a roundabout, expensive procedure whereby Alaska exports LNG to other countries and the mainland United States imports LNG from the South Pacific and Russia—in foreign-flag vessels.

The Jones Act was enacted to aid the American shipping industry. In practice, it tends to aid foreign shipping industries and to reduce the availability or increase the cost of goods to the American consumer.

We all believe in making available the safest product possible and the CPSC is charged with the responsibility of making certain that consumer products are safe. However, the following story demonstrates how overregulation operates and how expensive it is to us all.

The Consumer Product Safety Commission, upon learning of a University of Oklahoma doctor's suspicion that there may be a link between abnormal children born to some of his patients who used spray adhesives, in the summer of 1973, called 3M and Borden executives and told them their spray glues—13 brands in all—were banned. Both companies promptly notified their distributors and set about removing the products from the market. Another spray gluemaker, Woodhill Chemical Sales Corp., Cleveland, removed its product voluntarily.

Seven months later, after university testing of the glues, the tests failed to find any link between the products and the genetic damage claimed by the doctor. The CPSC lifted its ban. 3M asserted that they lost $3 million in sales of the product during the ban; Borden dropped its line altogether, feeling it would not pay to reintroduce it, and Woodhill lost about $80,000 because of the ban.

The single greatest threat from CPSC, as business sees it, is the cost of altering products to meet CPSC standards. OPEI—Outdoor Power Equipment Institute—executive director, Dennis Dix, says OPEI's mower manufacturer members voluntarily spent $48 million to upgrade safety on their 1973 models. The cost of mandatory safety changes, especially unnecessary ones, could wipe out smaller manufacturers.

Upon recommendation by the CPSC, Consumers Union wrote a proposed set of standards for the lawnmower industry. CU's standards call for a deadman control to stop the mower blade 2 seconds after the operator releases the handle; complete enclosure of the blade within a half inch from the ground; reduction of maximum blade tip speed to 15,000 feet per minute; a sound alarm and signal light that would go on when riding mowers lean too far to the side; and a device that would stop the engine when the fuel tank cap is removed. Mower manufacturers protest that the requirements are all safety design, rather than safety performance standards; that they call for specific safety features rather than allowing manufacturers to design a variety of solutions.

In May 1975, the Outdoor Power Equipment Institute—OPEI—announced a study it commissioned from the Standford Research Institute—SRI—in which SRI concluded that it would cost the mower building industry $520 million to implement newly proposed mandatory lawnmower standards being developed by the Consumers Union for the Consumer Product Safety Commission. SRI estimates that 190,000 mower injuries occur annually, totaling some $400 million for such costs as medical expenses and lost wages.

SRI findings reveal over 85 percent of all lawnmower injuries are due to operator error, while a previous CPSC study showed 95 percent due to operator error. According to SRI, implementation of the proposed standards could reduce unit sales from 7,400,000 to 5 million, and SRI stated that engineering and new capital requirements to meet the standard could force 25 of the industry's smaller firms—of the estimated 60 to 75 mower manufacturers—out of production and result in causing the loss of some 16,000 jobs in the outdoor power equipment industry. OPEI concludes that the cost of a $100 walk-behind rotary lawnmower, could increase as much as $86 with compliance to the new standards.

Another example of an expensive mistake by a Government agency is the following tale of woe:

E. H. Weder, chairman of the Highland, Ill., Manufacturing & Sales Co., late in April 1972, received a letter from the Federal Drug Administration's Bureau of Product Safety, informing him that FDA was planning to ban the sale of all flammable cellophane Easter grass, and hence he needed to destroy his stock.

Failing to secure FDA's approval, allowing him to market his Easter grass marked "flammable" Mr. Weder destroyed his cellophone grass and, at a cost of $950,000, retooled his machinery to produce nonflammable Easter grass, which would cost consumers more.

While he was shopping during the following Easter season, Mr. Weder noticed that flammable cellophane Easter grass was being sold with the label "flammable" attached to the grass. Incensed, Mr. Weder phoned the FDA asking why he could not sell flammable grass while his competitors could. He was informed that since there were no medical reports claiming injuries caused by flammable Easter grass, it had been determined that it was rather senseless to ban the grass, if it was not harmful, and that he simply had not been informed of the Bureau's policy change.

The automobile industry has been on the receiving end of many new and costly regulations.

Since enactment of the Motor Vehicle Safety Act in 1966, 59 safety act standards and regulations have been put into effect. Today, nearly 900 separate points must be tested or checked on a typical full-size model in order to certify compliance. The average cost to the consumer on a cumulative basis, just to meet the presently applicable safety standards, is estimated to be approximately $400 per car. This includes approximately $155 for added bumper protection for the car's safety systems * * *.

It is estimated that the safety and damageability standards that have been proposed, or are scheduled to go into effect during the next 2 model years, could result in an additional cost to the consumer of approximately $350 at current economic levels. This would bring the total consumer costs for these standards alone to approximately $750 by 1977 * * *.

While there has been some postponement in the schedule to reach this ultimate reduction—of a further 90 percent reduction in emissions over the levels already achieved—the 1975 emission levels have resulted in equipment on the vehicle costing the consumer an estimated $215 on a cumulative basis.

If a way can be found to meet the 1977 and 1978 emission standards on production vehicles, current projection is that this could result in additional consumer costs of approximately $110 in 1977 and $150 additionally by 1978 * * *. Further, the 1978 emission levels have been achieved only experimentally at very low mileage. These additional costs would bring the total costs to the consumer—for emissions equipment—to approximately $475 by 1978 * * *.

To summarize, the cost on a cumulative basis to consumers for safety and emission control equipment on cars through the current 1975 models totals approximately $615 per car—consisting of $400 for safety and $215 for emission controls. Looking to 1978, and the prospect of more stringent safety and emission standards, as well as the imposition of Federal damageability requirements, consumer costs can be expected to increase by approximately another $610. Thus, by 1978 consumers would have to pay about $1,225 per car just for the

equipment to meet Federal motor vehicle standards * * *.

To develop the ability to meet the wide range of mandated Government requirements, GM expenditures for automotive safety work, in the United States alone in 1973 totaled $653 million. These costs were for research and engineering development, reliability, testing, tools, and facilities. The automobile has been burdened by increased costs through price increases. However, even these increases have apparently contributed to deterring many consumers from buying—resulting in diminished new car sales and, in turn, substantial unemployment in the automobile industry * * *. Inevitably, unproductive use of capital and personnel leads to lower productivity and inflationary pressures.

The environmental protection agency has been another thorn in the side of our economy. It seems that these regulations are more important than jobs and our timberland.

In Gary, Ind., the United States Steel Corp. tried to meet EPA requirements for clean aid by building two new installations of nonpolluting furnaces. But initially their output was limited by factors beyond the company's control: a power failure that damaged its furnaces, the coal strike and a construction strike. U.S. Steel last fall asked EPA permission to keep its one remaining openhearth installation in operation 6 months more. It was told that the installation could be kept open for 3 months, with a $2,300 fine for each day of operation. Instead, the company closed the installation, and hundreds of workers are losing their jobs as a result.

An infestation of deadly tussock moths in 1972 defoliated 174,000 acres of magnificent Washington and Oregon forests. To prevent further ravages, State officials and conservationists pleaded with EPA to allow a carefully controlled spraying of DDT. EPA stubbornly refused even a temporary removal of its ban against DDT. Unchecked, the multiplying moths by the summer of 1973 had afflicted 700,000 acres of timber. Faced with congressional uproar and a lawsuit, EPA in February 1974 relented and authorized use of DDT. Helicopters sprayed the forest, and infestation ended. But the devastation inflicted by bureaucrats endures.

The U.S. Environmental Protection Agency recently disclosed that from 1971 to September 1975, EPA regulations were directly responsible for the loss of 13,460 jobs, 1,200 of which occurred during the past 6 months and that near future job losses could go as high as 33,000 workers. This news is especially depressing when the unemployment rate has been hovering around 8 percent for the past year.

Very often two agencies will issue conflicting standards and the poor businessman is caught in between. For example, the occupational Safety and Health Administration adopted, in early 1972, a maximum noise level standard of 90 dbA, which would cost $18 billion, to be implemented by business, whereas the Environmental Protection Agency demands a maximum noise level of 85 dbA, which bears a $31 billion price tag. The 90 dbA standard is the recognized occupational standard for noise today, as it is used in the Walsh-Healy Act, which sets mandatory occupational safety and health standards to govern Federal contracts. Since noise levels are measured on a logarithmic scale, 85 dbA is exactly one-half the energy of 90 dbA.

A Federal regulatory agency can also be very arbitrary in its dealings with American businessmen, as the following story discloses.

A high-rise, low-rent housing project in Fremont, Nebr., was examined by an OSHA safety inspector, who informed the Beall Construction Co. superintendent what equipment did not comply with OHSA's safety regulations.

By November 16, all but one deficiency had been corrected, and in order to secure spare parts, OSHA granted a repair delay. A second OSHA inspection on January 20, 1972, resulted in a $35,442 fine for safety violations.

Beall Co. appealed the fine and an OSHA review commission chairman determined that the second OSHA inspection was "provoked," because of the Beall Co.'s repeated requests for extensions of an abatement period to modify the one original safety deficiency, which could not be immediately corrected due to the lack of locally available repair parts. The OSHA review chairman lowered the OSHA fine to $620.

Another incident that occurred in California again reveals the arbitrariousness of OSHA officials. In Newport Beach, Calif., an OSHA official inspected Arsene Gardarian's "Blackie's Boatyard" and charged Gadarian for violating one of OSHA's ladder regulations, since Gadarian did not have a ladder at his pier's end.

Facing up to a possible $1,000 fine, Gadarian appealed to a Federal hearing examiner. After Gadarian revealed that the water around his dock was only 3 feet deep and, consequently, did not require a ladder for rescue—should someone fall off the low pier into the water, as the victim could stand up and easily climb back upon the pier—the examiner certified that Gadarian was innocent of the charge.

Last year OSHA issued final regulations in many areas affecting industry and these standards filled over 450 pages in the Federal Register. The standards dealing with the common everyday wooden step ladder ran for numerous pages and were explained in such technical terms that a person would need an engineering degree to understand its meaning, such is the burden placed upon the American businessman.

Overregulation is not merely a problem with agencies mandated to regulate commerce, we should also consider just the sheer size of government, both State and Federal, as a hinderance to a vigorous and expanding economy. Consider, for example, that the number of such employees has grown from about 3 million in 1940 to around 14.5 million in 1975, and this is excluding military people.

Government at all levels accounts for about 37 percent of the GNP, as against around 12 percent in the late 1920's. Just the sheer numbers and economic impact that all levels of government have is bothersome.

When one weights the cost in dollars and lost personal freedom that we all suffer, because of overregulation, one can understand the people's loss of confidence in our Government.

[Source: The materials found in this statement were taken in part or in whole from a document entitled "Regulatory Failure" prepared by the National Association of Manufacturers and specific sources can be found in that document.]

Mr. President, I should like to speak for a few moments about another aspect that goes beyond regulation and bureaucracy, to an area of cost to citizens in loss of freedom to them and their elected officials through acts passed by the Congress of the United States with little or no knowledge of the economic impact that these laws have when they pass them.

I will use, specifically, the example of amendments to the Fair Labor Standards Act of 1974.

When I was mayor of Salt Lake City and vice president of the National League of Cities, we opposed these amendments vigorously, as mayors across this country, representing 15,000 cities. For the first time, this act would include cities and counties, municipal and local government, across this country, under the Fair Labor Standards Act, with rules and regulations concerning overtime, compensatory time off, work rules and regulations for employees. For the first time, these were made uniform and mandatory on 80,000 units of local government across this country, taking away the authority of mayors and county commissioners and locally elected officials who were responsible and accountable to their voters in their cities to make these decisions for themselves.

I was the mayor of Salt Lake City. There was a good, old-fashioned way for the people of Salt Lake City to take care of their problem. They could get a new mayor in the next election, but there was no way they could get rid of the bureaucrats locked into civil service, who are never answerable or accountable for their actions. That is why they can become arbitrary and dictatorial and thumb their noses at the American people.

I will give an example of the economic impact of these amendments which are pushed through Congress despite the fact that the National League of Cities Board of Directors, the U.S. Conference of Mayors, and the Governors' Conference, representing all of the legally elected officials of this country, came to the U.S. Senate. I was one who testified as a mayor and said, "Do not impose this burden upon us." But they ignored us, because I suppose George Meany is more meaningful to this Congress than all the mayors and Governors and county commissioners.

In my city alone, the Fair Labor Standards Act imposed burdens such as overtime rules. With very distinct seasons in the State of Utah, we normally had our

parks department employees working great amounts of overtime in the summer, and they would accumulate it on a voluntary basis and take it off in the middle of the winter—4 or 5 weeks at a time.

Our snow removal crew could work vast amounts of overtime in the winter and take 4 or 5 weeks off in the summer at time and a half, and they enjoyed this. It was all voluntary.

In its great wisdom, the Congress of the United States said, "No, you can not do that anymore. If you are going to give compensatory time off, you will give it during the week in which the overtime was incurred or the following week, or you pay it in cash."

Item No. 1: $1.5 million more on the people of Salt Lake City in taxes to pay, because Congress said we could not work it out anymore, even when our employees wanted to do it on a voluntary basis. So $1.5 million went into the last budget I prepared as mayor of Salt Lake City.

One other example: This bill mandated that firemen be put on a 40-hour week, despite the fact that their work weeks are different from those of policemen, garbage collectors, and street crews. You would have to pay them time and a half over 40 hours or pay them for sleeping. That requirement will cost Salt Lake City $3 million a year.

So now we have just one act of the Congress of the United States, ignoring the local government officials of this country, that would impose $3.5 million of additional cost. Yet, they passed revenue sharing for us. Salt Lake City's share was $4 million. So, big deal—they passed revenue sharing to help the cities of this country and then passed another act, without any knowledge of what they were doing, that takes away $3.5 million. So Salt Lake City has a net of a half million dollars out of revenue sharing. Again, big deal.

Tom Bradley, the mayor of Los Angeles, testified before the Senate Committee on Labor and Public Welfare that this would cost Los Angeles $32 million a year. Across the country, we do not know how much it will cost, but it will be hundreds and hundreds of millions of dollars a year on the taxpayers of the cities and counties of this country just because of some amendments to the Fair Labor Standards Act. That is the cost.

Something more important is the taking away of the right of a local mayor to make decisions within his community. There were many days when I did not feel like the mayor of Salt Lake City, just the local manager for the Federal Government.

I came back here, pleading to a bunch of Representatives and Senators who had never been involved in a city or local government or State government, who did not have the faintest idea of what it was all about, but they think they are so darned bright that they can pass uniform national laws to impose it on all of us, thinking that the mayors and the Governors are not smart enough to handle those matters and make those decisions in their own communities.

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

Mr. GARN. I yield.

Mr. FANNIN. Mr. President, the Senator from Utah has had vast experience as an executive officer of the National League of Cities and has performed outstanding service as mayor of Salt Lake City. I should like him to comment on the problems that have been created by EPA coming in and telling the local jurisdictions what they should do with respect to their parking, so far as the facilities that can be constructed are concerned, so far as what can be done within a local community in regard to their traffic. Would the Senator like to comment on his experience in that regard? I think it would be very valuable to the other Members of the Senate.

Mr. GARN. I could stand here for 4 or 5 days and talk about examples of what the Federal Government did to us. EPA was one with which I was involved in a fight. I got a letter on—no, I did not. I read it in the Salt Lake City Tribune. They did not bother to talk to the mayor. I read about their great transportation plan for Salt Lake City in the Tribune. I wrote them a letter saying:

I find it difficult to respond to your transportation plan because I can't believe any intelligent body could devise such a plan. I shall be at your meeting to try to respond in detail to your extermination plan for Salt Lake City.

It was a uniform transportation plan which was going to be imposed on Phoenix, Denver, and Salt Lake City, without regard to the local pollution problems, without being tailormade to the individual situation. Fortunately, in this case, we fought and won and they accepted our plan. But I could tell the Senator horror stories that would take me 3 hours about what EPA planned to do to many cities, totally without merit as to the actual problem that was there or specific solutions that would solve the problem in Salt Lake City.

Mr. FANNIN. I thank the distinguished Senator. I know that in my State of Arizona, we had the same experience. After quite a battle with EPA and a great deal of expense and a tremendous amount of time on the part of the city officials and State officials—not only the city officials of Phoenix but of Tucson—this was something that went on for months, delaying planning and programing. Many subdivisions were delayed. They did not know what to do, what they would be able to do, what to do as far as parking was concerned and the new facilities that were furnished for the shopping centers. It was tremendously expensive.

One of the great problems was that the Federal Government did not counsel with local officials. I imagine that was one of the problems that the Senator from Utah had.

Mr. GARN. The mayor of Phoenix did have an advantage, Senator, because our hearing was first. I heard about it in the newspaper. They did not have the courtesy to inform me. I called the mayor of Tucson and the mayor of Phoenix and said, "This is coming, get ready for it." So they had the advantage over me.

Mr. FANNIN. I am glad the Senator had the experience because they did not get help from the EPA officials. The officials went ahead and made their findings and had everything all set to incorporate it in their structure, without having the knowledge as to just what the needs might be or what the planning might be. They were going to dictate the policies that would be observed. In some cases, they were even advocating blocking off spaces in parking garages so they could not utilize them. They were not going to tell the garage owner how he could finance his facility, what he could do about paying his people. They were just going to tell him, "This is what needs to be done; you go ahead and do it."

Fortunately, it was through the assistance of the Senator from Utah and others that perhaps that was thwarted to a certain extent. We do not know what is coming next.

Mr. GARN. All they were going to do in Salt Lake City, when I talked about the extermination plan, just one particular thing in their strategy was that they would eliminate parking 6 hours a day in a 2-mile-square area of downtown Salt Lake City—that is all; just totally eliminate on-street parking, 6 hours a day, in a 2-mile-square area. They thought that was entirely reasonable and consistent with cleaning up the air. It would be clean, because business would have closed down. There would be nothing left. No one would be there except the rats and mice and whatever other animals wanted to take over the city after EPA closed it down.

Mr. FANNIN. Hundreds of millions of dollars had been spent on parking facilities and handling traffic. Still they were going to change the complete operation of the city. I think the Senator used good terminology as an example of what would happen. I think we know we were very fortunate that actions were taken to see that these programs were not carried through.

Mr. McCLURE. Would the Senator yield?

Mr. GARN. I yield to the Senator from Idaho.

Mr. McCLURE. I thank the Senator for the statement he has made. His is one of the few very clear voices in the Senate that warns of the encroachment of the Federal Government into local governments.

I could not help but note the simile he made in regard to parking areas that would bar people from areas and leave it to the rats and mice. That reminds me that one Federal agency is using 1080 to control rats and mice while another says nobody can use it.

That is an example of Federal overlap, where one agency says you cannot do something that another agency says you must do.

Mr. GARN. I suppose they like coyotes better than rats and mice.

Mr. McCLURE. Maybe the Senator will find that instead of the people of downtown Salt Lake City, the coyotes will move in and they will feed on rats and mice that are protected from people who are not there any more.

Mr. GARN. I thank the Senator.

I want to summarize what I was saying. Perhaps we can appreciate the mag-

nitude of what the Federal Government has done if we consider I used one example of some amendments to one particular law that cost hundreds of millions of dollars, $3½ million in my own city. Then if we magnify that by the tremendous number of other laws, I do not know how we are even able to total up the cost.

ORDER OF BUSINESS

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

THE COSTS OF GOVERNMENT REGULATION

Mr. FANNIN. Mr. President, to continue with the problems we have with regulatory reform, the time has come for action.

There is a growing awareness among the American people that government regulation results in harmful economic and social costs. For many years, this has been recognized. In fact, since the Interstate Commerce Commission was established over 70 years ago, our constituents have been suggesting some changes for regulatory reform, but very little has been done. Now that the people are up in arms, I feel something will be done. This body is considering legislation. Today I will introduce a bill that is called the Regulatory Reform Act. I shall briefly mention some of the provisions of this bill and what it will accomplish. First, it would make every Government agency demonstrate to Congress that the economic benefit of a proposed rule or regulation exceeds an anticipated cost to the public.

Mr. President, I think this is very important. Here we have the Environmental Protection Agency and they require an environmental impact statement. This would be an economic impact statement.

Second, it would require the House and the Senate to approve every major regulation proposed by the agencies. If this is done, we shall not see the proliferation of rules and regulations coming through that we see today, thousands of pages that are printed each year regarding new rules and regulations in the Federal Register, thousands of pages in that very fine print that is involved.

Third, the act that I am talking about would make employers and employees jointly responsible for seeing to it that regulations are complied with and will protect an employer from legal sanctions where he can demonstrate that violations have been caused by acts of negligence or omission on the part of others.

Fourth, it would relieve a person from liability for noncompliance with agency standards where he can show that the violation was necessitated by compliance with other rules and regulations promulgated by the same or other agency.

This is quite a problem. Here we have an example where they say that a truck must have an audible sounding device when it is around a construction job or on a construction job and when it is thrown into reverse, it has to have this audible sounding device. Then they also specify that the workers that are involved in that same job must wear earmuffs so that their ears will not be affected by the noise. It is pretty difficult for a sound to be heard. So here we have one rule that is negating another. Of course, this is just a simple example of what has been done.

Another provision will eliminate unnecessary paperwork, report filing and record keeping requirements. It costs billions of dollars. In fact, there have been articles in publications recently, statements made by public officials, that there are as many as 63,000 employees of the regulator agencies, and OMB has stated it is over 100,000. Still, what are the results? The result to the American consumer is the cost of about $130 billion. That is about $2,000 per family. This estimate that has been made is not the total cost, but this is the cost to the consumer. In other words, the cost is passed on to the consumer in the way of higher prices. Then costs also are added because of the tremendous number of employees and all the work done by these agencies.

I am sure that we have all heard from constituents and have read accounts in the press of small businessmen and consumers who are being hurt by arbitrary and capricious decisions made by an army of faceless Government bureaucrats.

Taxpayers are increasingly angered and frustrated by the costs and wastes involved in Government regulatory programs and by the maze of Federal agencies and regulations that they must put up with and pay for. As one of my constituents put it: "Get Government off our backs and out of our pockets."

Employers complain of the mounting costs of running their operations as a result of the patchwork of regulations and reams of paperwork required by various agencies.

They protest that normal business decisions cannot be made without first clearing them with Washington. They argue that regulation stifles innovation and technological development and cuts deeply into business profits and productivity.

Employees find themselves bogged down in paper shuffling. Labor sees a loss in jobs in industry as a result of higher costs of running business under regulation. This pertains, too, to the cost of doing business in this great Nation of ours as compared with other countries of the world. Most of the countries have very simplified regulations and rules; in fact, they are cooperative programs and not ones that inhibit productivity and inhibit efficiency, so we have a very serious problem in this country in competing with the other countries in the world because of these added costs.

We do pay higher wages in this country, and we do have good employees and modern machinery, and we should be highly competitive with other countries in the world if we would just let the employers go about their business without all of the detail and all of the different rules and regulations that inhibit their operations.

Conservative critics of regulation decry the loss of personal freedom at the hands of "big brother" bureaucrats. They warn of the dangers to the free enterprise system and to individual liberties from Government controls and regulations. Liberals charge that the so-called independent agencies are neither independent nor agents of the public interest, but, in fact, serve the special interests of the industries they are supposed to regulate. They see an unholy alliance between Government and business whereby Government agencies protect regulated businesses from competition in the marketplace. Together conservative and liberal politicians of both parties, responding to the complaints and criticisms of taxpayers, consumer groups, businesmen, intellectuals, Government experts, and editorialists, are calling for deregulation and improvements in the Government's vast regulatory machinery.

It is now generally acknowledged by all but the bureaucrats themselves that the Federal bureaucracy has grown too big and powerful.

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

Mr. FANNIN. I am very pleased to yield to the distinguished Senator from Idaho.

Mr. McCLURE. I commend the Senator on his statement as well as on the introduction of the legislation, which is a very helpful and hopeful piece of legislation.

The Senator's reference to the growing number of people who are responding against the growth of Government, who are speaking out against the regulatory overlap, reminds me of a statement made by one of the liberal Members of this body not long ago in private in which he indicated that many, many years ago when he had arrived in this place he had been a very strong liberal and, over the years, he had assumed that the solutions to many of the problems in this country lay in creating new programs and appropriating more money to concentrate on those problems; and that he had come to the conclusion that that had not worked, and if he stayed around much longer he was going to be voting to dismantle all of the apparatus he had helped to create.

Would not the Senator from Arizona agree with me that there is a widespread public acceptance, cutting across all kinds of ideologies and across party lines, that recognizes this failure of Government?

Mr. FANNIN. The Senator is so correct. A good indication of that having happened is the introduction of legislation in Congress that has come about in the last few months and even in the last few weeks where we do have so-called liberal Members of our body who are introducing perhaps very similar legislation to that being introduced by the Senator from Arizona, and the Senator from Arizona is not considered a full liberal, and I feel that this is—we have moderates, liberals, and conservatives all involved in this legislation, so we are hearing from the people, and I know I am hearing from my people in Arizona and from people all around the country.

Mr. McCLURE. Many of those of us

who regard ourselves as conservatives are inclined to say when we hear one of the liberals in the country talking about regulatory reform and talking about getting the Government out of the affairs of business, we nudge each other and say, "Hey, they are playing our song."

Mr. FANNIN. They have finally seen the light.

Mr. McCLURE. Some of us tend to be a little jealous of that and, I think, there is a danger that, instead of accepting their help, we will try to say, "Hey, that is ours, do not touch that."

Mr. FANNIN. I certainly want their help, and I feel that we have a common cause finally in this respect.

We say they have finally seen the light; they have felt the heat is what has happened in many instances around this body, which is, they started hearing from the people and feeling the heat from home or heat from the people who are supporting them and who are just saying, "Well, look, you are going in the wrong direction. This has cost me money. It is not of any benefit to me."

Senators know what has happened in recent years since OSHA was adopted. I do not imagine there are many agencies that have been more controversial than OSHA, but we can go on back as far as we would like to the beginning of the regulatory agencies, as I said earlier, where the Interstate Commerce Commission came into being, and they have been with us for over 70 years, and they are just about as controversial as any of the other agencies, and there is still a great demand—even with some of the legislation we are talking about—just to abandon the Interstate Commerce Commission.

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

Mr. FANNIN. I am very pleased to yield.

Mr. HELMS. The Senator from North Carolina is very much interested in this colloquy between the able Senator from Idaho and the able Senator from Arizona.

Is it not a complicating factor, however, that some elements of the business community encourage Federal regulation beneficial to them? That is to say, regulation which protects them from competition?

Mr. FANNIN. No doubt about it. Many of them will say, "Well, we do not want these regulations," but if you go to them and say, "All right, fine, what if we do away with all regulations?" Then you will hear a different story in many instances, and this is a little provoking to the Senator, who was formerly a small businessman and who worked with some of the people who are now saying, "Get off our backs, but now, do not go too far."

Mr. HELMS. In other words, when the Senator really begins talking about really reducing all this regulatory deluge, you begin hearing complaints that you have stopped preaching and started meddling—is that not about the size of it?

Mr. FANNIN. That is right.

Mr. HELMS. The Senator mentioned the conservatives and liberals. I think I have some credentials as a conservative, but I find myself constantly intrigued by some of the same businessmen who make eloquent civil club speeches about doing away with Federal controls, and then when some of us try to do it, the flap begins.

Mr. PERCY. Mr. President, will the Senator yield on that point?

Mr. FANNIN. I yield.

Mr. PERCY. I do not know whether this is a private conversation in this corner or not.

Mr. FANNIN. No, we are honored to have the Senator from Illinois join us.

Mr. PERCY. I was so pleased to learn there was going to be a colloquy this morning, because this issue does cut across ideological lines and certainly party lines. I have been working recently with Senator ROBERT C. BYRD on this very subject, and we are going to introduce legislation very soon on it. I find a tremendous willingness in this body now, and certainly within the executive branch of Government, to get moving on this important issue. The President could not have been more forthright in meetings he has held with some of us where he said, "Hey, let us get together and work something out."

I would like to ask the distinguished Senator from Arizona whether or not one of the great problems of the regulatory agencies is the process of decisionmaking.

The Rock Island is in bankruptcy, and there are merger proposals with the Union Pacific that go back over a period of how many years?

Mr. McCLURE. Thirteen years.

Mr. PERCY. Thirteen years. For them to sit there and watch the railroads of this country die, and one of them going into bankruptcy, when there was a perfectly viable answer for this a dozen years ago, is incomprehensible to me. We are not trying to prejudge whether the ICC should or should not have allowed the Rock Island merger. But the incredible part of it, which finally led to the strangling of the Rock Island line, was that they could not make a decision one way or the other. Sometimes it is better to make a bad decision rather than not make a decision and let the problem go on. But a commission can somehow get comfort from the idea that they do not have to bite the bullet but can keep it on the agenda with endless hearings and proceedings, and never arrive at a decision.

Mr. FANNIN. That is one of the foremost complaints we have. I know in the studies we have made on just what is happening with the ICC, and whatever other agency may be involved, it is the problem that business people have of finding out just exactly where they are going. They do not know. The right hand does not know what the left hand is doing.

Mr. PERCY. I just came in on the tail end of a conversation which I felt was very much to the point. This year I addressed the U.S. Chamber of Commerce at one of their sessions, and then conducted a poll over there, and they concluded that the biggest single issue and problem facing business was Government regulation. So this is the No. 1 priority. But I had to point out to them, in addressing them, that one of the biggest barriers we will have is those businesses which are regulated, because they have developed such a nice, cozy relationship with the regulators. It is the truckers who will try to fight to try to keep the ICC, along with the railroads that are regulated; it is the airlines that are regulated that will want to keep the CAB. They certainly look disparagingly upon Government regulation except when it somehow favors them, and this is one of our great problems, how to deal with the vested interest groups.

I do not want to infringe on the Senator's time, but I simply want to commend the Senators for holding this colloquy. And I certainly would cordially invite them, when the Senator from West Virginia (Mr. BYRD) and I offer some legislation in this field to really cause us to set up a schedule, to join together with us on that.

Mr. McCLURE. Will the Senator yield?

Mr. FANNIN. Yes.

Mr. McCLURE. I would like to give a case history of the exact thing the Senator from Illinois is referring to, about the regulated industry being the one which tries to protect the regulatory process.

I became so frustrated with the ICC, as many other Members of this body have, that I introduced legislation which would abolish the ICC. I did it very seriously.

I recognize the performance and functions that need to be performed, but I have become convinced that the agency, as now constituted, in the relationship with the industry which they are supposed to regulate, has become so engrained in attitudes and so cumbersome in their procedures that they absolutely fail in their mission.

The Rock Island case is a good example of the reason why I came to that conclusion. If they cannot make a decision in 11 or 13 years, how in the world will they ever make a decision?

They seem to be aware of the problem, until eventually it becomes a moot point. There is nothing left to merge, there is nothing to salvage.

But when I introduced that bill to abolish the ICC, guess who dissented on me? The truckers.

Mr. PERCY. Of course.

Mr. McCLURE. They do not want the ICC abolished. They would like to do away with some of the regulations which the ICC has, but they like some of the regulations the ICC has.

There are too many men and women in business, too many business enterprises that have not just established a cozy relationship with the regulatory agency, but they have grown comfortable with it. They understand that process, they know how to use it to their benefit and they would rather fight the bureaucratic nightmare and jungle than be out in the open marketplace fighting the competitive market.

Mr. PERCY. The regulatory system has become a make-work program, because the city is filled with lawyers who specialize in getting along with these agencies.

The ACTING PRESIDENT pro tem-

pore. The time of the Senator from Arizona has expired.

Under the previous order, the Senator from Idaho (Mr. McCLURE) is recognized for not to exceed 15 minutes.

Mr. McCLURE. I yield to the Senator from Illinois to complete his statement.

Mr. PERCY. There is a built-in mechanism to self-perpetuate all these agencies. Certain industries do not want to give up the special relation they have. They know people inside the agency; they know how to get along with them. They can get along with them, they think, better than their competitors or potential competitors in some other industry.

Therefore, they like the relationship because it creates, in a sense, a monopoly for them and freezes others out.

I do not like that. I like the free competitive system. I have been a free trader all my life. I recognize that in the photographic business for instance, a nice big tariff would keep competition out. But that is not what the consumer wants, and I think this is why we can join together. The consumer is the one, really, paying the price of regulation. The American public is paying the price.

I think the distinguished Senator from Idaho and the distinguished Senator from Arizona have performed a great public service in starting this colloquy. I hope it will help continue the momentum and interest, because we have to keep that up. If it is just a campaign issue for a year and then dropped, once again the American public will say that the bureaucrats and politicians are just talking about it and not doing anything about it.

Senator BYRD and I hope to offer a proposal to set up the kind of schedule the budgetary reform bill has set us on.

I commend my colleagues.

Mr. McCLURE. I welcome the initiative of the Senator from Illinois.

I yield to the Senator from Arizona.

Mr. FANNIN. I thank the Senator from Idaho.

Today I wish to relate to the Senator from Illinois that I am introducing a regulatory reform bill. I covered earlier the different provisions of this bill. I say, finally, it will do away with the redtape and bureaucratic delay.

Everyone seems to agree that something must be done to cut Government down to size, to make the intricate web of agencies and regulators more responsive to public needs, interests and concerns and to improve the administrative process.

For too long too many Americans have looked to Washington for a quick remedy for the Nation's economic ills and for their own special problems. Characteristically, Members of Congress have responded to constituents' demands and to the pressures of special interest groups by proposing to spend more tax money, pass more laws, and create more Government agencies. Such simple solutions have proved inadequate and ineffective. The difficult and complex problems of our economy require much more than politics as usual. Fortunately, the electorate seems to appreciate this fact too. To paraphrase Lincoln, you cannot fool all the people all the time.

Mr. President, the American people are beginning to realize that another layer of bureaucracy and another set of rules and regulations can only add to their problems. Politicians traditionally have regarded regulation as an inexpensive way of enforcing socially desirable policies on business and achieving national objectives without adding significantly to the cost of Government. Consumers, however, now see that the cost of regulation shows up in the higher prices they must pay for the goods and services they need. They now understand that regulation contributes significantly to the high inflation rate and the shortages of essential products, such as natural gas.

As a consequence of this change in outlook, taxpayers are beginning to speak out against Government regulation. They are urging their elected representatives to tighten the reins on spending for Government programs and the Federal bureaucracy. They want the Congress to look into the operations of Federal agencies and the efficacy of economic regulation. Many are even urging a thorough revamping of the Government's regulatory system, with a view to eliminating those agencies and a repeal of those laws no longer needed.

The people are way ahead of the Congress in pressing for regulatory reform. Unfortunately, the record of Congress in this area is one of rhetoric rather than reform. I can only hope that the Members will soon heed the message and take positive and sensitive steps to correct this difficult but not insoluble situation.

Of course, regulatory reform is not new. Ever since the first regulatory agency, the Interstate Commerce Commission, was created 88 years ago, there has been talk of reform. Efforts have been made and commissions formed during the Eisenhower, Kennedy, Johnson, and Nixon administrations to study ways to improve the Federal Government's system of regulation and to cut down the size of the bureaucracy.

The impetus for current efforts at regulatory reform was the economic recession in our country together with the energy crisis which made most people realize that our domestic shortages and industrial lag could be traced directly to Government's overregulation of business.

Last year the Ford administration held a summit conference on the economy. Most of the participants, representing business, labor, the academic community and consumer interests, brought up the problem of Government regulation, the cost to the economy of regulation, the contribution that regulations were making to the inflationary spiral and the need to reexamine how government was regulating business and its citizens.

Then in June of this year, the President held a White House conference on regulatory reform with 24 Senators and Representatives. I was pleased to be one of those Members of Congress to discuss the problems of Government regulation with President Ford. In July, the President had a summit meeting with the commissioners of the major independent regulatory agencies to discuss how Government regulations stifle productivity, eliminate competition, increase consumer costs and contribute to inflation. At that meeting the President urged the regulators to undertake internal reforms to make their agencies more responsive to consumers and to cut down bureaucratic redtape and paperwork for small businesses.

It is encouraging that the President has taken the lead on this matter. In my opinion, regulatory reform is long overdue. The principal responsibility, however, rests with the Congress. It is unrealistic to believe that Government agencies and regulators will reform themselves without pressure from Congress. In addition, the Congress created the agencies and delegated to them the authority to make decisions and promulgate rules and regulations affecting business. The Congress has primary responsibility for oversight and control of the regulatory system.

It is time for the Congress to take a good hard look at what Government regulators and bureaucrats are doing to the economy. It is time for the Congress to investigate the Federal agency system, determine what improvements should be made and recommend specific changes in the laws.

Mr. President, I am pleased that we are holding this colloquy today—I hope, the first in a series of colloquies—to discuss the subject of regulatory reform.

The purpose of these colloquies is to examine our current system of Government regulation, and to analyze the problems created by Government regulation and to consider alternative methods to improve Government regulation. I hope that these sessions will provide a frank and candid exchange of different ideas and viewpoints. I welcome the participation of my Senate colleagues in what I hope will be a thoughtful and productive nonpartisan debate on the issues involved in deregulation and regulatory reform. Out of such discussion may come meaningful reform legislation.

Mr. President, later today I shall introduce a regulatory reform bill which is aimed not at specific Government agencies, but at specific problems common to many agencies which businessmen and consumers encounter in dealing with Government. Some of the problems covered by my bill include: The need of Government agencies to assess the costs against the benefits of proposed regulations; the failure of the Congress to exercise adequate oversight over the agencies; the problems of excessive and unnecessary paperwork, report filing and recordkeeping; Government redtape and bureaucratic delay; the proliferation of conflicting and contradictory regulations promulgated by different agencies; the quandary of the businessman who tries to comply with one set of regulations from one agency, but innocently violates another set of regulations from another agency.

These regulatory problems are famil-

iar to you, so I shall not dwell on them or my proposals for curing them at this time. Instead, I would like to discuss briefly the most pressing problem created by Government regulation, namely, the costs or "hidden tax" on consumers.

There are many reasons why I favor regulatory reform, but perhaps the most important reason is the necessity to alleviate the tremendous costs to the consumer and harm to the economy caused by Government overregulation of business. I say "overregulation" because, in my opinion, there exist today so many agencies issuing and enforcing so many rules and regulations that the added costs to the public from regulation now far exceed the added economic and social benefits. I certainly do not quarrel with the purposes of most regulations. I believe that regulation is essential to accomplish certain desirable social goals, such as improved public health and safety. Unfortunately, the costs of such regulation now exceed these benefits. It is the responsibility of the Congress, therefore, to reform our Government regulatory system so that the public will once again be able to enjoy the benefits from regulation.

Mr. President, let me cite a few statistics which attest to the fact that we are being "overregulated" today. Prof. Murray Weidenbaum, the distinguished economist and former Assistant Secretary of the Treasury, says that in 2 years employment in the major Federal regulatory agencies rose from about 55,000 to about 64,000. The Office of Management and Budget estimates that there are almost 101,000 Federal regulators at work. In the past 10 years the total number of Federal agencies has increased from 77 to 102 according to the General Services Administration. However you look at it, there is a fairly large army of Federal bureaucrats living at the taxpayers expense.

No one knows for sure how much regulation, as a whole, costs the economy. Dr. Weidenbaum has stated that in the 12 months ending June 30, 1972, Federal spending for regulatory purposes totaled $1.3 billion. Within 2 years, outlays increased to $1.9 billion. Total spending for regulatory purposes was estimated at $2.2 billion in fiscal 1975. The General Accounting Office has put the yearly cost of government regulation at $60 billion. A more meaningful figure is the $130 billion cost to American consumers estimated by the President's Council of Economic Advisors. In other words, each American family spends approximately $2,000 each year for the total cost of the Federal bureaucracy and regulatory machinery plus the cost in terms of waste and excessive prices resulting from regulatory overkill.

Estimates of the costs of regulation by the Interstate Commerce Commission alone vary from about $4 billion to $9 billion per year. Let me cite an example of ICC regulated waste. Along the main cross-country interstate routes between Cleveland, Ohio, and Jacksonville, Fla. trucks roll along with trailers empty—even though shippers at both ends of the line would eagerly give them cargo. The truckers are permitted to haul freight one way only and must make the 1,000 mile return trip empty. Why? Because the ICC says that empty trucks on the highway are caused by "freight imbalances" along certain routes and by specialized vehicles, such as auto carriers, which can haul only certain kinds of loads. What a waste of energy and manpower. Yet it is the consumers who have to pay for this waste, in the form of higher prices passed along by shippers to the public.

Here is another example of an agency increasing costs to the consumer. A small airline operating only in Texas flies passengers between Dallas and Houston for as little as $15 per trip. An interstate airline, which operates under authority of the Civil Aeronautics Board, charges $31 for the same trip. A similar disparity exists in California on flights between San Francisco and Los Angeles. In both cases, the State-regulated airlines will charge lower fares, yet return comfortable profits. The passenger who happens to fly on a CAB-regulated airline will pay twice as much as the passenger who travels on a statewide carrier.

These are but a few of the many examples of the costs to the consumer and the economy as a result of Government over-regulation. I am sure that my colleagues can provide many other similar "horror stories" during these colloquies.

Suffice it to say that the costs to the economy from Government regulation are tremendous. Fortunately, the public has become wise to the effects of Government regulation and they now realize that they are paying a "hidden tax" for such regulation. Consumers realize that regulation can be "anticonsumer" because it raises prices they pay for foods and services they need and causes shortages in products they use. No wonder the taxpayers are demanding reform.

Mr. President, the people are looking to the Congress, to their elected representatives, for answers. It is time for us to take action.

I just wanted to cover that. I certainly will support the Senator's regulatory reform legislation, and I trust he will support mine.

I thank the Senator.

Mr. McCLURE. I say to both Senators, each of us is involved with pride of authorship, trying to push our own approach.

I think today the fact we are engaged in this colloquy ought to be evidence that this problem is broader than any individual approach to the problem and will require a concerted effort of each one of us to see that it is done.

I think the Senator from Illinois is exactly correct that it does cross party lines, ideologies, and various interests in our economy and society.

There is a widespread demand for the reform because there is a widespread recognition of what it is doing to us.

It is not just the businessman weighted down by the weight of regulation. It is not just the consumer who sees high prices and a smaller variety of goods in the marketplace. It is not just the person who seeks to enter into a business and finds it difficult to get into the business because of the regulatory barriers to the entry into the marketplace.

All of these groups and many more see the reason for the failure of the present regulatory structures in this country.

I do not join with those who charge some kind of a conspiracy between business and the regulatory agency. I think there grows up a relationship in which each finds that the other is useful to them. The regulatory agency would not have a job if they did not have a business to regulate. The business finds certain aspects of that regulation that assist them in the marketplace.

We have a whole host of people who live on that system, whether it is the corporate attorney, the lobbyist in this town, the attorneys for one of the regulatory agencies, the commissioners or staff, that all have a vested interest in seeing the system is not changed.

It is going to take the very best efforts of every one of us working together, a common purpose, to break down that resistance.

I could not help but think a moment ago, speaking of the Rock Island case, of my reaction when I saw that the Commission that is charged with the responsibility of administering a railroad, which they have already, and requiring divestiture of media in common ownership, whenever there was a change of ownership of a newspaper that also owns broadcasting facilities, that requires divestiture, or a separation.

The first case that comes up of any real note, at least that I am aware of, occurs in this town with the ownership of the radio, TV, and newspaper that are amalgamated together in the Washington Star newspaper and radio and TV. And what was the response of the regulatory agency when they were called upon to rule on the application of their own regulation? They thought it might take them a year to make up their mind.

Well, that is ridiculous. They wrote the regulation. They know why they wrote the regulation. They know what its application is within this market. Right or wrong they ought to be able to make a decision. My personal belief is that they should make a decision very soon and I would hope that they are consistent in that decision, that they are willing to apply here the same rule that they intend to apply everyhere else in the country. If it is good for small country newspapers in a single newspaper market, it is good in this market. If the arguments for the divestiture are valid in Peoria, they are valid in Washington, D.C. If they are valid in Boise, Idaho, they are valid in Washington, D.C. If they are not valid here, they are not valid anywhere in the country.

Certainly, they can make a decision. They can somehow use their regulatory process to take a look at the application of the regulation which they were competent to write, but seem incapable of applying.

Mr. President, I think that the effort undertaken by the Senator from Arizona in the introduction of this legislation, supported, as he is, this morning, by the Senator from Utah (Mr. GARN), the Sen-

ator from North Carolina (Mr. HELMS), the Senator from Illinois (Mr. PERCY), and others, is a hopeful move.

I am pleased to join in cosponsorship of that particular legislation. Every one of us in this body could give some case examples.

Mr. President, much will be said during the bicentennial year about our Nation's unique legacy of freedom. The fine old phrases of the Declaration will be repenned by schoolchildren and will roll from the tongues of orators. And the foresight of those who gave those phrases their life will once again be admired. The life of the words lies not only behind them, in the minds of their writers, but exists today in the American people who continue their interpretation. Proof of the living response of the U.S. citizen is in the fact that we are hearing more and more about the least talked about freedom of our legacy: the freedom from Government. As we turn from periodicals to broadcasts to interviews, we hear more people asking for less Government.

Ironically, the very legislators who claim the most sensitivity to those who call themselves alienated who say that their Government is unresponsive to their needs, continue to plan ways to saddle them with more of it. Indeed I find that the Congress is a more imaginative body than I had ever suspected. Having run out of areas in which it can regulate the citizen's lives it has changed from quantitative to qualitative regulation. Instead of simply thrusting another area of business, industry or recreation under the regulatory umbrella, Congress has involved itself in a series of measures each of which regulate everything from a different critical angle.

If the regulators have their way, we will have an agency to regulate everything from the consumer point of view, from the energy point of view, from the economic point of view and eventually from as many points of view as can be dreamed up. Each will have its own secure bureaucracy and none will be bothered by the fact that its resonsibility overlaps that of the others and duplicates the activities of a still-increasing number of commissions, committees, authorities, administrations, panels, boards, and task forces.

The inconvenience and absurdity of each governmental intrusion are obvious. But something more serious is at stake. Traditionally, Americans have been governed according to laws enacted by elected representatives who are in turn responsible to the voters. Under the regulation system, we are not only subjected to the whims and caprices of unelected bureaucrats, we are actually put in jeopardy because of the difficulty in reading, interpreting and applying the rules which have the force of law.

Mr. President, I would like to congratulate my colleague, Mr. FANNIN. It seems to me that his approach to regulatory reform is both timely and judicious. It is clear to anyone who reads the Senator's proposed legislation he is not favoring any special interest group, nor is he grinding any axes. He blames no one for the redtape or the bales of paper. He is simply trying to get rid of them. I would like to say that I am delighted to be a cosponsor of his bill.

Scarcely a day passes when a constituent fails to beg for help in fighting some regulation or other. The usual complaint is not that the regulations are confusing nuisances, but that they threaten the very livelihood of the citizen himself. I would like to recite the most recent complaint I have heard, not because it affects a large number of people, even in the State of Idaho, but because it provides a clear example of how deeply and thoroughly the Federal Government has gone in its effort to regulate every facet of life.

In my State of Idaho the sheep industry is an important part of the economic life of our State. The men traditionally and necessarily look after the sheep from mobile camps. For decades they have done this. They have gone out in covered wagons. That relatively old way of life has been retained for only one reason: It is efficient. It gets the job done that is necessary to be done in moving the sheep and protecting them from predators and protecting the resource in the grazing on the range.

The canvas of the wagon preserves its low center of gravity so that it has stability on the rough land that it must traverse. It adds very little weight to a vehicle that has to cover many rough, roadless miles.

The wood stove in that wagon provides heat as well as hot food and there is never a fuel problem in the area where they are going. The wagon's 75 square foot area is ample in that it is only very occasionally used by more than one person for sleeping.

The Labor Department is, of course, offended by the commonsense and convenience of these arrangements. Its new regulations insist that there be rear window exits precisely 24 inches by 24 inches. One man who had made a larger exit was required to diminish it to the required size. The Labor Department would like to see the old canvas tops of those wagons replaced with aluminum.

The two or three people who have made this adjustment have reported that the new tops are unwieldly and they are breaking prone and heavy. Also, they present such wind resistance that the occupants are highly vulnerable during storms. The Department also insists that people living in such conditions cannot be warm enough. They must carry propane for heat. This means space, weight, and fume problems, problems that did not exist before. But our bureaucrats blissfully consider themselves to be improving life. They require the current double mattress space to be divided into two, for reasons as yet unexplained. They require the integration of the college campus but they are going to require the separation in the sheep camps, although again space loss results.

The final absurdity is a new requirement of 60 square feet per person instead of the current 75 square feet per wagon. All of this is done not with a desire to correct past problems—there has never been a serious accident, to my knowledge, in a sheep wagon—but with a passion to regulate for the sake of regulation.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. HELMS. Mr. President, I believe I have 15 minutes.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. HELMS. I am glad to yield 2 minutes to the Senator from Idaho.

Mr. McCLURE. I thank the Senator for yielding.

Mr. President, if our forefathers had suffered such constraints in their efforts to cross the country in their covered wagons, only the east coast of the United States would be populated today. This illustrates what the founding fathers so clearly knew: The heel of the despot feels the same whether it is on the tyrant's boot or the shoes of numberless bureaucrats who have assumed our individual responsibilities for us in return for an ever-decreasing measure of economic security.

Mr. President, I would like to close by quoting Alexandr Solzhenitsyn, a man who has learned something of the nature of despotic governments. He said:

> Let the people breathe. Let them think and develop.

Mr. President, regulating them out of their jobs is no way to get that done.

I thank the Senator from North Carolina for yielding.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina is recognized.

GAO AUDIT REPORT ON SOUL CITY

Mr. HELMS. Mr. President, on March 5 of this year, in response to numerous allegations of apparent impropriety involving Federal funds and loans, the distinguished Member of the House of Representatives representing the Second Congressional District of North Carolina, L. H. FOUNTAIN, and I requested an audit and investigation of the financing and operation of so-called Soul City. Mr. President, this is a new "community" in my State authorized by title VII of the Housing and Urban Development Act of 1970.

Mr. President, that GAO report was released this morning.

Since that project has to date cost the taxpayers of America $4,600,000 in funds already spent, and since another $14,600,000 have either been reserved or awarded for Soul City, I feel that I should share the conclusions of the audit report with my colleagues.

Before I do that, Mr. President, let me say that this report brings to the mind of the Senator from North Carolina a declaration that we so often hear in this Chamber, "Oh, you cannot cut Federal spending. You cannot reduce the Federal budget. You will deprive the poor and the needy."

As a matter of fact, Mr. President, any Senator who has examined any Federal project is bound to be aware that we could take a switchblade knife and cut off 25 percent of it, and the people of America, and particularly the poor of America, would be better off if proper

utilization of the remaining money was effected.

As I noted in this Chamber several months ago when the appropriations bill from the Department of Housing and Urban Development was under consideration, the plans for creating Soul City were first announced in 1969 by Mr. Floyd B. McKissick, and they were grandiose plans, indeed. Mr. McKissick and others widely advertised throughout this country that Soul City would be a haven for black people. Apparently, the idea was that blacks needed to have a city that was all their own. The project, it was said, would be a new "freestanding community" with its own industrial base to be developed by black controlled corporations.

The site of this project is located in my State of North Carolina, about 50 miles northeast of Raleigh in Warren County.

The city was to cover some 5,000 acres including a 928-acre industrial park which, it was said, would ultimately employ 8,200 people. To achieve all this, the Soul City foundation and a proliferation of other organizations created by Mr. McKissick and his associates for the obvious purpose of applying for Federal funds have been awarded numerous large grants, provided a loan guarantee, and the like, to develop programs in education, manpower training, health services, recreation, industrial development, and many other areas. So what has happened?

In one form or another over the past 6 years, the Federal Government has thrown millions of the taxpayers dollars at this project through the Department of Housing and Urban Development, the Office of Economic Opportunity—later the Community Services Administration—the Department of Labor, the Department of Commerce, the National Endowment for the Arts, and the Department of Transportation. In all, the Federal participation, in one form or another, including loan guarantees, amounts to $19.2 million.

Now, 7 years following the announcement of the grandiose plans, with the aid of the General Accounting Office and a very meticulous investigative reporter in Raleigh, N.C., we are able to gain an idea of how Soul City is being managed and how the millions upon millions of Federal dollars are being spent. There are, in all, nine organizations associated with the operation of Soul City, as follows: First, the Soul City Co., second, Warren Regional Planning Corp., third, Soul City Foundation, Inc., fourth, Health Co. Inc., fifth, Soul City Utilities Co., sixth, Soul City Sanitary District, seventh, Floyd B. McKissick Enterprises, Inc., eighth, McKissick Soul City Associates, and ninth, Madison & McKissick Development Co., Inc.

This confusing maze of corporate and other entities, with its interlocking directorates and nepotism, has the appearance of a family enterprise. In an editorial appearing in the News and Observer, Raleigh, N.C., on March 5, it was stated that—

McKissick's control and influence within the four profitmaking and five nonprofit organizations that own and comprise Soul City give a clear appearance of conflict of interest. For instance, McKissick is chairman of the nonprofit Warren Regional Planning Corp., which got $274,000 in Federal funds in 1973 to provide "technical assistance" to the profitmaking Floyd B. McKissick Enterprises, Inc., which he also heads.

Stating that the allegations regarding interlocking relationships between the organizations is correct, the GAO report also verified that the Warren Regional Planning Corp. hired Gordon R. Carey, at $25,000 a year, to direct the aforementioned contract to provide the $274,000 in Federal funds to McKissick Enterprises. I do not know how the distinguished occupant of the chair (Mr. STONE) would describe a ripoff, but I think we have here a pretty good example, because Mr. Carey is a vice president and stockholder in McKissick Enterprises.

The interlocking relations are further illustrated by the GAO verified fact that Mr. Carey and Warrenton, North Carolina lawyer, T. T. Clayton are McKissick's partners in McKissick Soul City Associates, which is a limited partner in The Soul City Co. And, while directing the Warren Regional Planning Corporation project to provide technical assistance to McKissick Enterprises, Carey farmed out legal work (paid for with Federal funds) to T. T. Clayton's law firm—a goodly arrangement, Mr. President. Additionally according to the News and Observer editorial, Clayton's wife is the $20,000-a-year director of Soul City Foundation, Inc., one of the five groups with which Clayton is not directly connected. McKissick's son-in-law, according to the editorial, is the $17,000-a-year associate director of the foundation, which has obtained numerous Federal grants totaling more than $1 million to plan and implement social and human services programs for the future city.

The editorial concluded that—

These questionable aspects of McKissick's venture in Warren County are but a few of its disturbing features. They suggest strongly that public funds aren't being spent wisely or in an accountable manner.

That seems to the Senator from North Carolina to be the understatement of the week. The editorial continued:

Some order must be brought to management of the project to save it, or else to prevent further waste of public funds on it. And accounting is needed of the ethics and legality, or lack of them, that have brought the project to its present status.

So Representative FOUNTAIN of the Second District of North Carolina and I requested an accounting—an audit and investigation by the General Accounting Office. In the report of the Comptroller General in response to that request, it is revealed that in a statistical-sampling of 349 selected expenditure transactions, 86—or about 25 percent—did not meet one or more of the tests for allowability. Another examination of a sample containing 113 transactions revealed that 39—or about 35 percent—of the transactions did not meet one or more of the established tests for allowability. Of that number, 29 related to expenditures that had not been made in accordance with the provisions of the Federal grants or contracts. The report concluded that—

On the basis of our projections at a 95 percent confidence level, the (total) number of transactions . . . which failed to meet one or more of the tests for allowability ranged from 1,063 to 1,926.

Additionally, the report in its recommendations states that—

In view of the serious questions our review raised of expenditures of Soul City organizations and of the planned expenditures of millions of dollars of Federal funds by these organizations for the Soul City project, we recommend that the Secretaries of HUD, HEW, and Commerce and the Director of CSA:

Determine the allowability of grant and contract expenditures made to date and recover all unallowable expenditures.

Insure that adequate controls exist to prevent such unallowable expenditures in the future.

Copies of the report are being provided to those Department heads and I have written to them this morning urging that they take steps to ensure that the recommendations of the Comptroller General are fully carried out before their respective Departments consider approving or funding any additional grants, loans, guarantees, or other benefits for Soul City. That, of course, will be a very constructive step in the direction toward fiscal responsibility and financial integrity on the part of both the Federal Government and Soul City.

However, the matter is not entirely that simple. Other statements and revelations in the report of the Comptroller General raise additional questions management, or lack of it, at Soul City. But first, I would remind my colleagues that the "city" is appropriately named, because there is hardly a soul there. What then do the hardpressed taxpayers have to show for their $4.6 million that has been thrown at the project. The GAO report advised that construction finally began on an interim water system and an industrial fire protection system last April, the month after the request for the GAO audit and investigation was filed. This fall, a study for a waste water treatment system was underway. Following completion of the study, they will begin working on the plans for the system. According to the report, the underground utilities are further along—final design has been completed. A building and roads are under construction, and there are a number of housetrailers at the site. Viewing this and exercising an unsurpassed level of charity, GAO mustered the courage to suggest that the physical development was "essentially on target." The report does not indicate what would constitute being "essentially off target."

In short, Mr. President, at Soul City funds have been expended for art and culture, but there is no evidence of such there, except for the traditional folk art, and so forth, of the area, and we have always had that for free. There have been funds expended for industrial recruitment and employment training, but there is no industry and there are no employees. Funds have been expended for roads, water and sewer needs, and social planning, but except for the occupants of a few housetrailers, there are

no people. Indeed, funds have been spent for education, but there are no students. In point of actual fact, Mr. President, there is no Soul City—just an expanse of bare land that has been somewhat tarnished by the most massive, wasteful boondogle anyone in that area can remember.

As noted earlier, one of the nine organizations associated with the project is HealthCo, Inc. And, as also noted earlier, like the other organizations it reflects the interlocking relationship that exists with other of Mr. McKissick's organizations. Clearly, there have been some problems with HealthCo. Its stated purpose is to provide health-care services to residents of Warren and Vance Counties. In August 1974, when it opened, the HealthCo clinic treated an average of seven patients a day.

By May 1975, the clinic was treating 31 patients a day, which workload remained constant through August 1975. In August 1975, with such a patient load, the patient-visit cost was about $44, after deducting fees collected from patients and third-party payments. The GAO report advises that this cost resulted from the clinic's staffing level, which consists of 2 full-time doctors and 1 full-time dentist, 2 family-nurse practitioners, and 18 other employees in support and administrative jobs. In all, the clinic has 23 employees to serve 31 patients per day.

The regional Administrator told GAO that one problem with HealthCo had been the organization's attitude. He said that the emphasis seemed to be on employing people rather than achievements. Other Public Health Service officials assessed HealthCo's performance as poor, considering the amount of money spent—about $760,000 as of December 31, 1974—and the length of time the organization has been in existence—about 30 months. The official attributed HealthCo's poor performance to: First, lack of clearly defined program goals and objectives and second, ineffective management.

The regional Administrator of the Public Health Service was even more candid. He stated that the lack of continuity of employees in key positions and Mr. McKissick's influence on HealthCo's operations adversely affected management's capability to perform effectively. As an example of this interference, he referred to a letter dated July 21, 1974, from Mr. McKissick to the then executive director in which Mr. McKissick expressed his concern over the executive director's failure to:

1. Use the services of an insurance company which committed $750,000 to the Soul City Foundation for building Soultech 1 and which has a representative on the board of directors of Floyd B. McKissick Enterprises, Inc. Additionally, the insurance company had an interlocking board with a bank which was a financial backer of Soul City.

2. Purchase vehicles from dealers that were friendly to Soul City.

3. Employ, as promised, the wife of the General Manager of The Soul City Company.

Additionally, CPA and HEW audits of HealthCo raised questions regarding costs related to: First, improper control over travel advances and expenses paid to employees; second, salaries and wages in excess of budgeted amounts; and third, penalty and interest payments to the Internal Revenue Service for late payment of taxes in 1973 and 1974.

Finally, the Public Health Service in its review of grant proposals for HealthCo stated that—

1. It appeared that the level of funding for the project did not coincide in any way with what had been or should have been the goals and objectives of the program which were ambiguous and for the most part nonexistent.

2. It was high time that HealthCo seriously considered divorcing itself from the Soul City Foundation and McKissick Enterprises and got on with the business at hand. If that could not be done physically, then it should be done programatically.

3. The financial base, number of patients treated, and those projected did not indicate sufficient need nor warrant an expenditure for a permanent facility at that stage of the program.

The initial HealthCo grant provided for constructing a permanent healthcare facility to contain about 16,000 square feet of space. Among its other unusual achievements, HealthCo imported a medical director from Jamacia to Soul City. If that is not enough, the Public Health Service disallowed the costs given him for travel expenses from Jamaica to Miami, Fla.—the port of entry. The medical director appealed PHS's decision, and as of July 1, the appeal was still pending.

In passing, let me note that the National Endowment of the Arts gave the Soul City Foundation $22,120 between January, 1973 and July, 1974 to plan and develop a long range cultural arts program. NEA's normal monitoring procedures includes making site visits to ensure that the grant funds are being spent for grant-related programs. As of July, 1975, NEA had not made any site visits to the Soul City Foundation. Additionally, NEA has not audited its grants to the Soul City Foundation. NEA officials told GAO that they selected for audit only those grants with a large dollar amount and those which had received adverse publicity. The official further stated that, although Soul City had received some adverse publicity, none of it related to the NEA grants, and NEA did not plan to audit the grants. Today, I sent a letter to Ms. Nancy Hanks, Chairman of the National Endowment of the Arts, advising her of the high level of unallowable transactions associated with Soul City. In that letter, I suggested that NEA might wish to reconsider its decision regarding an audit. In my view, that would be a minimum level of prudence.

Perhaps the most flagrant administrative abuses within the Federal Government in connection with Soul City grants occurred in the Office of Economic Opportunity—now the Community Services Administration of HEW. Since CSA assumed responsibility of the OEO grants, the audit report speaks in terms of CSA, even though many of the abuses mentioned no doubt occurred during OEO's tenure. Of the six grants CSA—or OEO—awarded, two were not processed according to normal review and approval procedures. Because of inadequate documentation, GAO could not determine if normal review and approval procedures were followed for three other grants.

According to a CSA headquarters official, in one instance the former CSA director had directed that a proposed grant in the amount of $502,875 be approved and funded even though the proposal had not progressed through the review and approval process. CSA regional office officials told GAO that another grant submitted by the Soul City Foundation to CSA headquarters was, in turn, referred to the Atlanta regional office for review and recommendation. However, GSA headquarters told the region that its allotment was being increased by $93,000 to fund the proposal.

Additionally, regional officials said that the Franklin-Vance-Warren Community Action Agency was responsible for monitoring the performance of the grant awarded by the region and that the only monitoring of the Soul City Foundation by CSA would be through its monitoring of the community action agency's performance. I have today written to the Secretary of the Department of Health, Education, and Welfare, inquiring as to whether in the light of the GAO report he feels that CSA should reconsider its stated monitoring policy regarding Soul City.

Mr. President, the list goes on. Indeed, I have a HUD grant notification dated December 15, 1975, to the Soul City Co. in the amount of $445,775. And, the GAO report consists of 96 pages. The tangled web of interlocking, nepotistic organizations that comprise Soul City is revealed. The GAO report failed to indicate a violation of conflict of interest provisions, but it did in large part validate the allegations contained in the News and Observer editorial and the research of a very fine and meticulous investigative reporter. I have forwarded a copy of the GAO report to the Attorney General with the request that he have the appropriate officials within the Justice Department review the conclusions of law contained therein. I am not an attorney, and I do not know what, if anything, that review will disclose. But, whatever the result, an obvious fact will remain—Soul City is suspected by many citizens of my State to be the greatest single waste of public money that anyone in North Carolina can remember. It is based upon concepts developed out of an intellectually and morally bankrupt doctrine—a doctrine that suggests that enough money thrown at any problem will make it go away, or thrown in similar fashion at any proposal will make it happen.

It just does not work that way. There really is no such thing as a free lunch. Somebody must pay the price. The taxpayers of my State are quite certain that they know who that "somebody" is.

ROUTINE MORNING BUSINESS

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

FOREIGN ASSISTANCE ACT OF 1975—S. 2662

AMENDMENT NO. 1291

Mr. EAGLETON. Mr. President, recent administration testimony concerning the CIA's legal authority to conduct covert actions and our activities in Angola serve to highlight the need to assure that the War Powers Resolution covers paramilitary operations.

CIA Director William Colby, in testimony before the House Intelligence Committee on December 12, acknowledged the paramilitary nature of his agency's activities in Angola, although he described those activities as "modest." Subsequent press reports—some apparently the result of explanatory leaks from the administration—have indicated that "not more than five U.S. agents" are on the ground in Angola "to relay reports about the military and political situation." Another report states that the United States has supplied five "artillery spotter planes" piloted by Americans.

Mr. Colby testified that this "modest" operation was permitted under the war powers resolution because "paramilitary operations were stricken from the act." Mr. Colby is correct on this point. My own amendment to include civilian combatants as well as uniformed Armed Forces under the war powers resolution was rejected by the Senate—see CONGRESSIONAL RECORD of July 20, 1973, pages 25079–25092.

But should not Congress—the branch given primary responsibility under the Constitution for authorizing the involvement of the United States in hostilities—insist on its right to approve paramilitary operations? Should we have to hear the details of such operations, no matter how "modest," by controlled leaks to the press?

If the five pilots and five agents reported to have entered the hostilities in Angola were U.S. military instead of CIA civilian personnel, the President would be obliged, under section 4(a)(1) of the war powers resolution, to report that fact to Congress. In addition, if no action were taken within 90 days to authorize their activities, they would have to be withdrawn.

That is the formula of the war powers resolution as it applies to military personnel.

It is not a formula I endorse since I feel it contradicts the constitutional design—the design that says Congress gives its authority prior to our involvement in hostilities.

Yet the 90-day formula was written with our Vietnam experience in mind. It was written as a reaction to the difficulty Congress had in ending that interminable war. We wanted a mechanism to automatically terminate an unauthorized war.

But the war powers resolution has a gaping loophole which is now being used by President Ford to involve the United States in hostilities in Angola in much the same way we initially fell into the mire of Southeast Asia. Just as President Eisenhower used civilian pilots in 1958 to bomb anti-Sukarno rebels in Indonesia—just as President Kennedy in 1961 allowed the CIA to train an army and lead the invasion of Cuba at the Bay of Pigs—just as Presidents Johnson and Nixon waged a secret war in Laos without congressional consent, President Ford is now using CIA personnel in a paramilitary operation in Angola.

Some difficult questions have to be asked and presumably answered before our Angola policy can be assessed.

What is the nature of our involvement in Angola? What are the tactical and strategic implications? Is it sound policy to become embroiled in an African war, especially after having virtually ignored Africa for 6 years?

Is it wise to ally ourselves in this venture, even indirectly, with South Africa? Are the deepwater ports of Angola and the shipping lanes off its coast important enough to our national interests to warrant our involvement in a war?

Is our Angola intercession driven more by a feeling that détente will not work if the Soviets are allowed to move into previously neutral or pro-West areas? Is the other side of the détente coin the more familiar "containment" strategy of the fifties?

What is the nature of the administration debate over Angola which reportedly resulted in the resignation of the Assistant Secretary for African Affairs, Mr. Nathaniel Davis? Was Mr. Davis in fact advocating a policy of exposing Soviet imperialism through diplomacy rather than adopting Soviet techniques?

Mr. President, many in Congress will no doubt feel that our "modest" paramilitary operation is needed—that the risks are not as great as they might appear at first blush * * * that the deepwater ports of Angola and the protection of shipping lanes from the Persian Gulf are important enough to warrant an even greater involvement by the United States.

It is entirely possible that I could be persuaded to this point of view. But what is important now is that Congress be given an opportunity to debate these issues. What is important is that Congress have a say in matters involving war and peace. What is important is that Congress, after carefully considering the risks, either authorize or stop our involvement in Angola.

Mr. President, the legal implications of our inaction on this matter are as important as would be whatever corrective actions we might take. Thus far, Congress' desire to limit CIA covert operations has created a Catch-22 situation. We attempt to limit certain activities and the administration turns right around to cite the limiting provision as authority for that which is being limited.

For example, Mr. Mitchell Rogovin, special council to the Director of Central Intelligence, testified on December 9 before the House Intelligence Committee that the President not only possessed "inherent" powers to conduct paramilitary operations, but that Congress implicitly "acknowledged" this "inherent constitutional authority" in the war powers resolution.

Mr. Rogovin cited section 3 of the resolution which states that the President should "in every possible instance" consult with Congress "before introducing U.S. Armed Forces into hostilities." He then goes on to cite section 8(d)(1) which states that the war powers resolution is not intended to "alter the constitutional authority" of the President or Congress.

Referring only to those two sections, Mr. Rogovin then offers his penultimate conclusion:

> If the President has the power to dispatch troops to foreign countries and to use military force short of war (the term "war" is used by Mr. Rogovin to mean all-out, declared war)—and the foregoing discussion clearly demonstrates that he does—than it would logically follow that he has the power to send civilian personnel to foreign countries to engage in covert action (under which general category Mr. Rogovin includes covert paramilitary operations) . . .

Mr. President, those now considering legislative reforms in the intelligence area will find Mr. Rogovin's testimony interesting for its Orwellian logic. He in effect says that Presidents have an inherent authority to conduct covert actions—an untouchable constitutional power recognized in the war powers resolution. If you follow Mr. Rogovin's argument to its logical conclusion, he is saying that Congress cannot enact a statute outlawing covert actions—that such a statute would unconstitutionally infringe upon the President's "inherent" powers. Such a proposition is frankly preposterous.

Not so preposterous, however, are Mr. Rogovin's and Mr. Colby's assertions that the war powers resolution does not require the President to report the involvement of CIA or contract personnel in hostilities. Consider the following exchange between Chairman PIKE of the House Intelligence Committee and Mr. Rogovin:

> Chairman PIKE. Mr. Rogovin, you cite the War Powers Act in your testimony as imposing certain limitations on the presidency. The War Powers Act involves the use of American Armed Forces. Would you deem the CIA to be a part of the American Armed Forces?
>
> Mr. ROGOVIN. No sir.
>
> Chairman PIKE. So that in your view of the law there would be nothing to prevent the CIA from hiring individuals to fight a war without the approval required by the War Powers Act?
>
> Mr. ROGOVIN. That is correct. That legislation would not inhibit (it) . . . all the War Powers Resolution does is require the President to consult with Congress before introducing armed servicemen into hostilities.

Mr. President, when I urged the Senate to broaden the coverage of the war powers resolution to encompass combatants, I warned that failure to do so might encourage future Presidents to resort to paramilitary operations to avoid the reporting requirements for uniformed forces—see CONGRESSIONAL RECORD, May 21, 1975, page 15580.

Today in Angola we are participating in a hostile action—in a situation which would be covered by the war powers resolution if military instead of civilian personnel were being used. And, because of the loophole we left in the law, Congress has been excluded from the decisionmaking process.

It should make no difference whether the five American pilots reported to be flying artillery spotter missions in Angola are civilian or military. That is a combat function being performed in a hostile area at the direction of the President of the United States.

It should make no difference that the five agents on the ground in Angola are wearing seersucker suits instead of Army fatigues. They have been introduced into hostilities by the President of the United States. And, if they were military personnel, their presence in the midst of the Angola fighting would have been reported to Congress as required by the war powers resolution.

American involvement in hostilities, no matter how minor, should be a matter for Congress and the President to decide together. Our Angola adventure may be limited now, but the exigencies of maintaining those whom we support could well lead to deeper involvement. Whether that involvement is paramilitary or military in nature, Congress should participate in the decision. Congress should decide whether to stay in or get out.

Mr. President, I am introducing an amendment today to the Foreign Assistance Act soon to be considered by this body. The amendment is a provision of a bill I have introduced to amend the war powers resolution. It would circumscribe the President's use of American or contract civilian combatants in the same manner uniformed Armed Forces are now covered by the law.

Under the amendment a President would be required—as he is now required in the case of uniformed forces—to report the involvement of civilians, whether directly or as advisors, within 48 hours after their introduction into a hostile situation. Clearly, if this provision were now a part of the war powers resolution, we would not be scurrying around trying to find out the exact nature of our involvement in Angola.

Mr. President, the war powers resolution as it is written today unintentionally encourages a President to use covert civilian combatants in lieu of uniformed personnel. And unless we quickly close this obvious loophole, our Angola involvement will represent the precursor for a new type of presidential war—a war fought secretly with plainclothes soldiers and hired mercenaries.

I thank the Chair.

MESSAGES FROM THE HOUSE

At 10:55 a.m., a message from the House of Representatives delivered by Mr. Hackney, one of its reading clerks, announced that the House has passed without amendment the bill (S. 2757) to extend until April 30, 1976, the authority of the National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance.

The message also 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 bill (H.R. 5541) to provide for emergency relief for small business concerns in connection with fixed-price Government contracts.

The message further announced that the House has passed the bill (H.R. 1547) to amend title 38 of the United States Code in order to extend medical benefits to the survivors of any veteran who at the time of death was suffering from a total and permanent service-connected disability, in which it requests the concurrence of the Senate.

ENROLLED BILLS SIGNED

At 11:49 a.m., a message from the House of Representatives delivered by Mr. Hackney announced that the Speaker has signed the following enrolled bills:

S. 2757. An act to extend until April 30, 1976, the authority of the National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance.

H.R. 1753. An act to amend section 141 of title 13, United States Code, to provide for the transmittal to each of the several States of the tabulation of population of that State obtained in each decennial census and desired for the apportionment or districting of the legislative body or bodies of that State, in accordance with, and subject to the approval of the Secretary of Commerce, a plan and form suggested by that officer or public body having responsibility for legislative apportionment or districting of the State being tabulated, and for other purposes.

H.R. 2110. An act for the relief of Joyce Ann Farrior and Sarah E. Farrior.

H.R. 4865. An act to amend title 39, United States Code, to prohibit certain franked mailings by Members of the Congress and certain officers of the United States, other than mailings related to the closing of their official business, after such Members or officers have left office.

H.R. 6642. An act to provide for allotment or assignment of payments from civil service annuities, and for other purposes.

H.R. 7976. An act to amend title 5, United States Code, to provide that annual leave lost by a Federal employee because of an unjustified or unwarranted personnel action shall be restored to the employee, and for other purposes.

H.R. 10647. An act making supplemental appropriations for the fiscal year ending June 30, 1976, and the period ending September 30, 1976, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore.

At 12:25 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House disagrees to the amendments of the Senate to the bill (H.R. 5559) to amend section 883(a) of the Internal Revenue Code to provide for exclusion of income from the temporary rental of railroad rolling stock by foreign corporations; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. ULLMAN, Mr. MILLS, Mr. BURKE of Massachusetts, Mr. ROSTENKOWSKI, Mr. LANDRUM, Mr. SCHNEEBELI, and Mr. CONABLE were appointed conferees on the part of the House.

The message also announced that the House disagrees to the amendments of the Senate to the bill (H.R. 10624) to revise chapter IX of the Bankruptcy Act; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. EDWARDS of California, Mr. SEIBERLING, Mr. DRINAN, Mr. BADILLO, Mr. DODD, Mr. BUTLER, and Mr. KINDNESS were appointed managers of the conference on the part of the House.

The message further announced that the House insists upon its amendments to the bill (S. 2554) to amend Public Law 93–107 with regard to the broadcasting of certain professional sports clubs' games; requests a conference with the Senate on the disagreeing votes of the two Houses thereon; and that Mr. STAGGERS, Mr. MACDONALD of Massachusetts, Mr. MURPHY of New York, Mr. CARNEY, Mr. BYRON, Mr. FREY, and Mr. MADIGAN were appointed managers of the conference on the part of the House.

The message also announced that the House has passed the following bills in which it requests the concurrence of the Senate:

H.R. 2735. An act to amend title 38 of the United States Code in order to provide for an annual investigation by the Administrator into the cost of travel by veterans to Veterans' Administration facilities and to set rates therefor, and for other purposes;

H.R. 3035. An act to require the payment of interest in certain funds of the United States held on deposit in commercial banks, to provide for reimbursement of commercial banks for services performed for the United States, and for other purposes;

H.R. 8304. An act to amend the national reading improvement program to provide more flexibility in the types of projects which can be funded, and for other purposes;

H.R. 9348. An act to name a building in Temple, Texas, as the "W. R. Poage Federal building";

H.R. 10268. An act to amend title 38 of the United States Code in order to clarify the purposes for which the Administrator of Veterans' Affairs may release the names and addresses of present and former personnel of the armed services and their dependents;

H.R. 10394. An act to amend title 38 of the United States Code to promote the care and treatment of veterans in State veterans' homes;

H.R. 11016. An act to extend the Renegotiation Act of 1951 for six months; and

H.R. 11045. An act to amend the Rehabilitation Act of 1973 to extend the authorizations of appropriations contained in such Act.

At 1:45 p.m., a message from the House of Representatives delivered by Mr. Hackney announced that the House has rejected the report of the committee of conference on the disagreeing votes of the two Houses on amendment of the Senate to the amendments of the House to the bill (S. 622) to provide standby authority to assure that the essential energy needs of the United States are met, to reduce reliance on oil imported from insecure sources at high prices, to implement U.S. obligations under international agreements to deal with shortage conditions, and to authorize and direct the implementation of Federal and State conservation programs consistent with economic recovery.

The message also announced that the House has receded from its disagreement to the amendment of the Senate to the amendments of the House to the bill (S. 622), supra, and concurs therein

with an amendment in which it requests the concurrence of the Senate.

At 5:55 p.m., a message from the House of Representatives delivered by Mr. Hackney announced that the House has passed the bill (H.R. 8529) to establish improved programs for the benefit of producers and consumers of rice, in which it requests the concurrence of the Senate.

The message also announced that the House has passed without amendment the following bills:

S. 848. An act to amend section 2 of the National Housing Act to increase the maximum loan amounts for the purchase of mobile homes; and

S. 1922. An act to amend the act of July 7, 1970 (84 Stat. 409) to authorize appropriations to the Secretary of the Interior without reference to the agencies involved.

The message further announced that the House has agreed to, without amendment, the concurrent resolution (S. Con. Res. 62) making apportionment of funds for the National System of Interstate and Defense Highways.

PETITIONS

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

A resolution adopted by the Board of Supervisors of Santa Barbara County, California, urging support of S. 327; to the Committee on Interior and Insular Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MOSS, from the Committee on Commerce, with amendments, and an amendment to the title:

S. 642. A bill to amend the Federal Trade Commission Act to authorize certain State and local officials to enforce certain rules promulgated by the Federal Trade Commission, and for other purposes (Rept. No. 94–564).

By Mr. HANSEN, from the Committee on Interior and Insular Affairs, with amendments:

S. 209. A bill for the relief of Willard H. Allen, Junior, and Nicole J. Allen (Rept. No. 94–566).

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

S. 2371. A bill to provide for the regulation of mining activity within, and to repeal the application of mining laws to, areas of the National Park System, and for other purposes (together with minority views) (Rept. No. 94–567).

By Mr. HARTKE, from the Committee on Veterans' Affairs, with an amendment:

H.R. 10355. An act to amend title 38 of the United States Code to liberalize the provisions relating to payment of disability and death pension and dependency and indemnity compensation, to increase income limitations, and for other purposes (Rept. No. 94–568).

By Mr. METCALF, from the Committee on Interior and Insular Affairs, with an amendment, and an amendment to the title:

S. 392. A bill to designate certain lands in the Flathead and the Lewis and Clark National Forests in Montana as wilderness (Rept. No. 94–569).

By Mr. LONG, from the Committee on Finance, without amendment:

H.R. 9968. An act to amend section 103 of the Internal Revenue Code of 1954 with respect to certain obligations used to provide irrigation facilities (Rept. No. 94–570).

By Mr. PROXMIRE, from the Committee on Banking, Housing and Urban Affairs, without amendment:

H.R. 8151. An act to authorize the President of the United States to present in the name of Congress, a medal to Brig. Gen. Charles E. Yeager (Rept. No. 94–565).

Mr. PROXMIRE. Mr. President, from the Committee on Banking, Housing and Urban Affairs, I report favorably a bill (H.R. 8151) to authorize the President of the United States to present in the name of Congress a medal to Brig. Gen. Charles E. Yeager for his accomplishments with the XS–1 and for being the first man to fly an aircraft faster than the speed of sound, and I submit a report thereon.

The PRESIDING OFFICER. The report will be received and printed.

HOUSE BILLS REFERRED

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

H.R. 1547. An act to amend title 38 of the United States Code in order to extend medical benefits to the survivors of any veteran who at the time of death was suffering from a total and permanent service-connected disability; to the Committee on Veterans' Affairs.

H.R. 2735. An act to amend title 38 of the United States Code in order to provide for an annual investigation by the Administrator into the cost of travel by veterans to Veterans' Administration facilities and to set rates therefor, and for other purposes; to the Committee on Veterans' Affairs.

H.R. 3035. An act to require the payment of interest on certain funds of the United States held on deposit in commercial banks, to provide for reimbursement of commercial banks for services performed for the United States, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 9348. An act to name a building in Temple, Texas as the "W. R. Poage Federal building"; to the Committee on Public Works.

H.R. 10268. An act to amend title 38 of the United States Code in order to clarify the purposes for which the Administrator of Veterans' Affairs may release the names and addresses of present and former personnel of the armed services and their dependents; to the Committee on Veterans' Affairs.

H.R. 10394. An act to amend title 38 of the United States Code to promote the care and treatment of veterans in State veterans' homes; to the Committee on Veterans' Affairs.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that today, December 16, 1975, he presented to the President of the United States the enrolled bill (S. 2757) to extend until April 30, 1976, the authority of the National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance.

HOUSE BILL PLACED ON CALENDAR

The bill (H.R. 8529) to establish improved programs for the benefit of producers and consumers of rice, was read twice by its title and placed on the Calendar.

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. FANNIN (for himself, Mr. BROCK, Mr. CURTIS, Mr. EASTLAND, Mr. FONG, Mr. GOLDWATER, Mr. HANSEN, Mr. HELMS, Mr. HRUSKA, Mr. LAXALT, Mr. MCCLURE, and Mr. THURMOND):

S. 2792. A bill relating to the promulgation of rules and regulations by agencies of the United States. Referred to the Committee on the Judiciary.

By Mr. BUCKLEY:

S. 2793. A bill to provide for the establishment of a national cemetery on Long Island, N.Y. Referred to the Committee on Veterans' Affairs.

By Mr. WILLIAM L. SCOTT:

S. 2794. A bill for the establishment of a National Cemetery at Quantico, Va. Referred to the Committee on Veterans' Affairs.

By Mr. BARTLETT:

S. 2795. A bill to amend the Hobbs Act to provide for penalties for the damages to employers. Referred to the Committee on the Judiciary.

By Mr. BUCKLEY:

S. 2796. A bill to amend title 3, United States Code, to provide for the protection of foreign diplomatic missions, to increase the size of the Executive Protective Service, and for other purposes. Referred to the Committee on Public Works.

By Mr. BENTSEN:

S. 2797. A bill to amend title 39, United States Code, in order to provide free postage for voter registration materials and nonpartisan voter information for those States and other political subdivisions subject to the provisions of Section 4(a) and Section 203 of the Voting Rights Act. Referred to the Committee on Post Office and Civil Service.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FANNIN (for himself, Mr. BROCK, Mr. CURTIS, Mr. EASTLAND, Mr. FONG, Mr. GOLDWATER, Mr. HANSEN, Mr. HELMS, Mr. HRUSKA, Mr. LAXALT, Mr. MCCLURE, and Mr. THURMOND):

S. 2792. A bill relating to the promulgation of rules and regulations by agencies of the United States. Referred to the Committee on the Judiciary.

REGULATORY REFORM ACT

Mr. FANNIN. Mr. President, I am pleased to introduce today on behalf of myself and Mr. BROCK, Mr. CURTIS, Mr. EASTLAND, Mr. FONG, Mr. GOLDWATER, Mr. HANSEN, Mr. HELMS, Mr. HRUSKA, Mr. LAXALT, Mr. MCCLURE, and Mr. THURMOND, a bill relating to the promulgation of rules and regulations by Federal agencies. This legislation, to be known as the Regulatory Reform Act, is designed to cure many of the most common and most frequently complained of problems which businessmen and consumers encounter in dealing with Government regulatory agencies. Perhaps it should more properly be called the Consumers' Cost Reduction and Relief Act because I believe it will, if enacted, eliminate many of the

hidden taxes that consumers pay as a result of Government regulation.

SUMMARY OF PROVISIONS

Briefly, my bill would accomplish the following:

First, it would make every Government agency demonstrate to the Congress that the economic benefits of a proposed rule or regulation exceed its anticipated costs to the public;

Second, it would require the House and the Senate to approve every major regulation proposed by the agencies;

Third, it would make employers and employees jointly responsible for seeing to it that regulations are complied with and would protect an employer from prescribed legal sanctions where he can demonstrate that a violation has been caused by acts of negligence or omission on the part of others;

Fourth, it would relieve persons from liability for noncompliance with agency standards where they can show that their violation was necessitated by compliance with other rules and regulations promulgated by the same or by another agency;

Fifth, it would terminate unnecessary paperwork, report-filing and record-keeping requirements; and

Finally, it would do away with costly redtape and bureaucratic delay by requiring an agency to complete its findings and make its final determination within 6 months from the date a proceeding is initiated. If the agency fails to make its findings and reach a decision by that time, the Federal Government must then reimburse the applicant and other aggrieved parties for costs, plus estimated loss of revenues, attributable to the agency's inability to take timely action.

PURPOSE OF THE BILL

Mr. President, the Regulatory Reform Act is not aimed at any specific Government agency, such as the Interstate Commerce Commission or the Civil Aeronautics Board. Much has already been written and said by others concerning the need for deregulation and for abolishing or reforming specific agencies. In fact, legislative proposals have been or soon will be introduced by the administration and by certain of my Senate colleagues aimed at various agencies.

This bill, however, does focus on specific trouble spots and shortcomings common to numerous Federal agencies. It is my sincere belief that if enacted, the Regulatory Reform Act would substantially improve the operation of the entire Government regulatory system, by increasing the speed, efficiency, and responsiveness of the Federal bureaucracy, by reasserting and strengthening congressional oversight over all regulatory agencies, and by lowering the direct and indirect economic costs rising out of Government regulation of business that the public pays for goods and services.

GOVERNMENT OVERREGULATION AND THE NEED FOR REFORM

Mr. President, I have long been a proponent of regulatory reform, and my legislative record on this matter is clear. I have dealt with this subject at considerable length on previous occasions, inserting into the RECORD numerous statements of my own and articles by learned writers, journalists, economists, business leaders, Government experts, and numerous scholars attesting to the urgent need for reform of the Government's vast machinery of agencies, boards, bureaus, commissions, councils, departments, offices, or what have you, and for comprehensive review and assessment of the tangled web of Government rules and regulations that have grown up over the years.

In addition, as my colleagues are aware, in the Senate Interior Committee and on the floor, I have been active in the fight to end the Government's oil control program and to deregulate the natural gas industry. I have also introduced and cosponsored bills aimed at reforming the broadcast license renewal process and abolishing and phasing out Government agencies which have outlived their usefulness.

There are many reasons why regulatory reform is urgently needed, but in my opinion, the most important reason is the necessity to alleviate the tremendous costs to the consumer and harm to the economy caused by current Government regulation of business. Perhaps "overregulation" is a more accurate description of what we have today. I certainly do not quarrel with the benign purposes of most regulation nor would I argue that all regulation is necessarily bad. Some regulation may be essential to accomplish certain desirable social goals, such as improved public health and safety. The problem, as I see it, is that the Congress has too long permitted Government agencies to promulgate new rules and regulations without considering the impact of these regulations on the consuming public. As a result, there are today so many agencies attempting to enforce such a large number of rules and regulations, that the added costs to the public from new regulations now far exceed the added economic and social benefits.

Mr. President, during my over 10 years in the U.S. Senate, I have watched with alarm the steady growth of Government. During that period the number of Federal agencies—including departments, executive and legislative branch agencies, as defined by GSA—increased from 77 to 102. At the same time, the number of civilians employed by the U.S. Government grew from 2,496,000 to 2,802,000 and total Federal spending rose from $118.4 billion to about $274.8 billion. The distinguished economist and former Assistant Secretary of the Treasury Murray Weidenbaum has stated that in the 12 months ending June 30, 1972, Federal spending for regulatory purposes totaled $1.3 billion. By fiscal 1974, just 24 months later, outlays had increased 46 percent, to $1.9 billion, while for fiscal 1975, total spending was estimated at roughly $2.2 billion.

According to Professor Weidenbaum, in the past 2 years the number of persons employed in major Federal regulatory agencies rose from 55,316 to nearly 64,000. U.S. News & World Report recently estimated that there are currently 63,444 Government employees having regulatory functions. The Office of Management and Budget has put the number of Federal regulators at 100,980. Whichever figure you prefer, there is a good-sized army of Federal bureaucrats living at the taxpayers' expense.

Vice President ROCKEFELLER told a group of businessmen that nobody in Government has the slightest idea how much regulation as a whole costs the country. The General Accounting Office has put the yearly costs of Government regulation at $60 billion. A Federal Trade Commission report found $80 billion in economic waste in the American economy attributable to regulatory overkill. President Ford and the Council of Economic Advisors have estimated that the work done by Federal regulators is costing the taxpaying public some $130 billion annually, or approximately $2,000 each year for each American family. Estimates of the costs of ICC regulation alone vary from about $4 billion to $9 billion each year. In short, the economic costs of regulation are exorbitant and the Federal regulatory establishment is growing at a greater rate than the industries which it oversees.

The indirect costs of Government regulation are inestimable but have an equally serious impact on the economy. Regulation may distort normal supply and demand forces for a given product. For instance, the Federal Power Commission's regulation of natural gas prices has discouraged exploration for new reserves and encouraged many producers to sell their gas in unregulated intrastate markets where they could get higher prices. This, in turn, has resulted in severe shortages of natural gas available for interstate consumption.

Furthermore, ordinary business decisions are increasingly controlled by the actions of bureaucrats who are not responsive to the will of the people or to the influences of the marketplace. Government regulation also imposes tremendous burdens on small businesses, like mountains of paperwork and interminable delays, that decrease productivity. The regulatory process has tended to discourage innovation while perpetuating inefficiency. Finally, regulatory agencies discourage competition by protecting the very industries they are supposed to regulate.

In the words of former FTC Chairman Lewis Engman, a critic of regulation:

> Though most government regulation was enacted under the guise of protecting the consumer from abuse, much of today's regulatory machinery does little more than shelter producers from the normal competitive consequences of lassitude and inefficiency.

As Mr. Engman observed,

> Most regulated industries have become federal protectorates, living in a cozy world of "cost plus," protected from the ugly specters of competition, efficiency and innovation. Our system of hidden regulatory subsidies makes welfare fraud look like petty larceny.

It is evident that with the continued growth and expansion of Government control over the private sector, the tangible and intangible costs of regulatory activity will increase sharply. The resulting loss in productivity could lead to

stagnation in real living standards and a decline in the quality of life. In my opinion, the trend toward more frequent and costly Government regulation must be checked. We can no longer afford to be so tolerant of such costly controls over our individual liberties and America's free market economy.

In a speech to the Chamber of Commerce of the United States on April 28 of this year, the President discussed the harmful effects of regulation. He said, and I quote:

It is important to recognize that these obsolete and unnecessary regulations are not the result of perversity on the part of some regulatory body or government official. Rather, they result from the fact that the regulatory process is inherently static.

Regulations do not automatically expire when they have outlived their usefulness. There is no systematic pattern of review and even when it is acknowledged that changes are warranted, procedural delays often result in obsolete rules remaining in force for years.

In short, while the intention of regulation is to protect consumers, it sometimes does just the opposite.

In many cases, the reduction or elimination of existing regulations would result in lower prices for the consumer and open new opportunities for business.

In other industries, where there is inadequate competition, regulation should continue, but it is the job of Government to insure that such necessary regulation is administered efficiently and fairly.

In that address the President sounded the call for reform.

All too often the Federal Government promulgates new rules and regulations which raise costs and consumer prices at the same time. To achieve small, or somewhat social benefits, in these cases we must either revise proposed rules and regulations to lower their costs or we must not adopt them in the first place.

Moreover, we must examine the whole range of existing rules and regulations to determine whether modifications could lower costs without significantly sacrificing their objectives.

Let me emphasize, however, that we do not seek to eliminate all regulations. Many are costly, but they are essential to preserve public health and public safety. But we must know their cost and measure those costs against the good that the regulations seek to accomplish.

A major problem is that these costs are often hidden from the public generally. While we are accustomed to an open debate on the Government's budget, far too little attention has been focused on the ways in which Government regulations levy a hidden tax on the American people.

In the nearly 90 years since we created the first Federal regulatory commission, we have built a system of regulations which are bound with contradictions and excesses, all to the detriment of the public.

There are sound estimates that Government regulations have added billions of unnecessary dollars to business and consumer costs every year. To reverse this trend of growing regulation, my Administration is working hard to identify and to eliminate those regulations which now cost the American people more than they provide in benefits.

In his remarks at the National Federation of Independent Business Conference on June 17 of this year, the President again touched on the harmful effects of Government overregulation. I quote the President:

Although most of today's regulations affecting business are well-intentioned, their effect, whether designed to protect the environment or the consumer, often does more harm than good. They can stifle the growth and our standard of living and contribute to inflation.

When we consider revisions in these regulations, we must consider the case of those who may be injured by regulatory modifications. Our system can and will make needed changes which are fair to all. Obviously we cannot eliminate all regulations. Some are costly, but essential to public health and public safety . . .

As a consumer, I want to know how much the tab at the front door check-out counter is raised through the backdoor of regulatory inflation. As President, I want to eliminate unnecessary regulations which impose a hidden tax on the consumer.

I am pleased that President Ford has taken the lead by speaking out on the subject of Government overregulation and the need for reform, by urging the heads of the major independent regulatory commissions to make improvements in their procedures and regulations so as to cut out the redtape and paperwork for businessmen and to seek out the views and protect the interests of consumers, and by recommending to Congress specific legislative proposals for eliminating price and entry controls and other anticompetitive practices in the field of transportation.

I was among a group of Representatives and Senators who met with the President some months ago to discuss ways in which to implement reform in Government, and I am gratified by the President's efforts to date in this area.

Regulatory reform is long overdue, in my opinion. The prime responsibility for action, however, must rest with the Congress which enacted the laws creating the agencies and establishing the regulatory system. The Congress must take a good hard look at what the regulators have been and are doing, with a view to changing or eliminating many of their procedures and functions, where they have been shown to be unnecessary, no longer effective or likely to create more harm than good.

The Regulatory Reform Act which I am proposing today, will go a long way toward accomplishing the objectives of improving the operation of agencies and of the regulatory process.

Let me elaborate, Mr. President, on the specific provisions of this legislation.

DEFINITIONS

Section 2 of the act defines the principal terms used in the bill. It is clear that the legislation covers only major rules and regulations promulgated by Government agencies, including record-keeping and report-filing requirements, and does not cover purely internal business or housekeeping matters of the agencies, such as rules of practice or definition, which have no significant impact on parties or persons outside the agencies. It is also clear that this legislation relates to both the dependent administrative agencies within the executive branch and the independent regulatory commissions subject to congressional oversight as well as to their respective subagencies. This is necessary, in my view, because the rules and regulations of both the dependent and independent agencies have an impact on the economy. For instance, the safety standards promulgated by the Occupational Safety and Health Administration within the Department of Labor are just as meaningful to businessmen and consumers as a rule-making on cable television proposed by the Federal Communications Commission or a rate-making proceeding conducted by the Interstate Commerce Commission.

CONGRESSIONAL REVIEW OF REGULATIONS

Section 3 provides that no new rule or regulation proposed by an agency can become effective unless and until, first, the agency sends a copy of the rule or regulation to the Congress, together with a statement of proof that the economic benefits to be derived from the rule or regulation will exceed its projected costs and, second, the Congress reviews and approves such rule or regulation by concurrent resolution.

This section—the most controversial portion of the bill—is designed to prevent Government agencies from engaging in harmful regulatory activity and from adopting rules and regulations which will produce inflationary costs, the hidden taxes I have described. It will also reassert congressional control and scrutiny over the regulatory process.

Before a regulation becomes law, the agency considering the regulation, the Congress, and the public should have some idea of the anticipated costs and benefits of such regulation. There is a need, before a regulation is produced or a decision to regulate is made, for the agency to make an intelligent effort to balance the costs of that regulation—human costs as well as money costs, direct costs as well as indirect costs—against the social and economic benefits. Only in this way can there be an adequate assessment of the need and probable efficacy of proposed regulations or of alternative approaches to certain problems.

The President has stressed the need for measuring costs against benefits or regulation. As he told the National Federation of Independent Business:

Let us evaluate the costs as well as the benefits. The issue is not whether we want to control pollution—we all do. The question is whether added costs to the public make sense when measured against actual benefits.

Pursuant to Executive Order No. 118821, the executive departments and agencies are required to include inflationary impact statements with proposals for major regulations. When recommending proposed regulations or possible alternatives, the agencies must provide statements which consider the cost impact on businesses, consumers, markets, and governments and the effects on productivity, competition, product and service supplies, employment and energy demands. The Congress must make similar judgments when considering legislative proposals. It is not, therefore, unreason-

able to expect Government agencies to submit such statements to the Congress for its evaluation of proposed regulations.

A cost-benefit analysis is not sufficient, however, to avoid overregulation and its hidden taxes, the agencies must do more than merely measure the benefits and then the costs: They should also be made to demonstrate that economic benefits actually exceed the costs. This should prove to be a worthwhile study for it is probable that if such an analysis shows that the actual costs of a proposed regulation exceed its anticipated benefits, the agency will reject the regulation and consider an alternative, or even decide that no regulation is needed and that reliance on the marketplace may be the most reliable way to eliminate a problem.

In the case of dependent agencies, the Office of Management and Budget will not authorize funds to be spent by the regulators on regulatory activity which has been shown to be inflationary or unsound. Similarly, independent agencies can be persuaded through congressional oversight to follow the dictates of their cost-benefit analysis. We must be sure, however, that Government regulatory bodies do more than engage in an analytical exercise. To show regulators how foolish it would be for them not to utilize cost-benefit analysis is not sufficient to stimulate them to reform. We must be certain that the results of their analyses are not ignored, or worse yet, that the information is not shaded in such a way to justify any regulatory activity whatever. That is why I propose that Congress be required to review and approve every major regulation proposed by an agency.

The Congress, as the most representative branch of Government, directly responsible to the people, has the primary responsibility for insuring that the Government's complicated scheme of agencies and regulations function properly. After all, we created the agencies and established the system of Government regulation. It is, therefore, our duty as lawmakers to see that these agencies and these rules and regulations are responsive to the people's needs, interests, and concerns.

Too often the Congress enacts new laws and sets up new agencies without a clear precise mandate. Instead, authority and discretion—perhaps too much authority and too broad discretion—is delegated to the agencies, to appointed commissioners and bureaucrats who promulgate regulations and make decisions necessary to carry out the general tasks which we have assigned by law to particular agencies. For all practical purposes, the agencies are then left free to operate as they see fit without substantial congressional interference, control, or supervision.

Too often the Congress forgets completely about the agencies, assuming that they are performing adequately the jobs which were delegated to them, until the phone calls and letters start pouring in from angry constituents complaining about regulatory meddling. At that point, the Congressman's only recourse may be to call the commissioners on the carpet, threaten to vote against the next appropriations bill for their agency, introduce relief legislation, or just plead shock and surprise and promise the constituent to look further into the matter, hoping it will somehow go away.

In time, Government agencies, no matter how lofty their goals or vigorous their administrators, tend to become stale, lax, or lazy. In addition, regulators, not being elected officials directly accountable to the people, are insulated from considerations of profit and loss, and though their decisions affect management, they have no management responsibilities. They operate under a double standard: which businesses can be forced by Government to comply with rules and regulations, agencies are often left free to ignore them. The result is that regulators become increasingly preoccupied with their own narrow regulatory interests—indeed, with expanding their agency's jurisdiction and power—and less concerned with the effects their regulations may have on a company or industry, on consumers or society as a whole. They lose sight of the objectives of regulation, of the additional costs of their activities and decisions, and whether such costs can be justified in terms of benefits to be achieved from regulation.

The only method the Congress seems to have for fighting this process of bureaucratization is to heckle the agencies, take potshots at the administrators, threaten reprisals, and issue more directives and demand more reports—while simultaneously voting regulators more funds to pay for more personnel and more work. This patchwork approach to oversight produces much paperwork, but few positive results.

The people who elected us expect more from us than that. They have a right to assume that we, their elected representatives, know what the agencies are doing and can control the bureaucracy and prevent foolish and harmful regulation from being adopted. Understandably, they hold us responsible for what Government does in its regulatory capacity.

Section 3 of my bill, by granting to Congress a legislative veto over proposed regulations, will insure that consumers have greater opportunity for input into the rulemaking process. The people will have a final say over what Government agencies and regulators propose to do at the most important point in the regulatory process; that is, before rules and regulations become effective. This proposal will help to restore credibility in the Congress and public trust and confidence in the institutions and processes of government.

Under these provisions I envision a process similar to the one established under the Congressional Budget and Improvement Control Act. Under that law, the Congress must approve proposed rescissions before spending cuts can be made or programs terminated. This reform enabled Congress to exercise control over Presidential impoundments and comprehensive review of the entire budgetary process. In my view, the reforms that I propose in section 3 of my bill will permit the Congress to better oversee agency activities and better control the regulatory process.

Committee procedures suggested by section 3 would be similar to those followed in the normal legislative process. Each agency would submit proposed regulations, together with economic impact statements, to the appropriate committee or committees of the House and Senate having oversight over the agency and jurisdiction over the subject matter. It would then become the responsibility of the committee staffs to review the regulations and accompanying economic impact statements. The proposed regulations would be published in the Federal Register at the time of their submission. Consumers would have ample opportunity to comment and testify on proposed regulations during committee hearings. In fact, section 3 would guarantee consumers and consumer groups a greater voice in the regulatory process without the need or intervention of consumer advocates. Finally, as with budget rescissions, both Houses would vote on a concurrent resolution approving proposed regulations.

Mr. President, I am aware of several criticisms that have been raised against this proposal. For one, there may be a problem of separation of powers as a result of a congressional veto over the actions taken by dependent agencies within the executive branch. I do not believe these objections are frivolous, and I would welcome the comments of the Justice Department on this matter. I hope also that the Senate Judiciary Committee will hold hearings at some future date.

Some of my colleagues may be concerned by the workload that section 3 would seem to place on them and their committee staffs. Personally, I do not feel that Members of Congress or their staffs are especially overworked. After all, the Congress recently enacted legislation enlarging committee staffs so that we would all hire more assistants and be better prepared to carry out our legislative duties. And it is part of our duties to find out what Government is or is not doing, supervise the agencies and enact laws. Congressional oversight may not be glamorous and it may involve hard work, but that is what the people elected us to do.

As a practical matter, I believe that this legislation would have a chilling effect on regulatory activity. The regulators, knowing that their regulations would be reviewed by Congress, would be less likely to promulgate foolish, unnecessary or harmful regulations. The number of proposed regulations will decline dramatically, in my opinion. The entire regulatory process will, in fact, be slowed which may not necessarily be a bad thing. In any case, much of the review of proposed regulations will be routine, since the regulations submitted to Congress will be thoughtful, better written regulations and, therefore, less likely to be challenged.

Perhaps section 3 could be amended to redefine the kinds of major regulations subject to review or provide special handling for regulations covering emergencies. In any case, I do not find these problems insurmountable and the issues involved are too important to disregard.

EMPLOYEE RESPONSIBILITY FOR REGULATORY COMPLIANCE

Section 4 of the act would authorize every Government agency to promulgate rules imposing equivalent sanctions on employers and employees for failure to comply with its regulatory standards. In addition, the agency would be prohibited from imposing penalties against an employer alone where the employee is also subject to such penalties. This section would protect employers where they can show that they complied with agency regulations whereas employees were the only party to violate such regulations. The effect of these provisions would be to impose joint responsibility on employers and employees for carrying out Government rules and regulations. Both employers and employees could be fined for failure to comply with agency requirements.

In my opinion, this provision would improve occupational safety and health standards at worksites. An employer has the primary duty to see to it that his working places are safe for all employees. Employers would still be required to take appropriate steps to promote on-the-job safety, through employee training programs, posting warning notices, renovating industrial machinery, and replacing defective equipment, enforcing job safety rules and adopting other accident prevention measures. However, now employees would have an equal legal requirement to comply with Government regulations and employee rules relating to industrial health and safety.

Studies have shown that on-the-job accidents are primarily the result of employee carelessness. It makes more sense—and far better safety—to have workers share in the responsibility to obey OSHA rules. If an employee refuses to use a safety belt when climbing a tower ladder or wear a helmet on a heavy construction site, despite his employer's admonishments, and in violation of plant rules, it is unjust and foolish to cite management for noncompliance. Section 4 would encourage closer cooperation between management and workers to improve industrial working conditions and to take better precautions to prevent accidents.

PROTECTION AGAINST INNOCENT VIOLATIONS OF CONFLICTING REGULATIONS

Section 5 of the act would protect a businessman or consumer from incurring penalties in a situation where such person is compelled to violate one Government agency's rule or regulation in order to comply with a different rule or regulation of the same or another agency.

There are many different kinds of agencies exercising control over business. Some agencies specialize by industry. For instance, the Civil Aeronautics Board regulates the airline industry, and the Federal Communications Commission regulates all aspects of radio and television broadcasting. Other Government agencies, like OSHA, regulate only one aspect of business activity—for example, job safety—but its authority extends to many industries. The Environmental Protection Agency, for instance, deals with environmental impact only but its regulations affect all industry.

In addition, there is a proliferation of Government regulations, some of them contradictory and confusing. No one knows how many Federal regulations there really are. Just to list all the rules and regulations established last year required 45,000 pages of very small print in the Federal Register. Many of these rules, besides being complex and obscure, are written by government lawyers in very legalistic and bureaucratic jargon—"governmentese"—which is difficult for the average layman to understand. In fact, they are often impossible for other lawyers to comprehend.

It is not uncommon, therefore, for someone, in trying to obey one regulation, to run afoul of another. For example, in order to desulphurize coal and reduce air pollution, a combination with lime is required. But when that is done, large quantities of solid waste, calcium sulphate, are generated. In turn, disposing of calcium sulphate creates water pollution problems.

In the meat packing industry, Federal standards set by the Food and Drug Administration require plants to be kept clean and sanitary. Surfaces easiest to clean are usually tile or stainless steel. Unfortunately, those materials are also highly reflective of noise and may not always meet Occupational Safety and Health Administration standards.

Mr. President, let me cite several situations mentioned by Murray Weidenbaum which demonstrate the problems faced by an ordinary businessman attempting to comply with Government regulations.

> Let's take the personnel department. It's quite clear that before you can hire anyone, you have to make sure you follow the rules of the Equal Employment Opportunity Commission.
>
> Certainly, once the people are hired, you have to meet the requirements of the Wage and Hour law.
>
> If you have landed a federal contract, you have to file an affirmative action program. Also, you will have to make sure you comply with the Davis-Bacon Act or the Walsh-Healy Act.
>
> In all cases, you must make sure you don't violate the rules of the Occupational Safety and Health Administration. And sometimes those rules get in the way of the Equal Employment Opportunity Commission.
>
> For example, both OSHA and EEOC have jurisdiction over toilets. OSHA once said women need special lounge facilities as part of their restrooms. But EEOC says, well, if you provide lounges for women, you have to provide them for men also. Regulation, like justice, must be blind.

In those situations where an individual is faced with having to comply with so many confusing and conflicting regulations, it is not unreasonable to expect that errors will be made and rules will be broken. In such a situation, an individual who makes a reasonable effort to comply with appropriate Government regulations but mistakenly or innocently disobeys one regulation while complying with another, should not be held liable for such noncompliance. The burden of proof remains with the transgressor to show extenuating circumstances.

REDUCING THE PAPERWORK BURDEN

Section 6 would prohibit Federal agencies from requiring applicants to file any information previously furnished or not directly relevant to considerations affecting the grant or denial of an application. This provision would eliminate repeated and unnecessary filings and reduce the paperwork burden for both applicants and agency personnel. Of course, the agency might require of the applicant any new or additional facts it deems necessary to make its findings.

Over the years, grant of renewal application procedures have become increasingly involved and complicated as a result of the changing requirements of Government agencies. Such processes have become major undertakings for the average small businessman who is hard pressed to meet burdensome reporting requirements. The time, effort, expense and personnel needed to compile reports and keep records of all transactions are considerable. Indeed, the fees that must be paid to expensive lawyers to translate agency rules and to complete and file requisite documents can eat up a businessman's hard-earned profits. Excessive costs are, of course, passed on to the consumer in the form of higher prices.

As the Arizona Republic recently editorialized:

> Reports required by government of business and individuals have become so complicated and numerous that corporations have had to create new positions—at an estimated cost of $18 billion—simply to comply with the fettishes of paperwork tyrants.
>
> But the cost and harrassment is not the worst part of it. More depressing is that most of the government-required paperwork cannot possibly be read, analyzed and used for concrete action. The paperwork demand of government simply has become a mindless juggernaut out of control, and with no meaning.

Let me cite a few examples. A company with 40,000 employees has to maintain 125 file drawers of records to meet Federal reporting requirements on personnel, according to some estimates. An Oregon company operating three small television stations filed 45 pounds of forms for its license renewal applications. A small radio station in New Hampshire paid $26 in postage just to mail its application to Washington. The Bureau of Land Management called for bids on a pickup truck which should have cost about $4,000. But the successful low bidder had to hire 8 people to complete the 155-page technical bid report—and ultimately offered the $4,000 truck for $15,497. Such horror stories are all too common.

In my opinion, section 6 of my bill would substantially alleviate report filing and recordkeeping requirements of individuals and businessmen. It would expedite agency action on any grant or renewal application and would free agency personnel from paper shuffling to more important matters. It would eliminate the paperwork tyranny that has become too pervasive under Government regulation. Most importantly, it would avoid needless expense to applicants and parties, thereby reducing overhead costs for businesses, and yielding savings to consumers.

No one knows how big the paperwork problem is. One Senate select small business subcommittee estimated that 10 bil-

lion sheets of paper flow through Federal offices every year, enough to fill 4.5 million cubic feet of space. It is calculated that 50 different forms must be filled out each year by every man, woman, and child in the country. One estimate puts paperwork burden losses on American business at $18 billion a year, while another indicates that the costs to the full economy run to more than $40 billion. This legislation would stop such an enormous drain on the economy.

AN END TO BUREAUCRATIC DELAY

Section 7 of the act would require an agency to make a final determination or finding in a license proceeding within 6 months from the date of initiation of said proceeding. If the agency fails to take final action within that time, the Government would compensate the applicant and other interested parties for their full costs, including reasonable attorney's fees, and estimated loss of revenues attributable to regulatory delay. Reimbursement would be made out of funds appropriated for the operation of the agency. Should there be a dispute concerning the amount of such reimbursement, an aggrieved party could appeal to a Federal district court for de novo review of the award.

The purpose of this section is to force agencies to speed up regulatory proceedings. Regulatory delay is a disease that afflicts every Federal agency, burdening regulated companies with millions of dollars in legal fees and often costing customers of those companies higher rates or prices as a result. President Ford has called on independent regulatory commissions to streamline their work, improve their procedures and consider new approaches "to eliminate the interminable delays often created before regulatory matters are resolved."

Of course, regulatory proceedings are complex, often involving complicated questions of cost accounting, industry structure and competition. Because the stakes are high it may be in the interest of one party seeking the grant of an exclusive license to delay the proceedings as long as possible. Since many agency proceedings are adversarial in nature, if one applicant believes it is about to lose some advantage as a result of an agency decision, delay may become an asset rather than a liability. Furthermore, the regulators and bureaucrats may not share the profit-and-loss concerns of the applicants in a speedy outcome. Obviously a good many Washington lawyers make a handsome living from prolonged proceedings. Thus, too often regulatory agencies create administrative wars of attrition in which neither businessmen nor consumers can afford to participate.

It is not difficult to point to situations where the administrative process has dragged on for years and years, exhausting the funds and the patience of all parties concerned. Perhaps the classic case of bureaucratic delay in the regulatory process is the unresolved dispute between two broadcasters in New York and Albuquerque. For over 34 years the FCC has been unable to decide which of two radio stations—WABC or KOB—should be permitted to operate at 770 kilocycles on the AM dial. The problem arose because the agency assigned the two stations to the same frequency. Since 1941, when an international agreement required the FCC to grant a new frequency to KOB, the FCC has been unable to figure out how to restrict the operations of one of the stations in order to eliminate interference between the two.

Since 1969, the FCC has had a proposed rulemaking pending on this matter. Meanwhile, the delay has caused a paperwork nightmare at the Commission, cost the respective broadcast licensees a small fortune in legal fees and prevented listeners from receiving interference-free programming from either station.

Under section 7 of my bill, Federal agencies would be encouraged to make timely decisions. Perhaps 6 months is a rather stringent deadline which few agencies could meet without doing injustice to the parties. However, to many applicants in licensing proceedings who have a considerable financial stake in the outcome, 6 months may be too long to wait. In any case, in order to improve agency performance and cut down costs to the economy, I believe it preferable to strive for a regulatory time limit of 6 months rather than 6 years.

CONCLUSION

Mr. President, the Regulatory Reform Act does not purport to perform miracles. It would not cure every regulatory defect about which consumers, businessmen, economists, scholars, and editorialists have complained when advocating regulatory reform. Nevertheless, this bill, by concentrating on specific problems prevalent in the Government regulatory system, should go a long way to improving that system.

While I am not wedded to specific provisions or specific language of any section in this bill, I believe that the Regulatory Reform Act raises questions and poses answers which must be considered by the Congress in approaching the subject of regulatory reform.

I believe that this legislation will provide a reasonable basis upon which the Congress can undertake a comprehensive review of the operation of Federal regulatory bodies and reassessment of Government regulation. Because of the economic costs and important issues involved, I hope that the Congress will give prompt and careful consideration to this legislation.

Mr. President, I ask unanimous consent that the full text of the Regulatory Reform Act be printed in the RECORD.

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

S. 2792

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 "Regulatory Reform Act."

SEC. 2. As used in this Act the terms—

(1) "agency", "person", "party", "license", "licensing", and "agency action" have the same meaning as given each of such terms under section 551 of title 5, United States Code; and

(2) "rule" and "regulation" mean the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy, and include the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or evaluations, costs, or accounting, or practices bearing on any of the foregoing. Such terms also include record keeping and reporting requirements imposed by any agency but do not include rules of practice or rules which are issued to define specific terms or rules which have no bearing or effect on parties or persons outside the agency.

SEC. 3. Notwithstanding any other provision of law no rule or regulation promulgated on or after the date of enactment of this Act by any agency shall become effective unless—

(1) such agency transmits to the Senate and the House of Representatives a copy of such rule or regulation together with a statement demonstrating that the economic benefits to be derived from such rule or regulation exceed the costs incurred therefrom; and

(2) the Congress by concurrent resolution approves such rule or regulation.

SEC. 4. (a) Subject to the provisions of section 3 of this Act, each agency is authorized to promulgate rules and regulations which impose a penalty, for the violation by an employee of any rule or regulation in effect against the employer of such employee, if the penalty to be imposed against the employee is equivalent to a penalty to which the employer is subject.

(b) No employer may be penalized for the violation by an employee of any rule or regulation if such employee is subject to any penalty for such violation.

SEC. 5. No person may be penalized by any agency for the violation of any rule or regulation promulgated by such agency if such violation was necessary in order to comply with another rule or regulation of that or any other agency.

SEC. 6. Notwithstanding any provision of chapter 5 of title 5 of the United States Code, or any other provision of law relating to administrative procedures, in order to expedite action on any grant or renewal application, rule-making, or other agency proceeding, and to avoid needless expense to applicants and parties, no agency shall require any such applicant or party to file any information or document, in whole or in part, which previously has been furnished to the agency or which is not directly relevant to the considerations that affect the grant or denial of such application or are involved in such proceeding, but the agency may require of the party any new or additional facts it deems necessary to make its finding. Pending any hearing and final decision on any such application or the disposition of any petition for rehearing or other proceeding or rule-making, any applicant or party thereto may continue his operations.

SEC. 7. (a) Notwithstanding any provision of chapter 5, of title 5 of the United States Code, or any other similar provision of law, in the case of any agency that fails to make a final determination or finding in any licensing proceeding within six months from the date of announcement of the initiation of any such proceeding, the applicant or party seeking that agency determination, and all interested parties to such proceeding shall be reimbursed out of funds appropriated for the operation of such agency for the complete costs of their application, including reasonable attorneys' fees and estimated loss of revenues directly resulting from the agency's failure to complete the licensing proceeding.

(b) Any person aggrieved by a determination of an agency as to the amount of reimbursement required in any proceeding under subsection (a) may bring a civil action in

an appropriate district court of the United States to review such action. Any proceeding in any such court under this subsection shall be de novo. The district courts of the United States have jurisdiction over any action brought under this subsection.

By Mr. BUCKLEY:

S. 2793. A bill to provide for the establishment of a national cemetery on Long Island, N.Y. Referred to the Committee on Veterans' Affairs.

VETERANS CEMETERY ON LONG ISLAND

Mr. BUCKLEY. Mr. President, the National Cemetery System of the Veterans' Administration governs a network of approximately 100 cemeteries across the United States. The largest such facility in the State of New York is Long Island National Cemetery.

The best indication of the importance of Long Island National Cemetery is the fact that the interments at this one site represent in excess of 25 percent of the total in the entire VA cemetery system.

It is now estimated that all of the available gravesites in this massive facility will have been assigned by approximately 1978.

This would not be cause for great concern if facilities of similar scope were scheduled for completion in this area in the near future. However, at the present time, I am informed that there are no VA cemeteries under construction any closer than Otis Air Force Base in Massachusetts and the future outlook for such construction is not considered promising.

In view of the above facts—the heavy usage of Long Island National Cemetery and the rapid approach of what will amount to its elimination as an available facility—it is imperative that steps be taken to develop a new site. In view of the lengthy interval involved between the time a new facility is designated and the time the gravesites actually become available, it is imperative that some action be taken as soon as possible.

Considering the fact that the acquisition of private land is both more expensive and more time consuming—frequently involving condemnation—than the acquisition of federally owned land, the use of federally owned land would be the most expeditious method of arranging for the designation of a new VA cemetery in this area.

Fortunately such Federal land exists and has been visited and evaluated by representatives from the National Cemetery System of the Veterans' Administration, who found that its potential for development into a VA cemetery is excellent. I am referring to that area now comprising the Naval Weapons Reserve Plant in Calverton, Long Island. This area is currently under the jurisdiction of the Department of the Navy and is leased to a variety of agricultural interests on a short-term basis.

The Calverton area appears to be the only site which is: First, federally suited for development into a cemetery; second, geographically convenient for absorbing the overflow from Long Island National Cemetery; third, relatively available. Therefore, I am today introducing legislation authorizing the Navy Department to transfer jurisdiction of 900 acres of this area to the Veterans' Administration, and directing the Veterans' Administration to utilize this land for the construction of a badly-needed VA cemetery.

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

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

S. 2793

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Navy is authorized and directed to transfer to the Administrator of Veterans' Affairs jurisdiction over that tract of land, consisting of approximately 900 acres, which partially comprises the grounds of the Naval Weapons Reserve Plant on Long Island, New York, which is located north of State Route 25 and borders State Route 25A, and which is no longer needed by the Department of the Navy.

SEC. 2. The Administrator of Veterans' Affairs shall, at the earliest practicable time following the transfer of jurisdiction to him over the tract of land referred to in the first section of this Act, develop such tract of land for use as a national cemetery.

SEC. 3. The transfer of jurisdiction required by the first section of this Act shall be completed within 90 days after the date of enactment of this Act.

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

By Mr. BARTLETT:

S. 2795. A bill to amend the Hobbs Act to provide for penalties for the damages to employers. Referred to the Committee on the Judiciary.

Mr. BARTLETT. Mr. President, today I am introducing legislation to amend the Hobbs Act, to provide that organized labor related violence be considered a Federal crime under the act.

The Hobbs Act was passed in 1949 in an effort to curb the use of violence in labor disputes. However, in 1973 the Supreme Court severely restricted the application of this statute. In United States against Enmons, the Court determined that the Hobbs Act applies to the obstruction of interstate commerce by robbery or extortion only in cases where "union officials threaten force or violence against an employer in order to obtain personal payoffs and instances where unions use the proscribed means to exact 'wage' payments from employers in return for imposed, unwanted superfluous, and fictitious services." In the opinion of the court, the Hobbs Act did not apply to the use of violence "to achieve legitimate union ends".

The case, United States against Enmons, resulted from an indictment of union employees of the Gulf States Utilities Co. of Louisiana. The defendant, union employees, was charged with acts of violence in the destruction of Gulf States property, including blowing up a transformer substation owned by the company. But, in the opinion of the Court, the Hobbs Act did not apply to the use of violence "to achieve legitimate union ends".

Mr. President, implicit in that ruling is an invitation to Congress to correct this obvious shortcoming of the Hobbs Act. The invitation is stated explicitly in a concurring opinion by Mr. Justice Blackmun:

I readily concede that my visceral reaction to immaturely conceived acts of violence of the kind charged in this indictment is that such acts deserve to be dignified as Federal crimes. That reaction on my part, however, is legislative in nature rather than judicial. If Congress wishes acts of that kind to be encompassed by a Federal statute, it has the constitutional power in the interstate context to effect that result.

In his dissenting opinion, concurred with by Chief Justice Powell and Justice Rehnquist, Justice Douglas wrote:

Seeking higher wages is certainly not unlawful. But using violence to obtain them seems plainly within the scope of "extortion" as used in this act (the Hobbs Act) just as is the use of violence to exact payment for no work, or the use of violence to get a sham substitution for no work. The regime of violence, whatever its precise objective, is a common device or extortion and is condemned by this act.

Mr. President, my amendment is not directed at the isolated incidents of "brick throwing or stick striking," but rather to acts of violence that result in substantial damage—$2,000.

Additionally, there is the safeguard in my amendment that in order to be designated a Federal crime the destructive action must be willful.

The people of the United States are greatly disturbed by the continued acts of violence that labor commits to achieve its demands, and the Congress has the responsibility to help correct this deplorable situation. It has become obvious over the years that local and State law enforcement officials are not always capable of providing the protection from labor-related violence American citizens deserve. Surely that is evidenced by the very acceptance of the Hobbs Act as being necessary to deal with union violence. My amendment to that act would, in the words of the Supreme Court, "dignify" all such acts of violence "as Federal crimes" and recognize that "the regime of violence, whatever its precise objective, is a common device of extortion, and is condemned by this act."

I heartily urge rapid action by the Senate to enact this amendment.

By Mr. BUCKLEY:

S. 2796. A bill to amend title 3, United States Code, to provide for the protection of foreign diplomatic missions, to increase the size of the Executive Protective Service, and for other purposes. Referred to the *Committee* on Public Works.

Mr. BUCKLEY. Mr. President, I am today introducing legislation to meet the problem of protecting foreign diplomats at foreign missions outside Washington, D.C., in cases of extraordinary protective need.

Earlier this year, the Senate passed a broader bill, H.R. 12, which was subsequently vetoed. This version, on which such items as the method of authorization has been changed, represents a compromise with the administration. The administration has no objection to its enactment.

I ask unanimous consent that a copy of the letter from OMB Director James Lynn to that effect be printed at this point in the CONGRESSIONAL RECORD.

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

OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C.

Hon. JAMES L. BUCKLEY,
U.S. Senate, Washington, D.C.

DEAR JIM: This is to confirm that substitute draft legislation for H.R. 12 has been developed by your staff with the assistance of my staff.

That draft bill meets the basic objections to H.R. 12 set forth in the President's veto message, and the Administration would have no objection to its enactment.

Sincerely yours,

JAMES T. LYNN,
Director.

By Mr. BENTSEN:

S. 2797. A bill to amend title 39, United States Code, in order to provide free postage for voter registration materials and nonpartisan voter informaton for those States and other political subdivisions subject to the provisions of section 4(a) and section 203 of the Voting Rights Act. Referred to the Committee on Post Office and Civil Service.

Mr. BENTSEN. Mr. President, I am today introducing legislation to enable States and political subdivisions covered under the Voting Rights Act to encourage voter participation in State and Federal elections. My bill would grant free postage for voter registration materials and nonpartisan voter information to those States and political subdivisions subject to the requirements of the Voting Rights Act.

Compliance with the act due to increased postage costs will place a considerable financial burden on each State and other jurisdiction involved. In addition, many mass mail-outs come at a time when county budgets have already been set, making expenditures in budgeting extremely difficult.

Providing free postage for voter registration materials for appropriate areas is an important means of assisting these jurisdictions to deal with the costs inherent in meeting the Voting Rights Act requirements. It also has the important benefit of helping to insure compliance by increasing voter registration efforts and participation.

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

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

S. 2797

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Chapter 34 of Title 39, United States Code, is amended by adding at the end thereof the following new section:

"§ 3406. Free Postage For Voting Materials.

"(a)(1) Any voting materials which are directly related to any election for Federal office or for State office, and which are mailed by an election official of any State or political subdivision of a State which is—

"(A) subject to the provisions of Section 4(a) of the Voting Rights Act of 1965, as determined in accordance with Section 4(b) of such Act; or

"(B) subject to the provisions of Section 203 of such Act; may be mailed free of postage within the United States, if such election official makes such mailing as a means of complying with the provisions of the Voting Rights Act of 1965 specified in subparagraph (A) or subparagraph (B).

"(2) Any such election official, in making any mailing under this Subsection to any individual eligible to vote in the election involved, may enclose free mail covers in any such mailing. Any such free mail cover shall list a return address and may be used only for the transmission of voting materials.

"(b) For purposes of this section—

"(1) the term 'election official' means any individual designated by the chief executive officer of a State, or by the laws of such State, to be responsible for the conduct of elections for Federal office or for State office in such State;

"(2) the term 'free mail cover' means any envelope, wrapper, label, or card used to transmit mail free of postage under this section;

"(3) the term 'State' includes the District of Columbia; and

"(4) the term 'voting materials' means voter registration application forms, voter registration certificates, absentee ballots, and institutions relating to the proper use of such materials.".

SEC. 2. (a) The table of sections for chapter 34 of title 39, United States Code, is amended by adding at the end thereof the following new item:

"3406. Free postage for voting materials.".

(b)(1) Section 2401(c) of title 39, United States Code, is amended by striking out "3405" and inserting in lieu thereof "3406".

(2) Section 3627 of title 39, United States Code, is amended by striking out "3405" and inserting in lieu thereof "3406".

SEC. 3. Authorization of Appropriations.

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

ADDITIONAL COSPONSORS OF BILLS AND RESOLUTIONS

S. 2207

At the request of Mr. FONG, the Senator from Maryland (Mr. BEALL) was added as a cosponsor of S. 2207, a bill to provide for the exclusion of industrially funded personnel in computing the total number of civilian personnel authorized by law for the Department of Defense in any fiscal year.

S. 2402

At the request of Mr. FONG, the Senator from Louisiana (Mr. JOHNSTON) was added as a cosponsor of S. 2402, a bill to amend the Internal Revenue Code of 1954 to make the tax treatment of retirement income comparable to that of social security income.

S. 2705, 2706, AND 2707

At the request of Mr. BELLMON, the Senator from North Dakota (Mr. BURDICK) was added as a cosponsor of S. 2705, a bill to provide for a study of the need for regulation of weather modification activities; S. 2706, a bill to authorize an experimental research program relating to weather modifications; and S. 2707, a bill relating to the prevention and alleviation of drought emergencies.

SENATE RESOLUTION 319

At the request of Mr. CURTIS, the Senator from Michigan (Mr. GRIFFIN) was added as a cosponsor of Senate Resolution 319, relating to the occupation of certain Baltic nations by the Soviet Union.

AMENDMENTS SUBMITTED FOR PRINTING

FOREIGN ASSISTANCE ACT OF 1975—S. 2662

AMENDMENT NO. 1291

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

Mr. EAGLETON submitted an amendment intended to be proposed by him to the bill (S. 2662) to amend the Foreign Assistance Act of 1961 and the Foreign Military Sales Act, and for other purposes.

(The remarks of Mr. EAGLETON when he submitted the above amendment appear earlier in today's RECORD.)

PREVAILING FEES OF MEDICARE—H.R. 10284

AMENDMENTS NOS. 1292 AND 1293

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

Mr. BEALL submitted two amendments intended to be proposed by him to the bill (H.R. 10284) to amend title XVIII of the Social Security Act to assure that the prevailing fees recognized by medicare for fiscal year 1976 are not less than those for fiscal year 1975, to extend for 3 years the existing authority of the Secretary of Health, Education, and Welfare to grant temporary waivers of nursing staff requirements for small hospitals in rural areas, to maintain the present system of coordination of the medicare and Federal employees' health benefit programs, and to correct a technical error in the law that prevents increases in the medicare part B premiums.

AMENDMENT NO. 1296

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

Mr. McINTYRE submitted an amendment intended to be proposed by him to the bill (H.R. 10284), supra.

AMENDMENT NO. 1301

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

Mr. MATHIAS submitted an amendment intended to be proposed by him to the bill (H.R. 10284), supra.

PAYMENTS TO THE GOVERNMENT OF THE VIRGIN ISLANDS—H.R. 9432

AMENDMENT NO. 1294

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

Mr. McINTYRE submitted an amendment intended to be proposed by him to the bill (H.R. 9432) to amend the Internal Revenue Code of 1954 in order to provide for quarterly payment rather than annual payment, to the Government of the Virgin Islands of amounts equal to internal revenue collections made with respect to articles produced in the Virgin Islands and transported to the United States.

UNIFORM REVIEW PROCEDURES UNDER SOCIAL SECURITY—H.R. 10727

AMENDMENT NO. 1295

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

Mr. McINTYRE submitted an amendment intended to be proposed by him to the bill (H.R. 10727) to amend the Social Security Act to expedite the holding of hearings under titles II, XVI, and XVIII by establishing uniform review procedures under such titles.

AMENDMENT NO. 1300

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

Mr. BEALL. Mr. President, I submit an amendment for printing to H.R. 10727, which is identical to S. 1286, which would permit the Department of Defense to withhold State income taxes from military personnel.

SUSPENSION OF DUTIES ON CERTAIN SILK—H.R. 7727

AMENDMENTS NOS. 1287, 1298, AND 1299

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

Mr. BEALL. Mr. President, I submit for printing four amendments to H.R. 7727.

Amendment No. 1287 is identical to S. 667, the Historic Structures Tax Act of 1975.

Amendment No. 1298 is identical to S. 2215 which would amend the tariff schedules of the United States to certain footwear.

Amendment No. 1299 is identical to S. 556, which would permit the Department of Defense to withhold State income taxes from military personnel.

FISHERIES CONSERVATION AND MANAGEMENT ACT—S. 961

AMENDMENT NO. 1302

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

Mr. STEVENS. Mr. President, today I am introducing an amendment to S. 961, the Magnuson Fisheries Conservation and Management Act, which will return a certain amount of management control, where practicable, back to the State governments. The State regulations will, however, still be subject to the approval of the Secretary of Commerce. It is my belief that some States, because of their size, location, and characteristics of the fish species which inhabit their shoreline, are capable of managing the fish stocks off their shores. My home State, Alaska, is one such State.

The State of Alaska has for many years practiced sound management and conservation principles. The Alaska Department of Fish and Game, the State agency responsible for fish and game management, is a highly sophisticated organization which bases its fish and game regulations upon sound, scientific research and data. The Department has developed a reputation for its fish management expertise which is reowned nationwide.

Alaska is geographically isolated from her 49 sister States. A State such as Alaska could therefore realistically and practically manage the fisheries stocks off her coasts. State management would not be practicable for the smaller States, as the species of fish which inhabit their coastal waters mingle across State boundaries. We have no such problem in Alaska.

Alaskans view this as more than a simple issue of who will manage the fisheries stocks off the coast of the United States. To my constituents the real issue is who will determine the destiny and lives of Alaskan fishermen, the Federal Government or the citizens of the State of Alaska.

My amendment allows any sovereign State, with species of fish off its coast which neither comingle with a similar species of fish from any other State nor travel through the territorial sea or fisheries zone contiguous to any other State, to promulgate management regulations for such species. As with the regulations of the proposed regional management councils the management regulations promulgated by a sovereign State will still be subject to the approval of the Secretary of Commerce. Appeals for relief from State fish management decisions shall be made directly to the Fisheries Management Review Board, created by this act.

I would urge each of you who is concerned not only about viable fisheries management but about States rights to vote for this amendment. The question is, where practicable as dictated by the characteristics of the fisheries, should the citizen of a sovereign State be able to determine their own destiny or should the Federal Government determine it for them.

Mr. President, I ask unanimous consent that my amendment be printed in the RECORD immediately following my remarks.

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

AMENDMENT NO. 1302

On page 54, line 4, add: "(3) Those fisheries capable of being managed as a unit, which reside principally within the waters of a single state or the fisheries conservation zone seaward of the single state, shall be managed by that state, providing the management is consistent with the national standards. Appeals for relief from state fish management decisions shall be made directly to the Fisheries Management Review Board created by this Act."

DEPARTMENT OF DEFENSE APPROPRIATIONS, 1976—H.R. 9861

AMENDMENT NO. 1303

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

Mr. TUNNEY (for himself, Mr. BROOKE, Mr. CLARK, Mr. CRANSTON, Mr. KENNEDY, Mr. BAYH, Mr. HATHAWAY, Mr. ABOUREZK, Mr. MOSS, Mr. HARTKE, Mr. PHILIP A. HART, Mr. WEICKER, Mr. HATFIELD, Mr. NELSON, Mr. MCGOVERN, Mr. BIDEN, and Mr. BURDICK) submitted an amendment intended to be proposed by them jointly to the amendment of the House to the amendment of the Senate numbered 75 to the bill (H.R. 9861) making appropriations for the Department of Defense for the fiscal year ending June 30, 1976, and the period beginning July 1, 1976, and ending September 30, 1976, and for other purposes.

ADDITIONAL COSPONSORS OF AMENDMENTS

AMENDMENT NO. 1237

At the request of Mr. MCINTYRE, the Senator from New York (Mr. JAVITS) and the Senator from Massachusetts Mr. KENNEDY) were added as cosponsors of amendment No. 1237, intended to be proposed to the bill (H.R. 7727) to extend for an additional temporary period the existing suspension of duties on certain classifications of yarns of silk.

NOTICE OF HEARINGS

Mr. McINTYRE. Mr. President, I am pleased to announce that the Subcommittee on Financial Institutions of the Committee on Banking, Housing and Urban Affairs, will hold hearings on S. 958, a bill to provide for Federal regulation of foreign banks establishing, acquiring, operating, or controlling banks, branches, and agencies in the United States, and for other purposes.

The hearings will be held on January 28, 29, and 30, 1976. They will begin each day at 10 a.m., room 5302, Dirksen Senate Office Building.

Anyone who wishes further information regarding these hearings should contact Mr. William R. Weber, room 5300, Dirksen Senate Office Building, 202–224–7391.

ADDITIONAL STATEMENTS

SELECTIVE SERVICE SYSTEM'S BUDGET SHOULD NOT BE CUT

Mr. ALLEN. Mr. President, our country's national defense capabilities could be severely undermined if drastic budget cuts in the Selective Service System, currently being considered by the White House, are approved by the Congress.

The President, acting on the recommendation of the Office of Management and Budget, is expected to ask Congress to reduce the Selective Service System's budget from its $28 million request to $6 million for the fiscal year which begins October 1, 1976.

In my judgment, this would be a reckless move and if such a proposal is made, I will strongly oppose it in the U.S. Senate.

A cut of this magnitude in the funding of this vital organization would, in effect, reduce it to a mere paper agency. It would take at least 6 months to bring it back up to an effective level of operation, in the event of a national emergency.

On such a limited budget, the System could not register and classify the 1.7 million men each year who reach age 18.

About all that would be left of the Selective Service System, if the budget cut is carried out, would be planners in Washington drawing up requirements for office space, forms and others supplies should a draft ever be ordered.

The Selective Service System is an integral part of our national defense system. This Agency did an outstanding job during past emergencies, meeting our

manpower needs in an orderly, efficient manner. It is ready to do so again if the need arises.

But to reduce its funding from $28 million to $6 million, would gut the entire program, leaving little more than a skeleton operation.

Legislation which Congress passed in 1971, called for a phasing out of the draft and a reduction in the activity of the Selective Service System. This legislation purposefully contained safeguards, in the form of a standby system. This was done so that the machinery of the organization would be ready to reinstate the draft immediately in the event of a national emergency.

Unfortunately, no position was taken by Congress on the level of spending to maintain this standby status.

Apparently the Office of Management and Budget would like to use this omission to further reduce the capabilities of our national defense forces by slashing the System's budget.

This is just another example of the heavy-handed tactics used by OMB on national security budget programs. I hope President Ford, who consistently voted in favor of funds for a strong national defense during his years of service in the House, will reject such a drastic cut.

It would be a foolish move and would put our great Nation in a vulnerable position. I for one will not stand still and permit the dismantling of the Selective Service System.

I plan to do everything within my power to see that adequate funding is provided for the System. I am not opposed to cutting out the fat in any program, but I believe it is most important that this agency be kept at a high level of readiness.

A strong national defense serves as an absolute foundation for all our national goals. An effective standby selective service system will serve as the foundation for a strong national defense.

It is commendable to be able to say that no young American has been drafted into the Armed Forces since December 31, 1972. But it would be totally incorrect to say that tensions throughout the world and goals of conquest have disappeared during this same period. Reality demands that we face up to the fact that the Russians are committed to achieving overwhelming military superiority over us.

Strength is the one thing the Communists understand and respect. Every reduction in the United States' defense capabilities is taken as a sign of weakness on our part. And every cutback in defense spending is met with an increase by the Russians. Commonsense tells us where such a policy will lead.

Former Secretary of Defense, Schlesinger, took a strong public position in favor of maintaining an effective Selective Service System. Mr. Byron V. Pepitone, the System's present Director, has stated that such an unreasonable cut in the budget would dismantle the whole apparatus.

It is my desire, like that of all our citizens, to have peace and protect our freedom. This is accomplished through strengthening those agencies and organizations which contribute to our national defense posture, not by weakening them.

NOMINATION OF JOHN PAUL STEVENS

Mr. PERCY. Mr. President, the Senate Judiciary Committee's action in unanimously approving the nomination of John Paul Stevens to be an Associate Justice of the Supreme Court is testimony to the nominee's unique qualifications and to his acceptability to a wide range of individuals and philosophies. In addition, his nomination has elicited overwhelmingly positive comment from the Nation's editorial writers and columnists, and I urge my colleagues, consistent with thoroughness, to confirm expeditiously Judge Stevens' nomination.

From the dozens of editorials which have appeared as a result of this nomination I have selected a representative sample and ask unanimous consent that they be printed in the RECORD.

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

[From the New York Times, Nov. 30, 1975]

COURT NOMINEE IS HARD TO LABEL

President Ford has nominated a successor to Justice William O. Douglas on the Supreme Court. He named John Paul Stevens, a judge of the United States Court of Appeals for the Seventh Circuit since 1970, a selection that confounded political speculation Mr. Ford would pick either a woman or his old Republican colleague from Michigan, Senator Robert Griffin.

Judge Stevens' legal outlook may also prove unexpected. Some immediate comment categorized him as "conservative," apparently on the basis of 11 of his opinions listed by the White House as "representative."

But a group of law school professors who studied all his opinions for the American Bar Association rejected any labelling and gave him high marks as a judge. They used such words as "practical, not always bound by the conventional wisdom, analytical, very smart, moderate, imaginative, elegant, aggressive, a little brisk, hard to categorize."

In the field of criminal law, for example, Judge Stevens declined in 1972 to hold unconstitutional on its face the Federal law allowing official wiretaps under court order, he said particular abuses could be dealt with as they occurred. It may have been on the basis of such an opinion that a news agency jumped to the conclusion that "Stevens is unsympathetic to rights of the accused."

But in 1974 he rejected the claim of Federal agents that they were entitled to break into a man's home without a warrant in order to keep him from destroying marijuana; the value of privacy outweighed the state's interest, he said. In 1973, upholding the claims of some prisoners, he said: "The restraints and the punishment which a criminal conviction entails do not place the citizen beyond the ethical tradition that accords respect to the dignity and intrinsic worth of every individual."

This year, voting to reverse an Illinois corruption conviction, he said the evidence of guilt was strong and the crime shabby. He hesitated to upset the conviction, he said, but he did not want to compromise fair procedure for others. He added:

"This case brings to mind the trial of Titus Oates, a guilty man who was convicted by improper means. Macauley's observation about that trial is worth repeating: 'That Oates was a bad man is not a sufficient excuse; for the guilty are almost always the first to suffer those hardships which are afterward used as precedents against the innocent.'"

Mr. Ford's nominee is not likely to have much difficulty getting confirmation in the Senate, where hearings will be held this week. Before his appointment to the bench in 1970 he had been a leading anti-trust lawyer in Chicago. He also was a law clerk to Supreme Court Justice Wiley Rutledge from 1947 to 1949.

[From the Washington Post, Dec. 3, 1975]

THE STEVENS NOMINATION

If President Ford was looking for a Supreme Court nominee who could be confirmed with minimal difficulties, it appears that he has chosen well. John Paul Stevens is a non-controversial judge, whose credentials are impressive, although not overwhelming, and whose record, as far as we now know, contains nothing that should impede his confirmation. On that record and those credentials, Judge Stevens is clearly a better choice than were most of the six men nominated for the Court by former President Nixon.

It is difficult, if not impossible, to predict what kind of a justice Judge Stevens would be. His opinions on the circuit court have been, for the most part, tightly reasoned and confined to the issue before him. That is as it should be, for a circuit judge's task is to stay generally within the bounds of precedents. Because a judge on circuit courts is not confronted frequently with the kinds of broad issues that are routine on the Supreme Court, it is usually impossible—unless his service has been exceptionally long—to tell from his work there how he will approach major constitutional questions.

What one looks for, therefore, in a nominee coming from a lower court are demonstrations of scholarship, technical excellence, thoughtfulness—and a breadth of mind and spirit. Judge Stevens' work is full of examples of the first three qualities. But his adherence to the traditional role of a lower court judge has given him few opportunities to demonstrate the fourth. If he is confirmed, he will need to adjust quickly to the wide horizons required of one who interprets the sometimes vague language of a constitution as compared to the narrow focus of one who is involved in interpreting statutes and following precedents. Many of those who know Judge Stevens, either as a lawyer or a judge, believe he has the capacity for this kind of growth and will make a major contribution to the Court.

We hope that the Senate will act on this nomination as expeditiously as it can. Unless there is something in the Judge's record that is not now evident, we see no reason why a thorough review cannot be completed and the nominee confirmed before the Christmas recess. The Court has been handicapped for almost a year now because of the illness of Justice Douglas. It needs a full complement of members in place when it begins its January argument period.

[From the Chicago Tribune, Dec. 1, 1975]

JUDGE STEVENS' NOMINATION

President Ford has made an excellent choice in his nomination of Federal Judge John Paul Stevens of Chicago to the Supreme Court. If confirmed by the Senate, he will fill the vacancy caused by the retirement of Justice William O. Douglas.

We are pleased, of course, that Judge Stevens is from Chicago—he is only the fourth Illinoisan out of the 105 justices who have served on the court. But a strong case could also be made—and was made—for naming a woman, and there were some creditable candidates.

Judge Stevens' virtue is that he has earned this appointment not by controversial stances or his place of residence or his sex or his politics, but simply because in his five years on the 7th Circuit Court of Appeals he has been a steady judge and a good one. He has looked for the right answer or the best

one, not for the one that would bring cheers or headlines. A good measure of his success is that in these five years he has never been reversed by the Supreme Court. His record supports the comment by White House counsel Philip Buchen that "he won't stretch to find a federal question arising in cases where there are only state questions."

His virtue as a strict constructionist is enhanced by the fact that his reputation is not engraved in stone as either a liberal or a conservative. For too long the Supreme Court has been divided between relatively inflexible blocs—the liberal activists on one side and the conservatives on the other. As the usual "swing" members, Justices Stewart and White have had more influence than any two men should. If Judge Stevens' nomination is confirmed, he will become a third member of this influential group and will thereby strengthen the court.

His nomination has the endorsement of Sen. Stevenson as well as of Sen. Percy and Atty. Gen. Levi, both of whom have known and worked with him. We have every reason to hope and believe that his nomination will be confirmed quickly. The Supreme Court has been weakened too long by its strong ideological division and by the illness of Justice Douglas. It has much important work ahead of it.

THE NATIONAL COUNCIL ON THE AGING: 25 YEARS OF SERVICE TO THE ELDERLY

Mr. KENNEDY. Mr. President, for 25 years, the National Council on the Aging has provided ongoing service and leadership to public and private agencies working to meet the continuing needs of the Nation's elderly. As the spokesman for America's aged—the National Council on the Aging has led the way in playing a vital role in the development and implementation of a public national policy which is more responsive to the concerns of our Nation's older citizens. Throughout this quarter century, the National Council on the Aging has sought to facilitate the full utilization by the aged of services and programs that could make their lives more meaningful and personally gratifying.

As a result of this ongoing effort by the National Council on the Aging, there has been a considerable improvement in the quality of life for older people—particularly for those citizens who require special social programs and other services to meet special individual needs.

Mr. President, I do not have to elaborate on the many problems still facing the elderly of the Nation. As a member of the Select Committee on Aging, I know all too well that the burden of inflation has severely punished the elderly who are mostly living on fixed incomes. And not only have food prices skyrocketed, the cost of medical care and housing has turned retirement into a virtual nightmare for most of our older citizens. The National Council on the Aging is all too well aware of these and other problems, and the Council's important recommendations to meet these problems warrant careful study by my colleagues and the public.

I ask unanimous consent that the policy statements of the National Council on the Aging be printed in the RECORD.

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

SEPTEMBER 1975.

OLDER AMERICANS AND THE ARTS

For 25 years the National Council on the Aging has sought to facilitate the full utilization by the aged of services and programs that could make their lives more meaningful and personally gratifying.

NCOA continues to seek new alliances that can improve the quality of life for older people particularly as that quality relates to the loneliness, isolation and lack of new social roles that exist in the world of the aged. Leaders and policymakers in the burgeoning field of cultural services must be increasingly made aware of how the arts network, both public and private, can serve and be served by older Americans. Agencies and practitioners in the field of aging must become active advocates for older persons in the field of the arts.

NCOA believes that while the aged's involvement in cultural services and programs may not be a matter of life and death for older persons, it can be a matter of happiness or unhappiness, usefulness or uselessness. The overall goal in this area is to ensure that older persons have an equal opportunity, with other population groups, to participate in and have access to cultural programs and services.

In addition, NCOA recognizes the need to preserve the folklore and forgotten arts of America, including the ethnic heritages of our diverse population, for the enjoyment of all citizens. It is the older adult who has the knowledge and skills not only to produce such crafts and artwork, but also the capability to teach others the techniques of these accomplishments.

With these goals in mind, NCOA makes the following recommendations:

1. The arts constituency should be broadened to include the elderly.

2. The quality of arts programs now available to older people should be upgraded.

3. New employment opportunities for artists young and old in the field of aging should be provided.

4. Art forms which otherwise might be lost forever must be preserved.

5. Support for the arts should be broadened through better use of the energy and ability of older persons whether as volunteers or as paid professionals.

6. Arts resources at local, state and national levels in both the public and private sectors that are currently overlooked or underused in the field of aging should be mobilized.

7. Local initiatives to preserve the folklore and forgotten arts of America can be encouraged by developing co-ops and/or channels to the retail market where they can reach the consumer. Any public effort to develop such channels should ensure that the proceeds of sales benefit the older artisan.

8. Older artisans should be given opportunities to share their knowledge with others and be provided opportunities to improve their skills. Both Federal and state governments need to be sensitive to these needs and provide avenues by which this unique talent can be shared and enhanced.

To date, cultural services for, with and by the aged is a concept without priority status in either the arts or aging fields. We recognize that promoting a new concept which is not considered as important as survival support services is difficult at best and is more so in two fields that are currently underfunded. The arts are primarily concerned with survival of cultural institutions and the individual artist. Likewise, practitioners in aging emphasize survival and support of aging service agencies and the aged themselves. Nevertheless, NCOA remains convinced that there is something positive for both the arts and the aging fields in the marriage we have proposed.

CRIME AGAINST THE ELDERLY

The elderly, especially the urban elderly, are the most vulnerable victims of the recent dramatic increase in crime in America. Millions of the aged are virtual prisoners in their own homes, self-confined victims who fear even going out in the streets. The quality of life for thousands and thousands of elderly people is degraded not only by the existence of robberies, assaults, fraud and rape, but also by the threat of such crimes. In a recent NCOA study conducted by pollster Louis Harris, those over 65 rate crime or the fear of crime as their most serious personal problem.

Unfortunately, there is no reliable index of the volume of such offenses against the elderly. Numerous studies showing the high numbers of unreported and underreported crimes also indicate that the elderly are more likely to be silent victims. In addition, reported crime records only note the age of the criminal, not that of the victim.

NCOA believes that a number of steps must be taken immediately, at both the national and local levels, to make America safe for its nearly 21 million older citizens.

1. A national Senior Citizens Crime Index should be developed to monitor the growth and delineate the development of offenses against older people.

2. The Law Enforcement Assistance Administration (LEAA) of the Justice Department should undertake studies to determine how localities may best cope with the problem of crime against older people and to use its resources to fund programs which protect the elderly.

3. Local police authorities should be encouraged to set up strike forces to prevent attacks on the elderly and to pinpoint the locations and modus operandi of the attacks.

4. Local police should undertake regular visits and liaison to facilities used by the elderly such as senior centers, housing projects, etc.

5. Self-help programs which train the elderly themselves in crime-prevention procedures should be developed.

6. Senior center leaders should be trained to train their members in crime prevention.

7. Community watch programs, involving community groups of all ages (teen patrols, radio-dispatch cab drivers, police hookups, high school student escorts, etc.) should be established to be alert to threatening or suspicious activities.

8. Patrol of streets (perhaps by retired policemen or police cadets) and areas older people use that have high incidences of criminal activities should be encouraged, and escort services to and from transportation services to housing projects, shopping malls, senior centers, clubs, clinics, etc., should be set up.

9. The police should train and assign the elderly stay-at-homes or home-bound to observe streets or sections of their neighborhoods, and to report suspicious behavior to police.

10. Regular police security checks of buildings and sites housing the elderly should be made (just as the fire department makes regular fire prevention inspections).

11. Housing for the elderly should have installed (on government subsidy or as tax-deductible expense) burglar-proof photo-electric beams on windows and doors, one-way glass, TV monitors in elevators and corridors, and central alarm buzzer systems linked to police dispatchers or patrol units.

12. Since crime against the elderly is reduced in specific housing as compared to intergenerational housing, more housing especially for the elderly should be encouraged and built.

13. Government checks should be mailed to banks for individual deposit; banks should provide free checking accounts for the elderly.

14. An offense against an older person

should be made a Federal crime if committed in Federally funded facilities such as housing projects, centers, etc.

EMPLOYMENT

The nation is experiencing its highest unemployment rates since the Depression. Millions, regardless of occupation or age, are suffering. Middle-aged and older workers, with heavy family and financial responsibilities, tend to suffer special hardships when the economy takes a downward turn. Men and women over 40 constitute almost half of the present labor force and more than a fourth of all unemployed. As Bureau of Labor Statistics figures indicate, they undergo longer terms of unemployment than younger age groups. They tend to drop out of the labor force through discouragement in a futile job search. Advocates of a broader definition of unemployment believe that present figures—which categorize discouraged workers as not-in-the labor force—understate by a considerable extent the true unemployment rate. Middle-aged and older workers are often victims of age discrimination on the part of both employers and employment-manpower service agencies.

One goal of a national employment policy should be to assure continued participation for all age groups since it is a major factor in a full and satisfying life style. It should also be noted that periods of unemployment have serious repercussions in terms of unemployment insurance, welfare costs and social security benefits.

The basic premise of employment and manpower programs from the inception of the Wagner-Peyser Act of the 1930's to the present Comprehensive Employment and Training Act (CETA) approach, has been that all Americans in need of assistance related to employment may fully participate in available programs. The desired outcome is free access for all individuals to the job market regardless of age and other possible limiting factors over which the individual worker has no control.

THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT (CETA)

There is no question that middle-aged and older workers are not receiving an equitable share of manpower services through the CETA and the United States Employment Service networks. These groups of workers lack priority in these systems—only 4 to 8 percent of the CETA participants are men and women over 45 and analysis of Employment Service data reveals that middle-aged and older workers are less likely to receive services than those under age 40.

NCOA's concern, therefore, with the current regulations pertaining to CETA is that they in no way guarantee improved status for middle-aged and older persons in need of employment assistance. CETA regulations must be established which assure that funds allocated to prime sponsors are equitably distributed to all participating age groups.

NCOA recommends that the Department of Labor include the following general guidelines and specific changes in revised regulations pertaining to Title I and II of the Comprehensive Employment and Training Act.

Prime sponsors and their agents in order to assure fair and equitable participation of middle-aged and older men and women of all racial and ethnic backgrounds in CETA programs must include within any state plan an analysis of the universe of need of individuals they intend to serve by age and sex categories. The following groupings are suggested: Under 22; 22-39; 40-54; 55-64; 65+.

An appropriate reporting system should be standardized whereby Prime Sponsors and any Subcontractor can report comparative services to age groups on a quarterly basis.

Prime Sponsors should see to it that middle-aged and older individuals, familiar with the manpower and employment needs of workers over 40, are included in fair proportions of all state and local manpower planning committees.

Any Prime Sponsor with responsibilities for implementing a Title II Public Employment Program must develop an Affirmative Action Plan to accommodate individuals within the protected group of the Age Discrimination in Employment Act. All state and local government and/or public employers are now covered and bound by federal age discrimination in employment legislation.

Middle-aged and older workers, by reason of their long neglect on the part of the Department of Labor, should be regarded as a new minority. Each Prime Sponsor, therefore, should be bound to submit within his state plan special training and technical assistance provisions to agents, or subcontractors on how to:

Assess the needs of middle-aged and older workers within a community.

Develop outreach capabilities to bring these older workers into CETA training and employment programs.

Develop special training methodologies and skill conversion techniques for middle-aged and older men and women.

Develop job placement strategies, in cooperation with other employment related agencies (e.g., the State Employment Security Agency) for those older individuals.

Appropriate Prime Sponsors should be informed and directed by the Manpower Administration that it is their responsibility to support all Senior Aide programs currently being funded by the Department of Labor through national contractors. *These are programs of demonstrated effectiveness.*

A separate title should be established under CETA that will address the manpower needs of the middle-aged and older worker, just as the Job Corps has been established for youth. It is important to note that although older workers were specifically mentioned along with Indians and youth in Title III, no money has ever been appropriated for this group.

AGE DISCRIMINATION IN EMPLOYMENT (ADEA)

The Age Discrimination in Employment Act (ADEA) has recently fostered significant legislative, administrative and judicial activity. The law's major objective is to eliminate discrimination against individuals between 40 and 65 years of age in matters of hiring, job retention, compensation or other terms, conditions and privileges of employment. ADEA promotes a policy of employment according to ability rather than age. Despite recent legislative improvement in the Age Discrimination in Employment Act, systematic implementation and enforcement is needed. In addition, because any worker, regardless of age, should be evaluated according to functional ability, NCOA recommends that the present upper age limitation for application of ADEA be removed.

To ensure uniform national standards protecting all citizens against discrimination in employment, NCOA further recommends the establishment of one national regulatory body with the authority and resources to enforce effectively one federal statute which prohibits employment discrimination on the basis of race, color, religion, sex, national origin, age and handicapped status.[1]

MANDATORY RETIREMENT

A recent survey conducted by Louis Harris and Associates for NCOA found that a large majority of Americans feel that "nobody should be forced to retire because of age," and a smaller majority agree that "most older people can continue to perform as well on the job as they did when they were younger." Yet in mid-1974 there were over four million unemployed or retired persons age 65 and over who wanted to work but were not employed, compared to some 2.5 million who were working full- or-part-time.

NCOA strongly urges that flexible rather than fixed retirement ages be adopted by employers and unions, allowing those who wish to retire early or at the "normal" retirement age of 65 do so and allowing others to work as long as they are able, perhaps as determined by a physical examination or an objective scale such as that employed in the Industrial Health Counseling Service for the last four years in Portland, Maine. The fact that not all employers require mandatory retirement is evidence that flexible retirement is administratively feasible.

UNITED STATES EMPLOYMENT SERVICE

To increase services to middle-aged and older workers, NCOA recommends that the Manpower Administration mandate that the Older Worker Specialist be a full-time position at the state and local office level and institute a system for financial incentives to local offices that do an outstanding job of placing older workers. In addition, we recommend that the Manpower Administration set up on a pilot basis an employment service based on the 40-plus methodology to test techniques and procedures for adequate service to middle-aged and older workers.

SENIOR COMMUNITY SERVICE PROJECT (SCSP)

The Senior Community Service Project has clearly demonstrated that older workers can adequately carry out diverse work assignments, involve people in meaningful relationships, motivate them to initiate action on their own behalf, mobilize community resources and generally serve as a bridge between the consumer of services and the agency providing the services. It has also demonstrated that the program participants measure up in all ways to standards for younger workers—and often exceeded these standards. SCSP is a manpower model for the older disadvantaged worker. It has successfully carried out its primary mission of providing meaningful public service employment for older workers.

NCOA believes that the funds available for this program and similar ones are totally inadequate and that steps should be taken by the national Manpower Administration, local prime sponsors and national contractors to establish these projects at the local level on a permanent basis.

FUNCTIONAL CAPACITY

NCOA believes that middle-aged and older persons should be assured of opportunities for continuing employment. The extension of employment opportunities for this group and the removal of barriers to their employment remain primary goals. There is a need for the expanded use of techniques which have been developed for relating the functional abilities of workers to the functional requirements of jobs. In general, functional capacity and not chronological age must become the primary employment standard.

PRE-RETIREMENT PLANNING

Planning ahead for retirement can significantly reduce the mistakes and frustrations that accompany a trial-and-error approach after retirement. Problems may still arise, but the individual will be better prepared to cope with them. The three critical elements are opportunity and incentive to plan, and concrete, relevant data on which to base the planning.

NCOA recommends that the Federal government recognize the need for planning and assume a partnership with educational institutions and private industry by funding research and training programs, sponsoring demonstration projects and providing incen-

[1] Basic recommendation from the *Federal Civil Rights Enforcement Effort 1974*, U.S. Commission on Civil Rights, July 1975.

tives for employers to pay the tuition for appropriate courses as well as setting an example as a model employer.

SECOND CAREERS

A change in mid-life from one job pursuit to a different field is no longer considered unusual in our rapidly changing society. For some workers, because of technological displacement or involuntary early retirement, the need for a second career is a necessity. To fill the need, career oriented educational and training programs should be developed which are aimed not at the beginning worker but at those who must transfer from one career track to another.

WOMEN AND MINORITIES

Unemployment and poverty among middle-aged and older single women and members of minority groups are particularly severe problems. NCOA urges that special attention be paid to the employment problems of these groups in Employment Service job development and in training programs.

ENERGY AND THE ELDERLY

A limited supply of electricity, natural gas, fuel and motor oil at inflated prices is potentially damaging to older people themselves, as well as to the institutions and programs which serve them. As the price of energy continues to rise, increasing numbers of older people living on fixed incomes will be forced to decide between heat or food. Cost-of-living increases in Social Security and Supplemental Security Income benefits are quickly eroded by inflation in this area alone. Already inadequate public and private transportation becomes either too expensive or non-existent. The loss of volunteer drivers due to the lack, or high cost, of gasoline can cripple many programs geared to serve older Americans, including homemaker-home health aide projects, escort services, meal deliveries and senior centers. Reduced heat in the home aggravates arthritis and many other chronic conditions that affect the elderly. The benefits of programs, including those authorized under the Older Americans Act, are reduced because appropriations do not include increased costs for lighting, heating, cooking and transportation.

To avoid and/or alleviate these present or potential problems, NCOA recommends the following:

1. The development and implementation of a national energy policy should assure that all citizens are equitably treated and particularly that the elderly and other vulnerable groups are not adversely affected.

2. The use of any gas line allocation formula should include extra supplies to agencies who operate elderly transportation services and unrestricted access for volunteer agency drivers.

3. Any fuel allocation and/or rationing, if developed, should take into consideration the special needs of the elderly.

4. Government program regulations which restrict reimbursement of drivers should be changed periodically to reflect the higher price of gasoline.

5. The appropriations for service programs dependent on energy resources should be increased to account for inflation's impact on the cost of energy.

6. The Federal government should institute a program of low-cost loans for housing insulation.

7. Comprehensive consumer information on energy conservation and rights should be developed for the elderly and effectively distributed to them.

THE PRESIDENT'S RESPONSE TO THE ANNUAL REPORT OF THE FEDERAL COUNCIL ON THE AGING

The National Council on the Aging urges the President to reconsider his rejection of the major recommendations made by the Federal Council on the Aging in its first annual report.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act to advise and assist the President on the special needs of the elderly. Members of the Council were confirmed by the Senate on June 5, 1974, and, on March 31, 1975, as required by law, they submitted their first annual report to the President. On July 2, President Ford transmitted that report with his comments to the Congress.

NCOA believes that, because the FCOA is composed of leading experts from the field of aging, the recommendations and advice in that report deserve more consideration than the President's negative comments gave them. It is especially unfortunate that the first official dialogue between the President and the FCOA should be so negative. We hope that this is not the beginning of a pattern of animosity which would destroy a potentially valuable relationship for all concerned—particularly for the nation's 21 million older people.

The President criticized the report for being "limited to a particular area of interest and advocacy." NCOA believes this criticism is inappropriate and unjustified. The Congress established the FCOA to perform a limited and particular function which it also considered essential; that is, the Council was to provide advice, assistance and advocacy on the special needs of older Americans. The FCOA's first report definitely fulfills this mandate.

NCOA has consistently supported the major policy recommendations contained in the FCOA report: The development of high standards of safety and care in nursing homes and the rejection of Administration proposals to cut back Federal programs essential to the welfare of the elderly.

We congratulate the FCOA on its initial efforts and look forward to the findings and recommendations of its ongoing studies. NCOA remains hopeful that, in the future, the President will be more receptive to the recommendations of the Federal Council on the Aging.

HEALTH OF THE ELDERLY

Good health is a basic ingredient of a satisfactory life for all people. For older Americans this goal is more difficult to attain and maintain than for the remainder of the population. Growing older is almost always accompanied by an increasing need for health care services (people aged 65 and over, while approximately 10 percent of the population, account for 30 percent of health care costs).

While recognizing that good health should be a public policy goal for all Americans, the National Council on the Aging is particularly concerned that there be a public commitment to assuring that the necessary steps are taken so that older Americans can live healthfully and can choose and purchase appropriate health care services.

NCOA believes that the final responsibility for comprehensive health services, both physical and mental, for older Americans lies in the public sector at the Federal level. The objective of such health services should be the provision of expanded and specialized health programs and facilities and rehabilitative and preventive care, including mental health services, for older persons. The provision of these facilities and services must be complemented by the establishment and enforcement of national standards to guarantee quality physical and mental health care and decent living conditions. Therefore, NCOA supports the early establishment of a national health security program which incorporates the following principles:

1. Comprehensive physical, mental, environmental and social health care benefits for all Americans;

2. The integration of Medicare into a national health security program for Americans throughout the life span;

3. The elimination of all co-insurance, deductibles and premiums;

4. Administration and fiscal management of the new health security program by a public agency without an intermediary between the providers and the public agency;

5. Financing of the health program through general revenues and payroll taxes.

6. Consumer participation of the aged in the development and implementation of this program including involvement in quality controls (in such areas as accessibility, acceptability and accountability) and in cost controls.

7. Coverage for the full range of long-term care services including home-based, community-based and institutional-based services, with appropriate quality and cost controls specifically designed for the aged.

8. Monies allocated to research and output measurement to include appropriate attempts to develop criteria for evaluation of health care delivery to the aged related to functional capacity, ranging from minimal self-care to full independence; and

9. The exclusion of means tests from any aspect of the program.

Pending the establishment of a national health security program and recognizing that health care costs are now increasing 50 percent faster than the economy as a whole; that per capita health care costs in 1973 were 3½ times greater for people aged 65 and over than for younger age groups; that Medicare, which covered 49 percent of the total costs for medical expenses in 1969 covered only 38.1 percent of these expenses in 1974; and that skyrocketing costs of health programs do not reflect advances in health services for older people, NCOA recommends:

10. The present Medicare and Medicaid programs should be improved and expanded immediately to meet more adequately the health needs of older persons in relation to such matters as length of stay in acute hospitals; extended care and nursing home facilities; psychiatric hospitals; coverage for home care; diagnostic and preventive services; and out-of-hospital drugs and medicines; the elimination of the premium paid for Medicare Part B and the co-insurance features related to hospital care.

11. Greater coverage should be provided for dental care, eye and hearing care and aids as well as for other prosethetic devices which contribute to social and health functioning, and which facilitate mobility.

12. A nation-wide program of comprehensive long-term care for older persons suffering from chronic disease and disabilities must be developed. Such a program should include specialized health programs and facilities for rehabilitation and resocialization as well as alternatives to institutional care, such as health maintenance organizations, neighborhood clinics, day or night hospital care, and home care services.

13. Present standards of care should be better enforced and, when promulgated, vigorous state implementation of national standards for nursing homes and personal care homes should be encouraged. This should assure not only the safety and appropriate levels of health care for older persons, but also the inclusion of social care perspectives which help to preserve the human rights and dignity of the older residents.

14. The encouragement of specialties in geriatric medicine and other health professions should be a matter of national policy, with funds made available for recruiting and training these specialists required to staff a comprehensive health service for older persons.

15. A national policy and program on the physical fitness of older Americans should be developed and coordinated.

Housing for the Elderly

With the moratorium on subsidized housing, instituted in the last several years, the need for suitable housing for older persons has reached critical proportions. Waiting lists for existing low and moderate income housing for the elderly are extensive and growing. Hundreds of thousands of America's older people are forced to live in environments which are substandard, too expensive, too difficult to maintain, too inefficient for their age and capacities.

Older people everywhere find it difficult to understand why a demonstrated need for a program which has been singularly successful—financially and socially—should be suspended and unfulfilled.

Because of time, because of special needs with age, older Americans require a special priority today. They have the right to make independent choices of their living arrangements regardless of their current income situation. These choices can include single family homes, independent apartments, congregate facilities and rehabilitative centers. In all instances, such housing should have easy access to senior center activities, health services, therapy programs, nutrition programs, cultural activities—all designed and implemented to maintain independent living even when disability occurs.

NCOA has the following specific recommendations:

1. To achieve independent choice of living arrangements, all the programs of low and moderate income housing authorized by the Congress should be used fully and immediately. Of vital importance in this regard is the full implementation of the Section 202 Program. Congress has authorized and appropriated substantial funds for a new beginning of this very successful program of housing for the elderly. The Administration should accept this action and institute an effective program of direct financing both in the construction period and for the permanent loan for qualified nonprofit applicants.

2. Such loans should have available to them a special set-aside of Section 8 subsidy to ensure that low incomes will not bar older people from suitable housing. This is a priority, major action required today.

3. There should also be enactment and execution of full appropriations under the Section 8 program and Section 236. These programs individually, and especially in combination, could generate the volume of specially-designed housing older Americans need and require.

4. In addition, a substantial program of special grants to senior citizens who own their own homes should be underway on a sizeable basis. This will permit older persons of modest incomes to improve and rehabilitate their own homes and to go on living independently in neighborhoods of their own choice.

5. In any housing program, more than sheer shelter is required. Urgently needed senior centers, adequate nutrition programs, physical and occupational therapy, health programs, cultural enrichment programs, etc., should be financed by grants, rather than out of the rents of residents.

6. Administration of the subsidy programs must be realistic if the program is to be effective. This means reassessing fair market rents, construction costs, methods of financing and speed of administrative processing.

7. New construction should be emphasized. Too many older person live in homes which are too old and too inefficient for them. They require having arrangements suitable to their age and physical conditions at rentals and prices they can afford.

8. A major national focus must be directed at rural America with particular emphasis given to the housing needs of older adults. An effort to broaden the programs of, and the appropriations for, the Farmers Home Administration specifically to meet the housing needs of rural America would be an important step in this regard.

9. There is a great need for a new investment in research on the physical and social aspects of housing for the elderly. New generations of older Americans with different values and different abilities will soon constitute our retirement populations. We need to evaluate the past, conduct research on the frontiers of our knowledge and develop criteria for the near future.

10. There should be legislative enactment creating the Office of Assistant Secretary of the Department of Housing and Urban Development for Housing for the Elderly. The field is so large and so important that overall policy and planning should be centered by law in an Assistant Secretary with trained staff to ensure effective knowledge, coordination and administration.

The Development of Social Utilities for Long-Term Care

The growth of the nursing home industry in recent years has been phenomenal; and, for the most part, caused by the introduction of Federal funds through Medicare and especially the Medicaid program. In fact, public funds now account for approximately $2 out of every $3 in nursing home revenues. In 1973, Medicare contributed $200 million and Medicaid $2.1 billion to the industry. In addition, there are almost 50 other Federal programs which assist nursing homes. These public funds support an industry in which 77 percent of the nursing homes are operated for profit, 15 percent are philanthropic, and only 8 percent are government owned.

Despite this rapid growth and public support, a recent study by the Subcommittee on Long-Term Care of the Senate Special Committee on Aging concludes that there is no coherent policy on the long-term care of older Americans. As a result, in too many cases, public funds are used to perpetuate deficient care for thousands of older people, thus causing them to live in unconscionable conditions. That Senate report concludes that the majority of nursing homes in the country do not meet minimum standards of acceptibility.

It is critical that the Federal government redirect public funds to encourage the development of quality long-term care institutions. Therefore, NCOA believes that there should be a systematic diversion of Federal funds now being spent on proprietary nursing homes (estimated between $3.5 and $7.5 billion) into public or private nonprofit social utilities for long-term care. By social utilities we mean facilities or services *not* exclusively oriented to the care of inpatients, but also planned to provide services beyond their walls. In other words, those facilities would become an integral component of the service delivery network to the elderly throughout the community.

The possible services are many and diverse—day care, congregate dining, disease detection, intellectual and social programs, group and individual counseling and psychotherapy, outreach care, social services and health education. Thus, while offering a quiet sanctuary for those who require it, these facilities for long-term care could also become lively places with ties to the larger community. Instead of the dread of inhumane treatment or the fear of being left in a home only to die, an older person entering such a facility would expect and receive the kind of care which offers rehabilitation and a renewed sense of hope and self-esteem.

The elderly need and deserve long-term care facilities geared to meeting the full range of their medical and social needs, places where they can go and be assured of quality treatment. In the best tradition of American society, public support for the social utilities described here would reinforce competition in the nursing home industry and encourage proprietary homes to develop similar constructive programs.

The Media and the Elderly

Because the Media reflect society's perception of older persons and also make these perceptions self-fulfilling, the National Council on the Aging believes that the Media must make a major nationwide effort to develop greater public understanding of the diverse character and characteristics of older persons. NCOA, through the National Media Resource Center on the Aging, has developed recommendations for a new focus within the Media on a more positive and accurate portrayal of older man and women.

1. The Media should enable more older persons to play a fuller role in the community by exposing and reducing ageism and discrimination by increasing public understanding of the older population's value.

2. The general public should be educated to a better understanding of the processes and potentials of aging. Everyone ages and therefore has a stake in assuring that society provides the elderly with opportunities and options making its possible for them to live a full and contributing life.

3. The Media should stimulate consciousness-raising among the elderly themselves to enhance their own sense of worth and power.

4. The social issues and programs which affect the elderly should be dealt with more fully so that lack of information or misinformation does not prevent them from participating in activities and assistance programs which are available.

5. Staff should be developed with special knowledge in the area of aging, perhaps to monitor neighborhoods with a high concentration of elderly residents and report accurately on developments within them.

6. More cultural programs which are for, by and with the elderly should be initiated by the broadcast media.

Nutrition for the Elderly

Proper nutrition is a prerequisite of good health, but it is often hard for older people to maintain an adequate diet. Poor nutrition is frequently found among older adults because they live alone; they are often frail; and many more are poverty stricken. Inflation has increased food costs alone by 20 percent in the last year. Thus, the elderly poor are forced to "pay more to eat less." To ensure an appropriate public commitment to providing adequate nutrition benefits for older Americans, NCOA believes:

1. Title VII of the Older Americans Act should be fully funded to provide the necessary support for the Nutrition Program for the Elderly which, despite its success, now reaches only a minority of those who need such support.

2. The food stamp program should have an expanded outreach as well as an improved administration in order to be of greatest value to older persons.

3. Information about the influence of nutrition on the aging process should be incorporated into all health education programs. Such programs should be given in the public schools, be an integral part of the health education functions of the proposed national health security program, and be a significant part of senior center programs and of other services through which large numbers of older persons can be reached.

4. Standards for nutritional quality for food services for older people should be established at the Federal level and be included in the licensing and inspection procedures in every state and community.

RESEARCH ON AGING

During the past decade there has been a substantial degree of Federal government support for research and development of social, behavioral and biomedical research on aging. This has come through as many as 30 government agencies and departments, each which has found that it needs to support research on problems of aging and evaluation of its programs for the elderly.

There is naturally some question whether this variety of research projects and programs is well planned and coordinated so as to cover essential problems without overlapping in some places or causing serious gaps in other areas.

The situation is now ripe for a major effort to get more coherence and better planning into the Federal government's support of research on aging.

The new National Institute on Aging is almost ready to function and its National Advisory Committee has been at work for several months. Also, the Department of Health, Education, and Welfare has a Federal Council on Aging consisting of non-governmental personnel which advises on programs in HEW. We urge these two groups to get together, and perhaps to jointly create a Task Force on Research and Development in Social Gerontology, with the mission of producing a *Five Year Plan* for government support of research and development in this area.

Some of the most needed research can be foreseen. NCOA recommends:

1. Studies of methods of providing long-term care of elderly persons in feeble physical condition should be undertaken. This involves studies of standards and methods of financing nursing homes; as well as studies of facilities that can serve home-bound or physically impaired people through homemaker services and home-delivered meals—thus avoiding the cost and difficulty of moving into a nursing home.

2. Research should be started on ways of protecting the incomes of elderly people from erosion by monetary inflation.

3. Senior centers should be carefully studied. These agencies are increasing in numbers, and probably are the most useful single service facility for the elderly. A variety of model programs should be studied, evaluated and then those that work well should be spread over the land.

4. Television and radio programs, as well as the printed media, should be monitored and evaluated for their values to elderly viewers. Possibly some experimental programs should be created and tried out.

5. Research should be done on the adequacy of existing retirement roles and programs for development of new retirement roles.

6. Factors that affect policies governing retirement age should be studied.

RETIREMENT INCOME

In the last few years, there has been a sharp reduction in poverty for persons 65 and older, from one out of four older Americans in 1969 to one in six by 1973. Nevertheless, the elderly are still the most economically disadvantaged age group since the proportion of aged living in poverty (16.3 percent) is higher than for any other age group. The majority of aged persons in poverty are women living alone.

Many more older Americans, although not considered to be in poverty, do not have incomes sufficient to meet a modest standard of living. Almost half of all aged couples have incomes below the Bureau of Labor Statistics intermediate budget for a retired couple ($6,041 in 1974) which was recommended as a standard by the 1971 White House Conference on Aging.

Thus, the nation has still not achieved the long-sought goal of an adequate retirement income for all even though income maintenance for the aged has been improved in three major areas: Social Security benefits have been substantially raised; the old age assistance welfare program has been federalized by enactment of the Supplemental Security Income program administered by the Social Security Administration; and, private pensions have been made more secure by the pension reform law.

At the same time that these improvements have been made, however, inflation has offset their impact on retirement income. Social Security increases have lagged behind price increases, particularly in the areas where the elderly have their greatest expenditures—housing, food, medical care and transportation. In the SSI program, recipients in at least 21 states will not even receive the benefits of a recent eight percent cost-of-living increase which they are entitled to along with other Social Security and SSI recipients.

Reduced Social Security taxes because of the recession and a long-term change in the population mix, have generated questions about the financing of the Social Security program. The National Council on the Aging has addressed itself to the financing aspects as well as to the adequacy of benefits in a statement adopted earlier this year. The goal with regard to financing is to bring income and outgo of the Social Security trust funds into balance within the next few years and maintain them in balance over the long-range future. There is no need to achieve a close balance in the present recessionary period or to maintain such a balance in the future over every year or short period of years.

The suggested measures to achieve this goal are:

1. The amount of earnings subject to Social Security taxes and counted in determining Social Security benefits should be increased substantially, as of 1977, from the present $14,100, and from then on adjusted, on an automatic basis, to increases in average wage levels. An increase to $24,000 in 1977 could be expected to bring the Social Security system as a whole (cash benefits and Medicare) into financial balance for the next several decades without an increase in the tax rates.

2. Beginning in about 1985 and increasing over the following three or four decades until covering about one-third of costs, a contribution from general tax revenues should supplement employer and employee tax contributions to the Social Security cash-benefits program. The general revenue contribution should begin within the next decade and be phased in gradually.

In order to achieve more adequate Social Security benefits (and supplemental work income) the National Council on the Aging recommends:

3. An increase in the amount of earnings covered (see above no. 1) which would lead to higher future benefits and therefore greater economic security for workers in the middle and upper income brackets.

4. Gearing benefits to total wages in covered employment instead of to changes in the cost-of-living. Thus, as standards of living and levels of living increased for the working population, the retired would have a share in the increases.

5. Abolishing the premiums paid by beneficiaries for Part B Medicare.

6. Increasing the amount a Social Security beneficiary may earn in a year without reduction in benefits from $2,520 to $3,000.

The objective of the Supplemental Security Income program for the elderly is to provide an adequate standard of living for those who do not have income, or enough income, from Social Security, pensions or savings. It provides a federal "income floor" for those without other adequate income resources. Experience with the program has shown, however, that although there are some 2.3 million aged persons receiving benefits, there are still many aged persons not receiving benefits to which they are entitled, and that implementation of the program is reducing already limited benefits.

To achieve the goal of bringing all eligible aged persons into the program and to provide a more adequate income from SSI benefits, NCOA recommends that the Social Security Administration take the following, necessary administrative steps:

7. Field visits to those potential beneficiaries who are homebound and unable to come to local SSA offices.

8. Development and implementation of a permanent outreach and information program to inform potential recipients of their rightful benefits.

9. States should be mandated to pass along all cost-of-living increases in the federal portion of the SSI payment by requiring states to at least maintain supplementation payments at June, 1975 levels.

10. SSI recipients should be guaranteed that SSI benefits will not be reduced when Social Security benefits rise.

11. All applications for SSI benefits should be processed with the utmost promptness, preferably within thirty days. The present $100 advance should be increased to cover the full amount of the standard monthly payment for two months, and the present provision for advance payments on the basis if presumptive disability should be broadened to include presumptive blindness.

12. Legislation should be enacted authorizing the Secretary of HEW to provide a permanent mechanism for on-going emergency assistance, as often as needed, effective within twenty-four hours of a recipient's application for such aid.

13. The use of an Ombudsman at the state or regional level to respond to claims that individuals have been denied benefits to which they are entitled should be studied and seriously considered for use in the program.

The Employee Retirement Income Security Act of 1974 provided some new protections and guarantees for the some 30 million employees covered by private pension plans.

Enforcement of the new pension reform law has just begun and it is too early to assess its impact. Studies will be needed (and some are provided in the law) to determine its impact in such areas as the employment opportunities of middle-aged and older workers, the improvement of survivor provisions and the expansion of private plan coverage. The provision establishing individual retirement accounts for those not covered by other pension plans is already quite popular, but there is little information if the additional requirements provided by the law have had any effect on establishment of additional group plans. It is important that additional plans be established to extend coverage for less than half of the work force in private industry is now covered by retirement plans.

NCOA recommends two goals with regard to private pensions:

14. Existing pension plans should continue to be liberalized with regard to such features as early vesting, portability between employers and the provision of survivor benefits.

15. The establishment of new pension plans should be encouraged so that coverage would be extended to a larger proportion of the workforce.

Specific legislative and other recommendations await further study and experience under the new pension reform law.

EXTENSION OF THE GENERAL REVENUE SHARING PROGRAM (STATE AND LOCAL FISCAL ASSISTANCE ACT OF 1972)

Since the inception of the General Revenue Sharing Program in 1972, the National

Council on the Aging has provided technical assistance to public and private local, state and national agencies serving the elderly and poor on how they should go about obtaining their "fair share" of the allocated funds. We were pleased that social services to the poor and aged was one of the priority areas in which local governments were required to spend their funds. Yet a recent study by the General Accounting Office revealed that less than half of one percent of the total monies authorized for expenditure by the local governments surveyed were directed specifically to programs to benefit the aged. To compound the problem, cutbacks in and even complete elimination of categorical programs benefiting the poor and aged have been justified on the existence of general and special revenue sharing funds to take their place.

It is clear, without additional safeguards in the legislation being drafted to extend the program, the needs of the poor, particularly the elderly poor, will not be a significant objective of revenue sharing programs. Therefore, NCOA urges the Congress and the President to support in any legislation extending the State and Local Fiscal Assistance Act of 1972 the following provisions:

1. A restriction on the use of general revenue sharing funds by both state and local governments to the eight priority areas in the current legislation.

2. A requirement that states and local governments spend *no less* of these funds on social services for the poor and aged than the percentage of aged and poor in that particular political jurisdiction as determined by Bureau of the Census data.

THE RURAL ELDERLY

Until very recently there has been a large migration of the American people from rural to urban areas. Thus, people residing in rural areas faced a dramatic reduction in income, a lack of essential services and, of course, a reduced population. Rural America became less visible in terms of priority in Federal and state programs. What was once the backbone of the country became a skeleton, standing alone and forgotten. Interestingly, the same could be said of the older adult throughout America. For an older adult living in rural America, the problems of poverty, isolation, poor health, inadequate housing, and lack of visibility were compounded.

However, recent migration trends seem to be changing. The population is now leaving urban areas for rural ones, although services are not so quick to follow. The National Council on the Aging calls for a national effort through the voluntary public and private sectors to utilize the capabilities of rural older adults to restore them to productiveness and to expand and develop services to enable rural older adults to enjoy a life of dignity, health, and safety. To this end, we make the following recommendations:

In non-metropolitan society, pensions or annuities are almost nonexistent. Therefore, older adults rely on social security benefits or income maintenance programs for their only source of income. To relieve the burden of these often inadequate income levels for older adults in rural areas:

1. An accelerated effort to develop rural manpower programs should be made to enable older adults to remain self-sufficient.

2. An income maintenance program tailored and directed to meet the needs of the rural older adult should be established. Such programs should take into account the traditional multi-generational family model which is still common in rural America since this structure often prevents older family members from receiving full income benefits although they must contribute to the family's income in order to avoid impoverishing them.

3. An effort by Federal, state and local governments must be made to protect the independence of rural older adults by reducing property taxes, especially those of persons on limited incomes.

Noting that in 1973 the U.S. Department of Health, Education and Welfare spent only $7 million out of $175 million on health services delivery in rural areas although statistics show that approximately 140 rural counties in the nation do not have a physician and very limited auxiliary health services, NCOA recommends the following:

4. The Federal government should collaborate with medical schools in planning for special stipends for medical students who make a commitment to serve in rural areas (as well as other delivery areas) following their training as well as field placements during their training.

5. More support should be given to developing other professionals such as doctor's assistants, nursing and medical aides to provide supportive medical services to older adults in rural areas.

6. Mobile health service units, mini-medical clinics, visiting nurses services and emergency transportation services should be developed to alleviate this serious problem.

7. More emphasis should be given to medical service development, linkage of auxiliary services and provisions to enable the utilization of these services.

Public transportation is virtually nonexistent in most rural areas and medical and social facilities are too distant from residential areas to be reached by taxi or by walking. These conditions immobilize older adults and keep them from making social contacts and reaching professional services. NCOA recommends:

8. The National Mass Transportation Act of 1974 should be re-examined and new allocations made to offer more than token assistance to rural areas.

9. Efforts should be made toward ensuring the full development and utilization of volunteer transportation services, minibus services and school buses during "off hours" to fill this transportation gap.

10. State Public Commissions should remove those regulations which might restrict the implementation of transportation programs, and state Agencies on Aging should be prepared to follow up such action with recommendations of transportation programs which would benefit the elderly.

Sixty percent of the substandard housing reported in the nation's counties is in rural areas; one-fourth of those dwellings are occupied by the older adult. NCOA recommends the following:

11. A major national housing focus must be directed at rural America with particular emphasis given to the housing needs of older adults. An effort to broaden the programs of, and the appropriations for, the Farmers Home Administration specifically to meet the housing needs of rural America would be an important step in this regard.

12. Legislation should be enacted to make available funds for low-interest rate loans for major home repairs. The development of community services to provide minor home repairs could enable many older adults to maintain their independence by remaining in their own homes. Many others, by using their skills in carpentry, masonry and plumbing could earn extra income.

13. Planners and administrators should make greater efforts to provide social services, which are so often denied the rural elderly because of their limited mobility, with public housing projects for the elderly.

SENIOR CITIZENS

Findings from the National Institute of Senior Centers' Multipurpose Senior Center Research Project affirm the role of the Senior Center as a community focal point for older person services and activities. Nutrition, health and social services plus educational, recreational and community service opportunities are made accessible and available for older persons through Multipurpose Senior Centers in thousands of communities throughout the country. There are, however, great gaps in the development of Multipurpose Senior Centers. In rural areas, for instance, where services are particularly sparse and accessibility a major problem, there are great numbers of older persons who could benefit from Center services; yet, these are the communities which do not have sufficient local resources for such programs. NCOA thinks the following steps are necessary:

1. The Congress should appropriate funds to provide Title V of the Older Americans Act with the means to do the task it was authorized to accomplish. At the minimum, each planning and service area should have a Multipurpose Senior Center from which service delivery could be coordinated—in a sense the action arm of the Area Agency on Aging.

2. A Part C for Title V of OAA, which would provide assistance to existing programs which qualify or have the potential to become Multipurpose Senior Centers by authorizing grants to sustain all or part of the costs of staff, should be developed. The current focus of Title V is too limited. It reflects a major restriction on service delivery throughout the Older Americans Act—no support for ongoing programs. Emphasis is on new projects, with nothing to maintain services and activities which have been proven to be life-sustaining to millions of America's aged.

3. Community Development funds should be authorized for nonprofit Senior Centers in addition to those which are publicly sponsored. We also urge the Department of Housing and Urban Development to encourage support of Senior Centers in the Community Development program. The extension and ultimate funding of Title V remains the primary route of Federal support for Senior Centers. Reports from around the country indicate that centers are not receiving monies under the Housing and Community Development Act of 1974. Although Centers were specifically designated by the Congress as eligible recipients of such funds, little support has emerged.

4. The Administration on Aging should encourage Area Agencies on Aging to develop service contracts with Senior Centers whenever possible, thus recognizing and extending the comprehensive service delivery system which Multipurpose Senior Centers represent.

5. The Administration on Aging should provide support for the development of standards for Senior Centers. This would be an important step forward in the provision of services for older people because it would assure more consistency in quality and a means to maintain programs meaningful to the community and to older persons. The Senior Center field as a whole should assist in the development of these standards and be involved subsequently in their adoption as a means of promoting the best for those who deserve the best—the older people of America.

SOCIAL SERVICES AND THE ELDERLY

A social service system exists to help individuals and families to make optimal use of the resources which exist to sustain and enhance social functioning in our very complex society and its physical environment. Social services are needed by all people at some time in their lives to maintain or to attain their roles as socially or economically productive members of society, and to effectively cope with their environment.

The elderly particularly, because of their vulnerability and the impact of their problems on family and society, as well as their

relatively little knowledge about the social interventions which are needed, represent a primary target for social services. The provision of social services in their preventive, supportive and restorative functions can provide for the individual and collective needs of older persons.

Social services can include a wide variety of individual and group or community services, such as nutrition, health, educational or recreation and involve not only delivery systems but policy formation, training, education, and research. Transportation as well is an important ingredient of services and a link to resources in the community.

Where responsibility rests for providing needed social services for the aged has not been clearly defined. Neither has accountability been clarified nor the mechanisms for this developed. Perhaps most importantly, the resources which are provided are insufficient.

Social services have developed in three separate systems, one private profitmaking, and the others private-voluntary and public. None of these systems function adequately for the aged and the separation of the three systems have been dysfunctional to meet all the needs of the total elderly person. The identification of this group as a special category to receive government resources has weakened not only the principle of right to service but the integration of all services, private (profit-making and voluntary) and public, into one cooperative system which functions effectively.

The National Council on the Aging is aware of the wide disparity which exists at present between the needs of the elderly and the social services which are provided to meet the greatly varied needs and wishes of this diverse population. No national policy now exists regarding meeting the needs of all Americans; this should be a primary goal. There should be a public commitment to the elderly so that necessary steps may be taken to ensure that the gap be closed between service needs and services for Older Americans.

The new Social Service Amendments of 1975 (Title XX) basically represent special revenue sharing as applied to public service programs. Unfortunately, Title XX does not provide for the provision of essential services and omits the specific language permitting group eligibility or standards for adult care; it does not define strongly what constitutes an eligible service. What is most important, moreover, is that no attempt has been made to coordinate this social service program with other programs—private and public—which provide services to the elderly.

NCOA has continually worked for improvements to insure that the current delivery and future expansion of critical social services to older Americans be facilitated. Delivery and expansion of services, however, is not enough. NCOA is concerned with regulation and means to insure the quality of the services.

The assumption is that there will be little change this year in provision of social services, and the present pattern will continue until review and planning can affect new modes of implementation. Since Title XX provides for public review and comment, mechanisms for utilization of these to maximize allocations for the elderly are essential. In this way changes may take place in direct response to service needs of the elderly.

The National Council on the Aging makes the following policy recommendations accordingly:

1. Title XX should make explicit that services be designated for the elderly specifically, so that low-income elderly are not in competition with other groups for services;

2. Group eligibility in the provision of services to adults should be allowed under Title XX.

3. Standards which ensure quality adult care must be established under Title XX. Funding to ensure enforcement of these standards through inspection and education must also be forthcoming.

4. Attempts should be made to coordinate the Title XX programs with other service programs—private or public—which serve older people.

5. Provision of services under any law is useless unless knowledge and access to the service is made readily available to the group which needs them. Thus, a system which will provide information and make referral for the elderly to link them to services should be developed.

6. Transportation is a means to bring services and older people together. Mass transportation and/or diverse mobility systems which are responsive to the unique needs of older people should be developed.

7. Levels of appropriation for services should meet the massive needs of the elderly. Insufficient funding represents tokenism and results in inadequate services and blocks access to services.

THE SPIRITUAL WELL-BEING OF THE ELDERLY

Spiritual well-being is the affirmation of life in a relationship with God, self, community and environment that nurtures and celebrates wholeness.

The spiritual is not one dimension among many in life; rather it permeates and gives meaning to all life. We call attention to this fact of life: To ignore or to attempt to separate the need to fulfill the spiritual well-being of man from attempts to satisfy his physical, material and social needs is to fail to understand both the meaning of God and the meaning of man.

We recognize that human wholeness is never fully attained. Throughout life it is a possibility in process of becoming; thus, it is no less important to the older man and woman than it is to the adolescent. In the Judeo-Christian tradition, life derives its significance through its relationship with God. While we acknowledge and respect the rights of others to have other frames of reference, we reaffirm our belief that it is this relationship with God that awakens and nourishes the process of growth through wholeness in itself, crowns moments of life with meaning and extols the spiritual fulfillment and unity of a person.[1]

Spiritual wholeness is the right of all people. So that older persons can achieve and maintain a state of spiritual well-being and fulfillment, the National Council on the Aging recommends the following:

1. The spiritual leadership of the nation should address itself to a greater commitment of psychic and financial resources toward serving the elderly. While meeting the needs of the elderly and working for programs that contribute to the well-being of the elderly, religious bodies should attempt to ensure that older persons share in the planning and implementation of all programs related to them, and that these programs are directed not only to the independent aged in the community, but also to the elderly living in public or private institutions.

2. The religious community should take it upon itself to become the prime impetus toward developing special understanding and competency in satisfying the spiritual needs of the aging among its members and among those who deliver services to the aging in private and public agencies.

3. Religious bodies should take the initiative in developing a greater sensitivity toward, and appreciation of, the cultural and ethnic diversity of our nation in order to better serve the elderly. They should work closely with the diverse minority communities to ensure that cultural or language barriers to communication are broken down without destroying the common ethnic or racial identities which bind those communities and which give greater meaning and identity to so many older people.

4. Religious organizations should be aware of agencies and services other than their own which can provide a complete ministry to older persons. Other organizations designed for the benefit of older persons should develop, as part of their services, channels to persons and agencies who can help in spiritual problems.

5. Religious bodies have traditionally and properly developed their own philosophies. In this context, they should work together with the elderly and coordinate their efforts with other groups to develop and declare an affirmation of rights for the elderly as well as to become actively concerned with spiritual, personal and social needs. Such efforts would work to ensure the basic values of all while guaranteeing the basic right of freedom of religion.

6. Religious bodies and the government should affirm the right to, and reverence for, life. In that framework, we believe an individual has the right to choose to die a natural and dignified death. When there is no reasonable expectation of recovery from physical or mental disability, an individual should be allowed to die and must not be kept alive by artificial or heroic means. Medication should be mercifully administered during time of terminal suffering, even if it hastens the moment of death. Such a decision by an individual does not ask that life be directly taken, but that dying be not unreasonably prolonged. This decision should be made by an individual for himself or herself. To ensure that such a request for a natural death is understood and not abused by others, individuals are urged to compose living wills. These wills would communicate the conscious desire to be allowed to die even though the individual be unconscious or otherwise incapacitated near the moment of death.

7. Institutions caring for the aged should provide the opportunity for chaplaincy services. In all cases, however, the aged resident should be the sole arbiter of the religious denomination and degree of any assistance provided.

8. The government should cooperate with religious bodies and private agencies to help meet the needs of the elderly, but, in doing so, should observe the principle of separation of church and state.

We hope that these recommendations will stimulate a rededication of national efforts toward enriching the lives of our older people. In particular, we seek a society and spiritual atmosphere in which the elderly can grow to accept the past, to be aware and alive in the present, and to live in hope of fulfillment.

TRAINING AND EDUCATION

TRAINING

With what is bound to be a major expansion of services and programs for the elderly during the next few years, there is a growing need for continuing education of people in the field. NCOA believes the following steps are necessary:

1. Continuing education and supplementary training programs for people who wish to serve as staff members of area agencies, as staff members of senior centers, and as staff of low-term care institutions should be supported.

2. The present flow of young people through doctoral programs in gerontology and related disciplines should be maintained. The provision of a limited number of fellowships for doctoral candidates in the

[1] The introduction was adapted from a statement on Spiritual Well-Being developed by the National Interfaith Coalition on Aging at its Fourth Annual Meeting, April 29–30, 1975, in Washington, D.C.

spring of 1975 is commendable and should be continued.

3. Training grants for university programs in the social and biological aspects of aging should be maintained with funds that will guarantee the supply of research and university teaching personnel at a somewhat increased level.

4. The continuing needs for training persons at the doctoral and the semi-professional levels should be coordinated with the aid of the National Institute on Aging and the Federal Council on Aging. The time has come to set up an ongoing program for at least five years, with funding authorized by the Congress. Appropriations for training have been $8 million in the most recent years, and support should be continued at this level, or increased over the next five years.

EDUCATION

Programs of general cultural and socio-civic education provided for people in their 50s, 60s, and 70s are now beginning to catch the attention and interest of mature people much more than they have in the past. This is partly due to the ingenuity and effort of educators, working especially in community colleges and in extension divisions of the state universities. It is also partly due to the increasing level of formal education of elderly people. Within ten years, the majority of people aged 65 will be high school graduates. And those who have the most formal education are the ones who want more continuing education.

To encourage and meet this growing interest, NCOA recommends:

1. Educational programs should be effectively free of tuition charges for all people over age 60, which means that colleges and public schools should have access to Federal or state funds to support such program.

2. Legislation has paved the way for support of continuing education programs, but very little money has yet been appropriated and made available. Federal funds should be appropriated specifically for these programs.

3. Curricula regarding the aging process should be developed and introduced at all educational levels.

TRANSPORTATION AND THE ELDERLY

Transportation provides a link to needed services for the elderly, who are more reliant on transportation than any other segment of the population. Yet the elderly are least likely to be served by the present transportation system. Most transportation money goes to networks serving the private automobile, and the elderly are generally non-drivers. Where transportation is available—and almost none is available in rural areas—the elderly either can't afford it or design, routing or scheduling make use of facilities difficult. Thus, barriers are created to service and employment for the elderly, particularly the elderly poor. NCOA, therefore, recommends:

1. The Federal government must take the leadership in increasing the mobility of older people through subsidies and promotion of free or low-cost coordinated, accessible transportation systems with special attention to their unique needs. Ultimately, the responsibility in this area must rest with state, regional and local transit authorities.

2. The provision of transportation is an essential part of any social service, welfare or health program serving older people. Any of these which receives subsidy from local, state or Federal government should include transportation as the vital linkage between the older person and the service.

3. Funds should be provided by all levels of government to test out new alternative ways to provide low-cost transportation to meet the needs of older persons in both urban and rural areas.

4. Older people themselves should be actively involved in the planning, policy making and development of transportation programs designed to serve them.

HELP FOR THE NEEDY

Mr. BELLMON. Mr. President, the American Public Welfare Association recently gave special recognition to the Oklahoma Department of Institutions, Social and Rehabilitative Services for a statewide food stamp outreach program which represents "a creative and administratively sound contribution to the development of public welfare programs and services." The program will be among 18 new State and local public welfare service or administrative improvements featured in an Idea Fair at APWA's 1975 National Round Table Conference in New Orleans this week. The 18 were selected for presentation from 38 entries received from all parts of the United States. Selection was based on evaluation by public welfare program and management specialists for uniqueness, documented improvement in service to clients or administration, and/or dollar savings to the agency.

In announcing selection of the Oklahoma program for recognition, Edward T. Weaver, executive director, APWA, commented:

This program represents the sound, professional approach to public welfare administration advocated by the Association. We have initiated the Idea Fair at this biennial National Round Table Conference to draw attention to progress in the public welfare field and to give administrators and personnel of state and local agencies an opportunity to exchange views and ideas for improving services.

Mr. President, as I am sure my colleagues will agree, this is certainly the time when the officials of State welfare agencies should get together to compare ideas and develop better programs in their own States. Food stamp reform has been given considerable attention by Congress this session and it is the feeling of many of my colleagues that perhaps the Federal welfare program in the biggest state of chaos is food stamps. While the very size of the program is frightening, what has focused widespread congressional concern on food stamps is the ever-increasing charges of fraud, abuse and Government bungling. However, I am pleased to report that the State of Oklahoma has one of the lowest error rates in the food stamp program as compared with the rest of the Nation.

Mr. President, of equal concern to Congress is that Federal redtape keeps too many of the deserving needy out of the food stamp program. Is this not the original intent of Congress: to insure that resources are more properly allocated to persons in genuine need? I am proud to say, Mr. President, this is Oklahoma's major intent also: to reach the truly needy people.

Oklahoma's Outreach program is unique in that the State hires home economists as Outreach specialists to provide food stamp information and to promote wise use of the food dollar for better health through adequate nutrition. The Outreach specialists work closely with county administrators to plan activities and assure full coverage of public assistance and low-income households. They meet with senior citizens, AFDC mothers, and other groups to provide assistance in food budgeting and meal planning. Work with numerous target groups, such as Indian tribes, has enabled the Outreach specialist to produce a Cherokee translation of a current publication on nutrition and food stamps.

Mr. President, I would like to point out that the Oklahoma Department of Institutions and Rehabilitative Services is receiving this nationwide honor, not only because of the fine staff and outstanding services they are providing, but also because of the truly fine and dedicated director, Mr. L. E. Rader. Mr. Rader will also be honored by the American Public Welfare Association this week for distinguished service in the field of public welfare. Mr. Rader is one of five persons who will receive APWA awards for outstanding contributions to public welfare policy and practice. He was selected to receive one of the awards in recognition of his 24 years of continuous service as Oklahoma State welfare director and the influence he has had in the shaping of national social policies in these years.

APWA's selection for this award was made because, "Lloyd Rader has been in a position to make a unique contribution to the development of human services. As a State agency director for more than two decades—the longest record of continuous service of any State public welfare director in the Nation—Rader has developed an intimate knowledge of the workings of government and the relationships between various levels of jurisdiction. He has used this knowledge to improve services to people, not only in Oklahoma, but throughout the Nation. As an active member and officer of the National Council of State Public Welfare Administrators he has presented invaluable testimony and recommendations on numerous laws and regulations. Laws now on the books for which he worked most vigorously include amendments to the Social Security Act providing title XIX—medicaid—benefits to residents in institutions for the mentally retarded and a more favorable Federal matching formula for public assistance grants in States with lower per capita income. Most recently he worked for the successful enactment of legislation extending eligibility for food stamps to recipients of supplemental security income, the Federal assistance program for the aged, blind, and disabled. Lloyd has always been willing to share his knowledge with others and to develop new leadership in the field of public welfare. His practical counsel has had a far-reaching and constructive influence on social policies and programs."

Mr. Rader's public welfare career began November 15, 1951, with his appointment as director of the Oklahoma department. Previously he worked with the State tax commission and in private business. He has a law degree from Oklahoma City University. Mr. Rader has received many honors during his career including election to the Oklahoma Hall of Fame.

Mr. President, as former Governor of Oklahoma who worked closely with and observed Mr. Rader's administration of the welfare programs, I must agree with the American Public Welfare Association has chosen wisely when they selected Lloyd Rader and the Oklahoma Department of Institutions, Social and Rehabilitative Services for special recognition for work they have done in developing and successfully administrating programs to help Oklahoma's deserving needy.

SOCIAL SECURITY WAGE REPORTING

Mr. McINTYRE. Mr. President, before Christmas the Senate will take up an amendment to the social security regulations that will be a major cost-cutter to American small businesses.

In July I introduced S. 2156, a bill to provide for the annualization of wage reporting to the Social Security Administration by permitting changes in the tax code to allow the Social Security Administration and the Internal Revenue Service to exchange information so that American businessmen would not have to file quarterly reports outlining the wages they pay their employees.

The bill would allow the abolition of what has been described as the "most onerous" piece of paperwork that American businessmen must fill out, the form 941–A.

Last week the Senate Finance Committee reported the bill that I introduced to end the quarterly reporting of wages to the Social Security Administration. That bill would mean savings to American businessmen of about $275 million every years. It means that they would only have to fill out one form every year for each employee instead of five under existing procedures.

The bill has the support of the Secretary of the Treasury and the Secretary of Health, Education, and Welfare who have written to support the principle of changing the current quarterly reporting system to an annual system. But since the two Secretaries have not presented a bill of their own yet, we must move on our bill.

The time has come for the Senate to state strongly that it supports this bill and urge the House to move on it quickly. Since I first introduced the bill on September 19, 1973, to help business, that means they have paid over half a billion dollars that they could have saved.

As cochairman of the Federal Commission on Paperwork and chairman of the Select Committee on Small Business Subcommittee on Government Regulation, I know this bill will bring immediate relief to small businesses and big businesses too. It should be enacted in the Senate anad pass the House quickly.

Let us look at the paperwork savings. If a company has 100 employees, the bookkeeper for that company must fill out the 941–A for each employee every quarter and file an annual report as well. That is a total of 500 entries. If we abolish the 941–A, that bookkeeper would only have to file 100 pieces of information.

Clearly for the small and medium-sized companies that have not computerized their payroll accounts, the savings will be substantial.

POLITICAL RIGHTS OF WOMEN

Mr. PERCY. Mr. President, on Friday, December 12, the Senate Foreign Relations Committee held a hearing at my request to consider the ratification of the U.N. Convention on the Political Rights of Women and the Inter-American Convention on the Granting of Political Rights to Women. A number of outstanding witnesses gave eloquent testimony urging ratification. These conventions grant women political rights that are constitutionally guaranteed to every American woman.

I firmly believe that in this International Women's Year the Senate can do no less than to ratify these conventions as a reaffirmation of our national commitment to equal rights and opportunities for all. In the very near future the committee will be meeting in executive session to consider the issue. I would like my colleagues to have the benefit of the excellent testimonies given. I, therefore, ask unanimous consent that my opening statement and the statements of the witnesses be printed in the RECORD.

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

OPENING STATEMENT BY SENATOR CHARLES H. PERCY

Mr. Chairman. I want to thank you for agreeing to hold this hearing to consider the U.N. Convention on the Political Rights of Women and the Inter-American Convention on the Granting of Political Rights to Women. It is both timely and important that we are taking testimony on these two conventions during Human Rights Week in International Women's Year.

The rights granted by these two conventions are constitutionally guaranteed to every American woman. The U.N. convention provides that women shall be entitled, on equal terms with men and without discrimination, to vote in all elections, to be eligible to run for all publicly elected positions, to hold public office and to exercise all public functions established by national law. The Inter-American convention provides that the right to vote and to be elected to national office shall not be denied or abridged by reason of sex.

It is ironic that the Senate, renowned for its dedication to the pursuit of human rights and freedoms, chose not to ratify the U.N. convention and to take no action on the Inter-American convention. The U.N. convention, adopted in 1952, entered into force in 1954, and ratified by 79 U.N. member states was submitted to the Senate for its advice and consent in 1963. In 1967, this committee after holding hearings on three human rights conventions, including the convention on the Political Rights of Women, voted to table the convention. The Inter-American convention, adopted in 1948 and ratified by 17 of the 21 American republics, was submitted to the Senate in 1949. During the past 26 years no action has been taken on the convention until today.

U.S. resistance to ratification centers on concern that the political rights of women are not matters of international concern and, therefore, not proper subjects for treaty-making. Ratification, opponents claim, would violate our domestic jurisdiction and disturb our constitutional Federal and State relationship. These objections, based on the traditional view that international law is concerned with the rights of states, not with the right of individuals, were eloquently rebutted in the 1967 hearings. Our witnesses today, I am sure, will present further rebuttals. I will, therefore, take the time now to make only one major point.

Like Thomas Jefferson, I do not advocate capricious changes in laws or institutions. However, Jefferson recognized as I do that, ". . . laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed and more enlightened, as new discoveries are made, new truths discovered and manners and opinions changed with the change of circumstances, institutions must advance also to keep pace with the times."

Since World War II, with the creation of the U.N. and the adoption of the U.N. Charter and subsequent declarations and treaties, international law, although still primarily concerned with the rights of states, now also recognizes the rights of individuals. Today there is a U.N. Commission on Human Rights, a Universal Declaration of Human Rights adopted by the U.N. without a single dissent, regional institutions that deal with human rights problems, and a Human Rights Court. The development of international human rights law reflects "the progress of the human mind." In this 20th century international law can no longer just concern itself with relations between states. Two world wars and numerous regional conflicts have taught us that domestic oppression often leads to foreign aggression. The achievement of world peace, the ultimate goal in relations between states, is inextricably linked with respect for basic human rights.

U.S. resistance to ratification of international conventions dealing with the political rights of women is an anachronism. In 1975, International Women's Year, the argument can no longer be supported that women's rights are not proper subjects for international concern. In 1967, this committee reported favorably the Supplementary Convention on the Abolition of Slavery, the only major U.N. human rights convention this country has ratified, but tabled the Convention on the Political Rights of Women. If the outlawing of slavery, which included involuntary marriage, the sale of women and the transfer of widows as inherited property, is a proper subject for treaty-making, why not the guarantee of basic political rights to women, particularly at a time when the maximum use of every nation's human resources is so obviously a matter of international priority.

I hope this hearing will help the Senate "keep pace with the times." In this International Women's Year this committee can do no less than to make the realization of equal rights for women as important as the abolition of slavery by recommending for ratification the U.N. Convention on the Political Rights of Women and the Inter-American Convention on the Granting of Political Rights to Women.

STATEMENT OF STEPHEN M. SCHWEBEL, DEPUTY LEGAL ADVISER, DEPARTMENT OF STATE

I am grateful for the privilege of testifying before this Committee on the question of affording advice and consent to ratification by the United States of two conventions: the Inter-American Convention on Granting of Political Rights to Women, and the United Nations Convention on the Political Rights of Women.

The United States appears to stand in an anomalous posture on the issue of equal political rights for women. Provisions of the federal Constitution guarantee, and specific federal legislation reinforces, the right of women to cast votes and to seek and hold public office on an equal footing with men.

Yet virtually alone amongst the enlightened peoples of the world, this nation has so far declined to ratify two international conventions embodying that rudimentary principle of non-discrimination in the exercise of political rights. In this forum, our reluctance may be explained by concern over the legality or desirability of adhering to treaties touching an issue of great domestic significance, by a determination to preserve the proper balance of federal and state responsibilities, and by hesitancy to participate in an international convention which duplicates existing Constitutional and statutory law. But abroad, our failure to ratify these two treaties may be interpreted as evidence that our commitment to equal political rights for women lacks depth and conviction, or, at any rate, a proper respect for the opinions of mankind as reflected in these instruments.

Examination of the texts of these two treaties reveals how unnecessary our reluctance to consent to ratification has been. The Inter-American Convention on Granting of Political Rights to Women originated at a Conference of American States at Bogota in 1948 and was signed at that time by representatives of fourteen American nations, including one from the United States. President Truman transmitted the OAS convention to the Senate on January 13, 1949. During the nearly twenty-seven years that the convention has awaited the advice and consent of the Senate, twelve of the instruments' other thirteen signatories have ratified the convention, as have four other Latin American states. The OAS Convention contains a solitary operative paragraph: contracting parties "agree that the right to vote and to be elected to national office shall not be denied or abridged by reason of sex." That this provision comports with existing federal law is undeniable.

In 1952, the United Nations General Assembly adopted a similar Convention on the Political Rights of Women. The UN Convention breaks down into three articles the same guarantee embodied in the OAS document: that women shall be allowed to vote, to run for election to all national public offices, and to hold national public offices and exercise public functions, "on equal terms with men, without any discrimination." President Kennedy transmitted the U.N. convention to the Senate on July 22, 1973, and, in 1967, a subcommittee of the Senate Foreign Relations Committee conducted three days of hearings on this convention and two others involving the abolition of forced labor and of slavery.

Thirty non-governmental organizations and officials of the Administration endorsed ratification of the Convention on Women's Rights. The American Bar Association was alone in opposition. Apparently in response to the ABA's criticism, the UN convention was tabled, while the other human rights conventions under consideration received prompt and decisive assent. 80 nations currently are parties to the Convention on Women's Political Rights; the United States is one of two signatories to the initial agreement which have not ratified it.

By their terms, these conventions guarantee to women rights which the U.S. Constitution and existing federal law have already fixed as their due. Discrimination against women in the exercise of the franchise is currently proscribed by the 19th Amendment to the Constitution. Modern interpretations of the Fifth Amendment would preclude any attempt to qualify the right to seek or hold national public office on the basis of sex. In transmitting the UN Convenion to the President in July 1963, Secretary of State Rusk confirmed that there were "no substantive legal questions" posed by US participation in the convention. Ambassador Goldberg reiterated this point in testimony before the Senate Subcommittee in February 1967. Goldberg stated, "There is no doubt that Constitutional guarantees and legislation now in force already reflect the aims and [purpose] of the convention. We need no additional laws to ensure that women shall, on equal terms with men, be entitled to vote in all elections, be eligible for election to all publicly elected bodies established by national law, and be entitled to hold public office and exercise all public functions established by national law."

The ABA did not dispute these conclusions in its criticism of the UN convention.

The ABA's difficulty with the UN Convention—its primary and almost solitary reason adduced for declining to ratify the instrument—is that the scope of the franchise is a uniquely domestic concern and thus an impermissible basis for exercise of the treaty power. The Association's legal premise is accurate: the Supreme Court has admonished that the treaty power must be limited to matters of international import, for example in the noted case of *Geofroy* v. *Riggs*, 133 U.S. 258, 267 (1890). But in applying that precept to the UN Convention, the ABA has, we respectfully submit, underestimated the range of this country's international interests, and obligations. The Association of the Bar of the City of New York has cogently stated the implications of ratification for our foreign policy:

"By becoming a party we would underscore our commitment to basic freedoms, which is an important source of our influence in international affairs. Ratification would also give us standing to call to account both the countries which have acceded to these Conventions and countries which profess acceptance of the Conventions' substantive terms but have not become parties to them."

The opinion of the New York City Bar harmonizes with the broader view of the proper subject matter of treaties propounded by the Reporter for the Restatement of Foreign Relations Law in 1965. Discussing the significance of "human-rights" treaties, the reporter asserted that the United States participates in such international agreements, "not merely to protect its own standards, but to promote conditions abroad that will foster economic development and democratic institutions that are conducive to prosperity in the U.S. and achievement of its foreign policy objectives. It cannot effectively urge other states to adhere to such conventions without doing so itself."

In our view, the very terms of the Preamble to the Charter of the United Nations challenge the ABA's argument that equal political rights for women is not a proper subject for an international agreement. The Preamble provides that this nation and all others which subscribe to the Charter "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small . . ."—provisions that are carried forward in Article 1.55 and 56. To insist that domestic legislation must be the sole guardian of the principle of nondiscrimination between the sexes is to deny that international affirmation of fundamental principles of human rights can have a salutary and indeed legal effect on international relations. Yet the United States did not shy from such an affirmation in adopting the Charter of the U.N. Nor, in ratifying the Supplemental Convention on Slavery in 1967, did the Senate conceive that a multilateral statement of intent to abolish serfdom, debt bondage, and other institutions of slavery through domestic enactment and sanction lacked significance for this country's foreign relations. Rather the Senate saw in that document, as it should perceive in this one, a meaningful statement of a common will to abolish affronts to fundamental human rights wherever they may exist. If a binding expression of our own intent to insure equal political rights lends support to our desire that other governments extend a broad and nondiscriminatory franchise, then clearly an important international interest is served. We conclude that there can be no valid claim that actions taken to promote and expand human rights abroad, which are embraced by the U.N. Charter, transcend the proper scope of the treaty power.

Other arguments which have been raised against ratification of the U.N. Convention prove, in our view, still less substantial. The ABA has suggested as an ancillary point of contention, that a treaty with the force of federal law governing the rights to vote and to hold public office may infringe on state interests and powers. Former Justice Goldberg responded succinctly that absolutely no prerogative would be lost to the states by such a federal law. The point was reiterated in his testimony and that of other proponents of ratification that the U.N. Convention guarantees women an equal right to seek and hold only national office. The OAS Convention similarly speaks only of an equal right to be elected to national office. And the equal right of women to vote is already protected in both federal and state spheres by the Nineteenth Amendment to the federal Constitution. [*Breedlove* v. *Suttles*, 303 U.S. 277, 283 (1937)] Any question which might otherwise arise as to whether primary elections are covered by the treaties is rendered moot by the fact that all states allow women to vote in such elections on equal terms with men. Thus the spectre of a federal-state imbalance is a singularly grossamer objection to the ratification of the two conventions.

Finally, from the fact that all of the substantive rights guaranteed by the conventions are already accorded women under domestic law, the ABA has extrapolated the argument that further Congressional action to reinforce political rights for women would be gratuitous. In fact, the contrary conclusion is as warranted: because ratification of the conventions creates no new rights and requires no public debate, but merely confirms and reaffirms the existence of current political entitlements, this country may lend its support to these international agreements at no domestic cost and for a certain international benefit. Conversely, our failure to ratify the conventions may seem to cast doubt abroad on our commitment to equal political rights for women. Having enshrined that commitment as the law of the land, we need hardly shrink from recommending that all nations follow suit. The potential gains from ratification, and the damage to our stature in humanitarian affairs caused by failure to ratify, while not profound, argue not only that these conventions involve a proper international concern, but also that their reaffirmation of a fundamental principle is anything but gratuitous.

Reservations have been expressed, not by the ABA but by proponents of ratification, concerning the range of "public offices" and "public functions" open to women under the conventions. Support for ratification has been predicated on the understanding that military service is not comprehended in the term "public office." Eleanor Roosevelt, U.S. Representative to the General Assembly at the time the UN Convention was adopted, noted the possibility of confusion and articulated the view of the U.S. delegation that military service was not intended to be included. While the likelihood that this ambiguity will prove a problem may be remote, the Senate may foreclose the possibility by including in its resolution of advice and consent a statement that its approval is conditioned on the understanding that reasonable discrimination in the armed services will still be allowed. That statement of understanding would then be governing.

Given that no genuine legal barriers to ratification exist, our long-standing reluctance to approve these conventions is all the

more questionable in light of the initiatives this country has taken in recent years in support of women's rights. The United States lent its full support to the decision of the United States to declare 1975 "International Women's Year." We were instrumental in proposing the World Conference of the International Women's Year, held in Mexico this past June and July, and we have consistently supported implementation of the World Plan of Action which emerged from that meeting. We have repeatedly signalled our interest in the status of women everywhere by recommending at every opportunity that development and educational programs of international organizations should inure to the equal benefit of men and women, much as the Percy Amendment requires that this country's development assistance impact on foreign peoples in a non-discriminatory manner. Our central role in international humanitarian endeavors should be unchallenged, yet our commitment to the promotion of human rights may have been called into question because of our treatment of conventions like the two we consider today. We subject that the time could scarcely be more propitious for ratification of these two treaties.

TESTIMONY BY RAY M. S. TUCKER ON BEHALF OF THE NATIONAL COUNCIL OF JEWISH WOMEN

My name is Ray M. S. Tucker. I am a National Board Member of the National Council of Jewish Women and Chairwoman of its National Priority Task Force on Constitutional Rights. I am an attorney.

The National Council of Jewish Women, an education, community service and social action organization of over 100,000 women in Sections throughout the United States, has, since its inception 83 years ago, been committed to the principle of equal opportunity for all, including equal legal rights, equal access to education and equal employment opportunities. This commitment was reaffirmed by delegates from throughout the country gathered at the Biennial Convention in March of this year by the adoption of the following Resolutions:

"I. Individual Rights and Responsibilities. . . . We Therefore Resolve:

6. To support measures which ensure equal opportunity and legal rights for women." and

"VI. Foreign Policy

The National Council of Jewish Women believes that United States foreign policy should be directed toward world peace by striving to achieve those conditions wherein human beings can live in dignity and freedom. . . .

We Therefore Resolve:

4. To promote human rights and freedom throughout the world, including:

(d) The ratification of the Human Rights Conventions.

(e) The implementation of the Universal Declaration of Human Rights."

The Convention on the Political Rights of Women provides that women be entitled to vote in all elections on equal terms with men and without discrimination; be eligible for election to all publicly elected bodies, established by national law; be entitled to hold public office and to exercise all public functions, established by national law, all on equal terms with men, without any discrimination. These basic rights are consistent with our domestic law and the United States Constitution. The 19th Amendment guaranteed "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex." The Supreme Court held in Breedlove v. Suttles, 303 U.S. 277, 283 (1937) that the amendment by its own forces, supercedes inconsistent measures, whether Federal or State.

During the 55 years since the right of women to vote was guaranteed in our country, much significant progress has taken place recognizing the rights of women at home as well as in other nations. The U.N. Document adopted by the World Conference of International Women's Year in Mexico City this summer contained a "World Plan of Action" with the following objective: "Enactment of legislation on voting and eligibility for election on equal terms with men and equal opportunity and conditions of employment including remuneration and on equality in legal capacity and exercise thereof." (Section 46(f) page 11—July 1975) Our government participated in developing these objectives and voted for the "World Plan of Action" for International Women's Year. The National Council of Jewish Women to vote was guaranteed in our country, of International Women's Year in Mexico City through its membership in the International Council of Jewish Women as well as attendance by leaders of our National organization. The National Council of Jewish Women is committed to implementation of the "World Plan of Action."

During the Hearings before a Subcommittee of the Senate Committee on Foreign Relations held in 1967 many cogent reasons were advanced by Richard N. Gardner, representing the Ad Hoc Committee on the Human Rights and Genocide Treaties, of which National Council of Jewish Women was a member organization, for ratification of the Convention on the Political Rights of Women. He stated:

"First, our ratification will encourage other nations to adhere to these conventions and implement their provisions in their own territories. This is particularly true of newly independent countries that frequently take U.N. conventions as a model. . . .

Second, ratification will put the United States in a better legal and moral position to protest infringement of these human rights in countries that have ratified the conventions but failed to implement them in practice.

Third, ratification will increase United States influence in the continuing U.N. process of drafting legal norms in the field of human rights. . . .

Fourth, ratification will dissipate the embarassing contradictions between our failure to ratify these conventions and our traditional support of the basic human rights with which they are concerned."

Now, on the threshold of 1976, more than ever before, it is imperative that we ratify the Convention on Political Rights of Women. The United States has made vast strides domestically in human rights since 1953 when the treaty was introduced. The 1964 Civil Rights Act, Title VII, provides for eliminating sex discrimination in employment; Title IX of the 1972 Education Amendments provides for eliminating sex discrimination in education; and the proposal by the 92nd Congress of the joint resolution proposing the Equal Rights Amendment to the Constitution passed in the House in 1971 and in the Senate in 1972 would constitutionally guarantee an end to any discrimination by reason of sex.

Ratification of the Convention of Political Rights of Women would require no new domestic laws. The Convention on Political Rights of Women deals with a matter of international concern and is within the treaty power of the Federal government. It embodies ideas consistent with our Constitution and with our traditional basic values.

The world community is enhanced by nations who avail themselves of the political participation and capabilities of all their citizens not just the male half. The world problems of population, hunger, health, living standards can begin to be dealt with through the effort of the indigenous populations with the joint involvement of their female as well as male inhabitants. We should not withhold our encouragement and support from these essential objectives.

The National Council of Jewish Women urges this committee to support ratification of the Convention on the Political Rights of Women.

Thank you for giving me on behalf of the National Council of Jewish Women the opportunity to be heard on this timely and vital issue.

STATEMENT OF DR. IRENE TINKER, CHAIRPERSON OF THE INTERNATIONAL WOMEN'S YEAR COMMITTEE OF THE FEDERATION OF ORGANIZATIONS FOR PROFESSIONAL WOMEN

I am Irene Tinker, Chairperson of the International Women's Year Committee and former President of the Federation of Organizations for Professional Women. By profession I am a political scientist, serving as Head of the International Office of the American Association for the Advancement of Science. I am here today to represent the views of the Federation of Organizations for Professional Women.

First I want to thank the Senate Foreign Relations Committee for inviting the Federation to bring the concerns of our member organizations to the attention of this Committee. The Federation, which was formed three years ago, is an umbrella organization of more than 80 affiliates with a wide range of professional identifications. Our purpose is to provide a mechanism for improving the status of women by promoting equality of opportunity in education and employment. Among our affiliates are the American Association of University Women, the American Medical Women's Association, Graduate Women in Science, the Association of Women in Science Association, the Modern Language Association, and the American Economics Association. We ourselves are affiliated to the International Alliance of Women—a continuation of the suffragette movement.

I am here today to urge that the Senate Foreign Relations Committee recommend to the Senate ratification of the Convention on the Political Rights of Women and the Inter-American Convention on the Granting of Political Rights to Women. There are several compelling reasons why this should be done and no sound reason for continuing to delay ratification.

First, it would be fitting during International Women's Year for the United States government to begin a new, positive chapter in its treatment of international conventions dealing with the rights of women. As this Committee is well aware, the United States has not been in the forefront of those championing these agreements. Of seven such conventions signed by the United States, only one has been approved—and that occurred in 1934. The time is long overdue for the Senate to begin consideration of the other agreements. It is appropriate and heartening that two of these conventions are now before this committee for consideration.

Second, when one examines the conventions before you, it is difficult to understand why there has been a 22 year delay in their adoption. They are not controversial documents and they guarantee rights which have been protected by the United States Constitution for 55 years.

The Convention on the Political Rights of Women guarantees that "Women shall be entitled to vote in all elections on equal terms with men" and "shall be eligible for election to all publicly elected bodies" without discrimination.

The OAS Convention contains a more limited guarantee that assures that "the right to vote and to be elected to national office" shall not be abridged because of sex.

These are hardly revolutionary doctrines. Seventy-nine (79) nations have ratified or acceded to the U.N. Convention on the Political Rights of Women. Sixteen (16) OAS states have ratified or acceded to the Inter-American Convention.

Given the simplicity and apparent acceptability of these guarantees, it may be worthwhile reviewing the possible reasons why these conventions have not been adopted before. The primary intellectual argument is that these conventions deal with matters appropriately within the domestic jurisdiction of each state, and they are beyond the scope of international agreement. The conflict between the demands of protecting domestic jurisdiction and protecting human rights is an old one. In terms of the relevance of that argument to these conventions, however, it appears necessary only to note several facts.

1. What constitutes a matter within the sole domestic jurisdiction of states changes over time and appears to be determined by consensus among nations.

2. The United States itself has not felt compelled to seek consistency in determining what it believes is beyond the appropriate scope of international conventions and indeed has been willing to ratify agreements which deal with matters that are generally the subject of municipal law. Less than ten years ago, in 1967 the United States Senate ratified the Supplementary Slavery Convention. This convention had been submitted to this body in 1963 along with the United Nations Convention on the Political Rights of Women by President John F. Kennedy. One might suppose, given the domestic jurisdiction argument that the convention simply extended prohibition on internal slave trade. The convention did that, but it also dealt with the abolition of bondage and serfdom, the buying, selling, and inheritance of women, and the exploitation of women. Clearly there is precedent in the Supplementary Slavery Convention for ratifying the conventions guaranteeing political rights to women.

3. The Foreign Relations Committee's decision in 1967 not to send the Convention on the Political Rights of Women to the floor of the Senate apparently was based on a last minute recommendation by the American Bar Association. As the Committee may recall, when this convention along with the Supplementary Slavery Convention was subcommitted to the Senate, the Foreign Relations Subcommittee which held hearings on the agreements recommended approval of ratification by the full committee. Only after the American Bar Association by a vote of 115 to 92 recommended against the convention did the full committee determine not to send the convention to the floor of the Senate. A mere 22 votes by an organization that had fewer than 3% women members and whose profession was known for its discrimination against women was permitted to sway the position of the U.S. Senate. It is time this injustice was rectified.

In light of the foregoing it must be concluded that there are no compelling reasons to refusing to ratify these conventions and many reasons they should be ratified. First, the U.S. delegations to the U.N. Status of Women Commission and to the International Women's Year Conference have shown strong leadership in the effort to recognize women's equality under law and in development. It is time for the Senate to support this leadership. Secondly, the U.S. has signed the International Women's Year Plan of Action adopted in Mexico City and presently being endorsed by the U.N. General Assembly. The Plan calls for ratification of these conventions. Ratification of these conventions would be one concrete step the United States could take to demonstrate its support for the recommendations that emerged from the International Women's Year Conference.

Additionally, although no new political rights for American women are guaranteed by these conventions, adoption by the United States Senate would reiterate support for the principle of women's participation in politics at a time when women in the United States are moving into politics in increasing numbers. Despite the accelerating rate of participation and the undisputed gains in office holding enjoyed by women, the absolute numbers remain disappointing. In the fall of 1975, women held less than 6% of all public offices in the United States, although they comprise 53% of the population. In federal office there is no woman yet in the Senate, only one woman in the cabinet and merely 19 women in Congress. There has never been a woman in the Supreme Court; women constitute less than 1% of the federal judiciary—a total of only 8 women. In light of these dismal statistics which are replicated at the state and local level, it would be a welcome gesture for the United States Senate to reaffirm their support for the political participation of women.

In the past, the United States has refrained from endorsing conventions that guarantee women's rights. In light of the paucity of arguments against those conventions and the significant arguments in support of those agreements, it appears that perhaps women's rights have not been deemed sufficiently important for the Senate to devote time to deliberation of these matters. The Federation of Organizations for Professional Women hopes that the days of this disinterest have passed, and that in 1975, the U.S. Senate will seek to begin a new chapter in its consideration of conventions guaranteeing Women's rights.

STATEMENT OF B'NAI B'RITH WOMEN

(Presented by Mrs. Michael Shapiro, Past International President, B'nai B'rith Women Member, Executive Committee, U.S. Committee for Cooperation, Inter-American Commission of Women)

Distinguished members of the Senate Foreign Relations Committee, I come before you today as the representative of B'nai B'rith Women, and international Jewish women's service organization of 140,000 members in the United States. Our membership has, historically, been actively concerned with the rights of women throughout the world. In the United States, we have been in the forefront in the struggle for securing long-overdue rights for women in government, in the marketplace, in our educational institutions and in all aspects of our society where either law or custom has limited the opportunity for women to participate and contribute as equal citizens.

Internationally, as a non-governmental organization affiliated with the United Nations, we have enthusiastically supported the work of that body in removing the social, economic and cultural barriers against women in countries throughout the world, and our membership has been actively participating throughout 1975 in observances of International Women's Year. We now look forward to intensified international action on women's rights during the forthcoming Decade for Women and Development as adopted by the World Plan for Action in Mexico City.

Although the stated goals of International Women's Year of peace, equality and development have made great inroads in raising the consciousness of the world to women's needs, these goals are far from realized. Years of work lie ahead in educating the governments of many countries where social and cultural barriers have seriously hindered women's participation for centuries.

B'nai B'rith Women is committed to the securing of equal rights and opportunities for women in all aspects of society; the full participation of women in national and international life, assuring their freedom of choice and the development of individual potential, while emphasizing their increasingly important role and contributions in economic, social, cultural and political development; the expansion of free choice in planning life patterns; and women's participation in the decision-making process at local, national and international levels, and in international relations to aid in the development of cooperation among states in the strengthening of world peace.

As the preamble of the United Nations Declaration on the Elimination of Discrimination Against Women states: "discrimination against women is incompatible with human dignity and with the welfare . . . of society . . . the full and complete development of a country, the welfare of the world, and the cause of peace require the maximum participation of women as well as men in all fields."

I come before you today, gentlemen, to respectfully urge your prompt approval of the U.N. Convention on the Political Rights of Women, and the Inter-American Convention on the Granting of Civil Rights to Women which now await this Committee's judgement.

The U.N. Convention on the Political Rights of Women was signed in New York in 1953 and first introduced in the U.S. Senate in 1963 by President Kennedy. At that time, B'nai B'rith Women urged its approval, without success. In 1967 and 1968 we again sent messages to the United States Senate regarding ratification of this Convention, including formal statements from the delegates of our International Triennial Convention. You may recall it failed ratification in 1967. During those years we also supported approval of the Supplementary Convention on the Abolition of Slavery, which we were gratified to see ratified by the U.S. in 1967. We note, as well, the incredible fact that the U.S. Government has not even signed the OAS Convention on the Granting of Civil Rights to Women.

It seems difficult to reconcile the possibility—indeed, the paradox—of the United States government, a recognized leader in the struggle for the attainment of international human rights, and a symbol of freedom to the world for two hundred years, on the eve of its Bicentennial celebration refusing to approve a treaty which would recognize the rights of over half the population of the world. The image of the United States as a champion of the rights of all people could be seriously tarnished by such an act of disapproval at this time, and our credibility as a humanitarian nation questioned. Certainly we all agree that international tensions need not be aggravated in these unsteady times, and we would not wish to risk placing our ambassadors to other nations in ambiguous positions.

We are cognizant that there have been objections in the past by the government of the United States to such treaties, but we feel these may be readily dispelled, to the satisfaction of the Committee.

Some have claimed that such a treaty would extend beyond the bounds of the U. S. Constitution—which, indeed, it does not. The Supreme Court of the United States has ruled that treaty-making power would not authorize what our Constitution forbids, nor any changes in the character of our government or a cession of territory. Clearly, the issue of women's rights is in keeping with the democratic character of the United States government—and in any case where a provision would exist which might be in conflict with our system or policy, it is possible to ratify the Convention with specific exceptions and modifications.

Other critics claim that human rights are a domestic issue—and do not represent an area in which we should deal internationally. I respectfully refer the members of this Committee to my previous statements of the basic role and conscience of this great nation in international affairs as a symbol of human rights. I also refer you to previous U.N. Con-

ventions which the United States has ratified, such as the supplementary Convention on the Abolition of Slavery, and earlier, the League of Nations Convention on Slavery under President Hoover's leadership.

For those who fear that human rights conventions might result in the states acceding some of their historic jurisdictions to the Federal Government, we refer again to the Supreme Court, which has declared there is no such interference, according to our Constitution. Additionally, on the federal level, the 14th, 15th and 19th Amendments to the Constitution already guarantee the rights embodied in these Conventions.

In this historic International Women's Year 1975, it becomes even more necessary for the United States to express its commitment to the rights of women as enunciated in our Constitution and in our many laws and statutes which have sought to improve opportunities for women in this country, by translating our principles to international levels. (Indeed, our foreign policy itself already reflects the United States' concern for human rights and individual freedom).

In sum, the United States has a moral obligation to itself and its citizens as well as to the global community in ratifying these historic Conventions. Our image as a nation which has, admittedly, taken important steps to improve the status of women in our own country may be further enhanced, and in addition, could create a ripple effect on those nations which still resist the recognition of women's rights. Our ratification will underscore our dedication to freedom, and our encouragement to other nations to take steps to remove discriminatory barriers against their women citizens. Thus, our leadership as a democratic, humanitarian nation would be unquestioned by virtue of our example.

We urge, therefore, that the members of the Senate Foreign Relations Committee promptly approve the U.N. Convention on the Political Rights of Women and the Inter-American Convention on the Granting of Political Rights to Women. We further hope that the unanimity which we would wish to see expressed by the vote in this Committee will be conveyed to the floor of the Senate, where prompt ratification may be achieved. In this month which represents a Holy time of year for many of the world's great religions, the United States would thus be sending its most eloquent message of the true meaning of human rights and human dignity to every nation of the world.

Thank you for the opportunity to express to this Committee the views of B'nai B'rith Women.

STATEMENT OF ELIZABETH ATHANASAKOS, MEMBER OF THE NATIONAL COMMISSION ON THE OBSERVANCE OF INTERNATIONAL WOMEN'S YEAR

Chairman Sparkman and Members of the Committee:

I am Elizabeth Athanasakos, a Member of the National Commission on the Observance of International Women's Year. By profession I am an attorney at law, practicing in Ft. Lauderdale, Florida. Also, I am a former Municipal Court Judge, and at present serve as a Member of the Secretary's Advisory Committee on the Rights and Responsibilities of Women of the Department of Health, Education and Welfare. I am here representing the National Commission in the matter of the ratification of the United Nations and OAS Conventions dealing with the political rights of women. A Resolution, urging ratification during 1975, was recently adopted by the Commission. Attached to my written testimony is the full text of that Resolution.

Moreover, at the United Nations World Conference on International Women's Year, a World Plan of Action was adopted—a Plan which the United States supported. This document also calls for the immediate ratification of the Conventions on the Political Rights of Women by all states which have not yet done so. To our embarrassment, the United States, which considers itself a leader in matters of human rights, is one of those states which has allowed these Conventions to languish, since 1948 in the case of the OAS Convention and 1952 in the case of the U.N. document. The Resolution adopted by the National Commission states in part that "the failure of the United States to ratify these international conventions concerning women's rights contravenes the spirit of our Constitution and discredits the strength of our national commitment to equal rights and opportunities for all."

Since the United States is already legally bound by our Constitution and statutes to all the major human rights commitments included in these conventions concerning human rights, we suggest that it is in the best interest of this country to ratify these conventions as a reaffirmation of our recognition of and support for minimum universal standards guaranteeing dignity to over half of the human race.

In reviewing the history of the last attempt by the Senate to deal with this issue, I was shocked by the injustice done and by the circumstances which led the Foreign Relations Committee to over-ride the recommendation of its own Sub-committee, deleting the matter of political rights for women from the so-called Kennedy Package of human rights conventions under consideration at that time.

Looking through the full Senate debate of November 2, 1967, we find that the only argument used against the political rights convention was that it is a human rights matter, thus a matter of domestic concern and not a proper subject for an international convention. This was the position of the only organization then opposed to ratification—the American Bar Association. Twenty-nine other non-governmental organizations, as well as officials from the administration, testified in support of the convention.

The action by the Senate Foreign Relations Committee at that time was itself inconsistent with other actions taken by the Committee on the Kennedy Package of human rights conventions. I call your attention to the fact that within the Kennedy Package of conventions was the Supplementary Slavery Convention, a human rights matter if ever there was one, which was endorsed by the Foreign Relations Committee and sent on to the full Senate where it was ratified overwhelmingly. Most of the provisions of the Slavery Convention concerned purely domestic matters.

It was also argued in 1967 that the women of the United States already enjoy full political rights and that it is therefore unnecessary to ratify this convention.

Are we to assume, then, that in 1967 the practices prohibited by the Supplementary Slavery Convention including "debt bondage, serfdom, delivery of children by parents or guardians to others for purposes of exploitation, involuntary marriage or transfer of women for consideration, and transfer of widows as inherited property" were the practice and therefore were the proper subject of an international convention ratified by the United States? Of course not.

The jurisdictional question brought up by the ABA was absurd and its position was further clouded by the circumstances under which that position was reached. Meeting in Honolulu that year, the ABA argued about the Kennedy Package and finally decided on a compromise position which opposed only the Convention on the Political Rights of Women. Even then the vote was 115 to 92. That the ABA itself was divided on this matter was demonstrated at the time by the fact that the Bar Associations of the District of Columbia, the City of New York, the State of New York, and the State of New Jersey, testified in favor of passage before the Foreign Relations Committee.

The two prime arguments which arose around the question of ratification were the jurisdictional one already mentioned and the matter of possible conflict with states' rights. However, the Supreme Court has ruled that domestic matters may be the subject of international treaties—Geofroy v. Riggs, 133 U.S. 258, 267 (1890)—provided there is nothing which would require a change in the Constitution or in national law. Furthermore, in the case of Missouri v. Holland, 252 U.S. 416 (1920), the Supreme Court took the view that treaty-making power is not circumscribed by the provisions of the Tenth Amendment which make a general reservation of power to the States.

The action of this Committee in 1967, in allowing the ABA position to prevail, in the face of overwhelming opposition from citizens' groups and government experts, constituted an injustice to over half the citizens of this nation. It would seem that the real reason behind this rejection was not the validity of the jurisdictional argument, but was indifference to the question of women's rights. It was considered a "women's issue" and therefore not accorded political importance. In effect, I do not believe the issue was considered on its merits. Perhaps in 1967, it was thought that women would not notice such a slight. But this is not 1967 and women are more politically aware than they have ever been. I can assure you that failure to ratify these Conventions in 1975 will not pass unnoticed.

While ratification of these instruments constitutes largely a symbolic gesture, since in the U.S. we already enjoy the rights guaranteed by the Conventions, such a symbolic act would be of great domestic and international importance in complying with the commitment to the World Plan of Action adopted in Mexico City. Since this is International Women's Year, it would be particularly appropriate for this Committee to act favorably on these Conventions. Indeed, given the political awareness of women today, it might be highly inappropriate not to ratify them.

As a gesture of respect to the women of this nation and around the world, and as a gesture of continued support for the principles of human rights laid down in the Charter of the United Nations, we urge you to act favorably on these Conventions on the Political Rights of Women.

RESOLUTION ON INTERNATIONAL CONVENTIONS CONCERNING WOMEN'S RIGHTS

The National Commission on the Observance of International Women's Year urges the ratification during 1975, International Women's Year, of the Convention on the Political Rights of Women and the Inter-American Convention on the Granting of Political Rights to Women.

We believe the failure of the United States to ratify these international conventions concerning women's rights contravenes the spirit of our Constitution and discredits the strength of our national commitment to equal rights and opportunities for all.

Since the United States is already legally bound by our Constitution and statutes to all the major human rights commitments included in these conventions concerning women's rights, we propose that it is in the best interest of this country to ratify these conventions as a reaffirmation of our recognition of and support for minimum universal standards guaranteeing dignity to half the human race.

As a major commitment to the observance of International Women's Year, we pledge to do all in our capacity to carry forward the recommendation of the Interna-

tional Women's Year World Plan of Action that every effort be made by Governments which have not already done so to ratify these existing international instruments relating to women's rights during the year. We urge concerned individuals and organizations to lend their support to this effort.

STATEMENT OF RITA Z. JOHNSTON, DELEGATE OF THE UNITED STATES AND VICE-PRESIDENT, INTER-AMERICAN COMMISSION OF WOMEN (ORGANIZATION OF AMERICAN STATES)

I am Rita Z. Johnston, principal delegate of the United States to the Inter-American Commission of Women (Organization of American States). I have served in this capacity since July, 1973. In September 1974, I was elected Vice-President of the Commission. I also serve on the National Commission on the Observance of International Women's Year and was an alternate delegate to the United Nation's World Conference on Women in Mexico City.

I speak also on behalf of the United States Committee of Cooperation with the Delegate to the Inter-American Commission of Women. The Committees of Cooperation of the IACW exist in each member country of the IACW according to Chapter IX of the Organic Statute of the IACW as amended in 1968 and according to Chapter XXI of the Regulations of the IACW dated 1970. The membership of the United States Committee of Cooperation reflects the major women's organizations in the United States, government agencies and individuals who are concerned with carrying out the objectives of the IACW in the hemisphere and with implementing the objectives of the United States Committee which are to act as an advisory body to the delegate, to petition the government to implement resolutions of international and inter-American conferences on women and to establish relations with all national, inter-American and international organizations relating to the objectives of the Inter-American Commission of Women.

The United States Committee of Cooperation at its meeting in April agreed that its particular concern during International Women's Year was to develop a concerted effort to secure ratification of the Inter-American Convention on Political Rights of Women and the signing of the Inter-American Convention on Civil Rights of Women.

And so it is with the expressed concern of that committee that I appear before you to speak for the ratification of the Inter-American Convention on the Political Rights of Women.

Nineteen countries including the United States signed the convention on May 2, 1948 at the 9th International Conference of American States in Bogota, Colombia. The instrument has been ratified by seventeen countries, only Venezuela and the United States remain non-ratified. Chile was the most recent one to ratify. This was on January 18, 1975. They also ratified the convention on civil rights of women on the same date.

The Convention on Political Rights was submitted to the Senate of the United States on January 13, 1949 with a request for advice and consent to ratification. No action was taken on this convention. These are in fact the first hearings to be held on the matter.

In a letter from the Board of Directors of the United States Committee of Cooperation to the President dated April 25, 1975, it was stated that we have noted with pride that the United States has, in fact, led the way in granting civil rights to women and has inspired some of our neighbors by our example to do the same. We were dismayed therefore, to discover that our own government is one of the few member states of the Organization of American States to refuse to sign or ratify conventions concerning the basic rights of women as equal citizens in this nation.

In looking for the reasons that the United States might have to avoid ratifying this convention on political rights of women, we find that the opposition has centered around the American Bar Association's perception of a possible conflict with states' rights that it is a matter of essentially domestic concern. We submit that the right of women to vote in the United States is protected by the Nineteenth Amendment and that their right to be elected to national office has long been recognized.

It is to the honor of our hemisphere that the first organization to declare itself against discrimination on the basis of sex and to take concrete measures to combat it, was the Organization of American States. The Charter of the OAS, adopted at the Ninth International Conference of American States in Bogota in 1948, and amended by the Protocol of Buenos Aires in 1967, categorically declares, in article 3.j. that the American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex. And going from declarations to realities, we must recall that the birth of the Inter-American Commission of Women, goes back to the Fifth International Conference of American States, held in Santiago, Chile, in 1923, which pointed out the duty to struggle for the granting to women of the same political and civil rights enjoyed by men. The Sixth International Conference of American States, held in Havana in 1928, established the Inter-American Commission of Women, and the Inter-American system thus created the first intergovernmental organization in the world founded for the expressed purpose of working for the rights of women.

Since that time, many American women from every part of the hemisphere, have been carrying on a brave many-faceted struggle. Over the years, they have created a favorable climate that has enabled them to achieve or encourage the granting of political rights and the amendment of Civil Codes throughout the hemisphere. The first chairperson of the Inter-American Commission of Women was a United States citizen, Doris Stevens. United States participation and leadership have been meaningful support to the work of the IACW over the forty-eight years of its existence. The ratification of the Inter-American Convention on Political Rights of Women would serve as the most positive step to reaffirm our concern and our support of the Inter-American Commission of Women and to demonstrate to the Organization of American States, itself, our commitment to the principle of fundamental rights of every human person.

I respectfully urge that the Inter-American Convention on the Granting of Political Rights to Women receive the immediate attention necessary to achieve ratification at the earliest possible date.

TESTIMONY OF REPRESENTATIVE BELLA S. ABZUG

I don't know whether I should laugh or cry over the fact that this Committee is finally holding hearings on the ratification of these conventions granting equal political rights to women dating back to 1948 and 1953. The failure of this body to act on these conventions during the intervening twenty years is both inexplicable and inexcusable. I hope that you will favorably report them after the hearing today and see that they are ratified by the Senate before the expiration of this International Women's Year.

While these conventions are laudable in guaranteeing women the right to vote in all elections, to be elected to all publicly elected bodies and to hold public office and exercise all public functions, they merely restate already existing law in this country.

American women struggled for over a century to gain the right to vote and the ratification of the 19th Amendment was an important step in gaining equality. With the ballot and female participation in the political process came a growing awareness of the vital contribution women make to our society and of the necessity for full political, social and civil rights for women. This struggle continues today on the national and international level.

Despite the active participation of the United States in drafting these conventions, the opponent of ratification, principally the American Bar Association, contended that ratification would upset the delicate balance of federalism by permitting the Federal Government to intrude into an area otherwise reserved to the States. Although the individual States have been free to set voting qualifications, they can only do so consistent with our substantive law.

Opponents also claimed that political rights for women were a domestic matter and, therefore, an inappropriate subject for an international treaty. This argument was incorrect in 1963 when the Treaty was first sent to the Senate by President Kennedy and I think, today, their error is apparent. The United States is, and properly should be, concerned with the political status of women throughout the world.

As a nation founded upon the principles of liberty, equality and justice for all, we should take the lead in advocating the removal of any barriers which interfere with the exercise of these rights.

The Charter of the United Nations also contains a commitment to the equality of men and women. Any doubts as to the international significance of the question of equal rights for women must be dispelled by the designation by the United Nations of 1975 Women's Year, the convening of the Mexico City Conference and its World Plan of Action.

Despite the fact that, numerically, women constitute half of the population of the world, the World Plan of Action found that in the vast majority of countries only a small percentage of them are in positions of leadership in the various branches of government. Consequently, major decisions are often taken in bodies composed solely of men and the views and needs of women are often overlooked. A major objective of the World Plan of Action is to ensure that women have, in law and in fact, equal rights and opportunities with men to vote and participate in public and political life at the national, local and community levels, and to ensure that women all over the world are made aware of their responsibilities as citizens and of the problems affecting them directly.

The anti-Zionism claus of the Declaration of Mexico illustrates women's lack of power and their manipulation by governments composed predominantly of men. Had women been in complete control of the Mexico City conference I believe this never would have been included since the issue of Zionism is irrelevant to the legitimate struggle of women for equal rights throughout the world.

These conventions affirming women's right to participate equally in the electoral process set a minimum international standard to which all nations must adhere. In 1945, over half of the nations of the world had not granted women the franchise. Today there are only nine countries—Bahrain, Kuwait, Lichtenstein, Nigeria, Omar, Oatar, Saudi Arabia, United Arab Emirates, and Yemen—where women can't vote; nevertheless, ratification is still important. The United States must be on record in the international community as a supporter and a world leader of equal political rights for women.

Quite frankly, it is embarrassing that this nation is not among the 87 countries that have signed these documents. Their sig-

nificance extends beyond the right to vote to the timely question on ensuring the active participation of women in the decision-making process of the government.

A majority of Americans agree that this country needs more women in office. A Gallup Poll released three months ago reported the 71% of Americans feel the country would be governed as well or better with more women in public office, and 73% said they would vote for a qualified woman for President.

In just about the last 10 years, we have seen a revolution in the way this nation perceives women and in the way women perceive themselves. Women are now recognized as a power in this nation—not just because the newspapers and TV woke up suddenly one morning and realized that women are a majority of the population—but rather because a very effective women's movement has been organized.

On the national level there are now 19 women in the House. Connecticut has elected the first woman governor and we now have women lieutenant governors in New York, Mississippi, and Kentucky. At the state and local level, more women are becoming actively involved in the political process and seeking elective office. This represents a good start for American Women but we and other nations are still a long way from equal representation in our government. Ratification of these conventions is long overdue, and I hope it will signify a renewed commitment by the United States to strive for political equality for women.

A century ago in 1876 when this nation celebrated its first centennial, Susan P. Anthony and other women held a rally at Independence Hall, Philadelphia demanding the right to read their Declaration of Rights for Women which included the right to vote.

At the rally, which featured speeches and songs, one of them titled "A Hundred Years Hence" is particularly appropriate for today's hearings.

"Then woman, man's partner, man's equal, shall stand,
While beauty and harmony govern the land,
To think for oneself will be no offense,
The world will be thinking, a hundred years hence."

Well, a hundred years hence is nearly upon us, and I'm sure Susan B. Anthony would be surprised to find that the granting of political rights to women is still an unresolved issue in the United States Senate.

As we approach our bicentennial year, I urge the correction of this error of history by quick ratification of these conventions as an expression of our commitment to the full inclusion of women and the sharing of political power not only in American government but also in other governments throughout the world.

WOMEN'S EQUITY ACTION LEAGUE,
Washington, D.C., December 12, 1975.

Sen. JOHN SPARKMAN,
Chairman, Senate Foreign Relations Committee, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR SPARKMAN: I am writing on behalf of the Women's Equity Action League (WEAL) to express our support for the ratification of the OAS Convention on the Granting of Political Rights to Women and the UN Convention on Political Rights of Women. These Conventions, which have been pending since 1948 and 1952 respectively, embody provisions which are already included in the Constitution of the United States and which are basic to the dignity of women in this country as well as elsewhere.

We are shocked and not a little embarrassed by the knowledge that the U.S. has failed to ratify these Conventions. We understand that the only opposition to ratification when the matter came unsuccessfully before the Senate Foreign Relations Committee in 1967, was the rather specious argument of the American Bar Association to the effect that political rights of women is purely a domestic matter and not properly the subject of an international convention. The ABA defeated the logic of its own position by failing to oppose for similar reasons the Supplementary Slavery Convention which was considered at the same time and eventually ratified by the Senate. The Supplementary Slavery Convention addressed various conditions of servitude which are purely domestic in scope and which were in no more need of prohibition in the United States than barriers to political participation of women.

Because this legalistic argument of the ABA is of such a frail nature, we find it difficult to believe that the Senate Foreign Relations Committee was persuaded by it. We believe there was another factor operative which was more telling in the decision to delete the Convention of the Political Rights of Women from the matter sent on to the full Senate for ratification in 1967. We believe that the controlling factor was a general disregard for anything which smacks of being a "women's issue." We find this insulting. Perhaps in 1967 the Senate Foreign Relations Committee felt it could get away with this slight to women far more easily than it could disregard the wishes of the ABA. Times have changed and women are more politically aware and sophisticated, and more importantly, organized for political action as they have not been since the suffragist movement. This time, failure to ratify these international conventions, which are so in keeping with the principles of equality which underlie our basic national philosophy, will not pass unnoticed.

Ratification of these conventions now, dur- International Women's Year, would be an appropriate tribute to the women of this nation. Furthermore, any person presuming to represent the people of the U.S., particularly in an election year which is coming up, will have a difficult time justifying a negative vote in this matter this time.

We sincerely hope the Senate Foreign Relations Committee will act to rectify the injustice done in the 1967 decision on these matters and move to ratify the conventions dealing with the political rights of women.

Sincerely yours,

ELLEN S. OVERTON,
Chair.

GUN CONTROL VERSUS CRIME CONTROL

Mr. ALLEN. Mr. President, I was saddened and deeply concerned at the two recent assassination attempts on President Ford's life. These two occurrences once again focus nationwide attention on the problems of crime and violence in the United States. They are menacing problems which threaten the very foundation of our society.

For Congress, however, to react by passing stronger gun control measures would, in my judgment, be unwise and unacceptable.

The theory—and it is only a theory—that taking guns away from law abiding citizens would reduce crime and violence in America has been refuted time and again during debate in both the House and Senate. In fact, no credible evidence has been presented to prove that tougher gun laws would have any measurable effect in controlling crime.

As Senators know, in 1968 Congress passed the Gun Control Act, replacing the Federal Firearms Act of 1938, and expanding the coverage of the National Firearms Act of 1934. This act, which was passed by Congress following the assassinations of Martin Luther King and Senator Robert Kennedy, contains much stricter and more detailed controls than the previous laws.

Initially, the focus of legislative proposals was on eliminating mail-order traffic in handguns. Over the years, however, a number of groups and individuals began gradually to press for more restrictive measures. By 1968, several Members of Congress were advocating both national registration of guns and national licensing of gun owners. And since that time, literally hundreds of gun control bills have been introduced in Congress.

Most of the gun control proposals of the previous Congresses have been reintroduced in the 94th Congress. The general thrust of these pending bills in varying combinations is:

First. National registration of all handguns.

Second. National licensing as a prerequisite to handgun ownership.

Third. Elimination of cheap handguns by prohibiting the manufacture or transfer of handguns made of metal that fails to meet certain technical requirements, including an established minimum melting temperature.

Fourth. Prohibition of the further manufacture or sale of handguns that fail to meet the present criteria for importation.

Fifth. Prohibition of the further manufacture or transfer of any handgun.

Sixth. Prohibition of the private possession of any handgun.

Additionally, several proposals have been introduced which would provide for stricter penalties against persons who use guns in the commission of a Federal crime. The arguments for this approach is that present penalties have failed to establish a proper deterrent to violent crimes.

The administration also has introduced legislation which provides for: First, the tightening of requirements for Federal gun dealer licenses; second, a ban on multiple sales of any handgun; third, a waiting period between the purchase and receipt of a handgun, allowing for a police check on the purchaser; and fourth, a change in title VII of the Safe Streets Act to make illegal the mere possession of a firearm.

The administration has also proposed certain administrative steps in the gun regulation field. Principal among these is a plan to "double" the investigative efforts of the Bureau of Alcohol, Tobacco, and Firearms in the Nation's 10 largest metropolitan areas.

Mr. President, the respective subcommittees in the House and Senate which have jurisdiction over gun control bills have completed hearings and are ready to send the bills to the full committees, following the Christmas recess. It is my understanding that these bills, in varying forms, contain some or a major part of the proposals I have discussed.

In addition, bills are pending before the two Commerce Committees which

contain provisions that would exclude firearms ammunition from items over which the Consumer Product Safety Commission has jurisdiction.

It is my considered opinion that we do not need additional gun control laws. In fact, I feel that the present Gun Control Act goes too far and infringes on the rights of our citizens.

Therefore, I will oppose, with every ounce of energy I possess and in every honorable way, all proposals which would take away the right of American citizens to obtain and keep firearms.

I refuse to be engulfed in the atmosphere of panic surrounding this important issue. An atmosphere which has been pressed on our citizens by the liberal news media and overzealous politicians.

Certainly, I will support proposals to fight crime. But it is totally unrealistic to believe that stronger gun control laws will provide most of the answers to the complex problem of crime.

It seems to me that we have put the cart before the horse. If Congress wants to reduce gun-related crime, it should pass legislation directed at the criminals, not the gun. Criminals should be taken to task, not law abiding citizens.

And yet, because of the pressure and attention by the national television networks and big city newspapers, many Members of Congress are twisting and stunting like hard-driving football linemen in order to get to the hopper to drop in yet another gun control bill.

Members are being flooded with "authoritative" reports, both pro and con. And so-called unassailable polls are being presented to prove, once and for all, that Americans want all handguns confiscated.

But underlining this slick promotion campaign is a distinct Madison Avenue, public relations flavor. It goes something like this: we know what is best for the people of this country. We will sell them on the idea whether they like it or not.

This hard-sell approach is unconvincing to me. It only reinforces my belief that legislation must be drafted and passed in a thoughtful, enlightened environment. Congress must never allow the passions of others to persuade it to take hasty action on gun control measures. Such action could set a dangerous precedent, and the people of the Nation would suffer the consequences.

After all the arguments have been made, the statistics presented and the polls taken, we still must return to some essential facts: Gun ownership is a basic, fundamental right given to the citizens of this Nation. The second amendment of our Constitution clearly guarantees American citizens the right to keep and bear arms.

There are those who tell us that this really does not mean what it says. These people have, in many cases, retained legal scholars to come up with opposing interpretations. These self-professed legal minds try to convince us that this provision of the Constitution is not applicable to modern times. They say it means that a citizen has the right to bear arms only in a military capacity.

Mr. President, I wonder how these advocates of gun control would advise the head of a household to protect his home, loved ones, and possessions from intruders. Would they advise him to call the Army?

For too long, law enforcement agencies and courts have bent over backward to protect the rights of criminals while stripping away the rights of law-abiding citizens.

Gun laws, no matter how stringent, will not prevent criminals from obtaining and using firearms. At a time when one of our greatest needs is to reduce crime and violence, taking guns away from our citizens would, in my judgment, only increase criminal acts.

Mr. President, I am convinced that additional gun control laws would be a further infringement on the rights and freedoms of U.S. citizens and I will oppose such measures when they come before the U.S. Senate.

AMBASSADOR MOYNIHAN—A STOUT DEFENDER OF THE UNITED STATES

Mr. GOLDWATER. Mr. President, in the language of the day, it is not often that patriotic Americans receive any favorable "vibes" from the United Nations. But in recent months the rhetoric from the United Nations—if not the action—has been much more to the liking of the American people. My reference is to the spirited defense of American policies voiced by Ambassador Daniel Patrick Moynihan.

It is certainly a welcome relief to find someone standing up everyday to defend this country against attacks from those people who have no use for us, except to drain off all the money that warmhearted America can expend. Because of his distinguished service to the United States and to the cause of freedom, I have been disturbed over recent reports in the press that Ambassador Moynihan may have earned the displeasure of certain State Department bureaucrats with his outspoken defense of the United States.

So far, Mr. President, these are only rumors and I sincerely hope that they are without foundation. If there is one place in the world where the United States needs a steadfast and articulate defender, it is in the United Nations. We have that defender in Ambassador Moynihan and I hope and trust he will be allowed to continue his valuable work.

NEEDED: MORE INFORMATION ON SPANISH-SPEAKING AMERICANS

Mr. KENNEDY. Mr. President, I wish to add my strong support to Senate Joint Resolution 115 which was submitted a short time ago by my distinguished colleague, Senator DOMENICI, of New Mexico. This resolution urges several agencies in the executive branch to develop techniques relating to the publication of economic and social statistics for Americans of Spanish origin or descent.

Over 12 million Americans identify themselves as being of Spanish-speaking background. These Americans—including many Puerto Ricans and other Hispanic groups in Massachusetts—are making significant contributions to enrich American society, despite the discrimination which has denied many equal opportunities to the benefits of this land. Unfortunately, while many Americans are aware of some of the issues facing this important community, we know little about Spanish-speaking Americans statistically, a fact which has led to the denial of too many social services and programs to Americans of Spanish origin which most other Americans take for granted.

Despite a significant increase in the rate of immigration of Spanish-speaking peoples to our Nation, when we are now the Nation with the fifth highest number of Spanish-speaking in the world, our Government has not yet developed an adequate method of determining their status in society and their needs. We can only become more sensitized to the needs of Spanish Americans if we know more about their needs. And in view of the severe economic hardships confronting minority groups and newly arrived immigrants, it is imperative that we improve the manner in which our Government collects social and economic information concerning Americans of Spanish origin.

That is why I fully support the purposes of Senate Joint Resolution 115 and have joined as a cosponsor. This resolution would go far in providing the types of information which would enable Spanish Americans to participate more fully in the social programs of our Government. The resolution directs the Secretary of Labor, in cooperation with the Secretary of Commerce, to determine the feasibility and cost of developing and publishing monthly nationwide unemployment rates among Spanish-origin Americans. In addition, the Director of the Office of Management and Budget is instructed to develop a Government-wide program for the collection of data on Hispanic Americans.

Moreover, the Department of Commerce would be directed to study and determine what steps are needed for developing estimates of undercounts of Spanish Americans in future censuses, and provide for bilingual questionnaires in the collection of census data.

Mr. President, this simple measure would go far toward insuring that our Government remain sensitive to the needs of Spanish Americans so that they too can fully participate in the American dream, and I urge swift and unanimous adoption of this resolution.

VIOLATION OF DÉTENTE BY SOVIETS

Mr. THURMOND. Mr. President, it is encouraging to read editorials in the heartland of America in which I see more evidence each day that many in the American press are not being fooled by the Soviets' policy of détente.

Just such an example appeared in the December 2, 1975, issue of the Augusta Chronicle newspaper, Augusta, Ga. which published an editorial entitled "Perilous Détente."

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

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

PERILOUS DÉTENTE

To no one's surprise, Red China's distrust of Soviet Russia, and its opposition to Soviet-U.S. "détente" was brought without delay to President Gerald Ford's attention on the first day of the President's current visit to Peking.

What is, if not surprising, at least food for sober thought, is the vehemence and urgency of the warning given the President by Acting Premier Teng Hsiao-ping.

Only hours after President Ford set foot in Peking, the Red Chinese official emphatically restated Mao Tse-tung's position with regard to the Kremlin. Russia today is, he said, "the country which most vehemently preaches peace," but nevertheless, at the same time, "is the most dangerous source of war." Russia is driving toward "world hegemony," despite its "rhetoric about détente," he insisted.

The grimmest part of Teng's warning envisions an outcome which would extend to global war: * * * viet world Hegemony) is bound to lead to a new world war. This is independent of man's will." In other words, the tide of events has set in, and a fatalistic acceptance of war is the only sensible course, we are told.

Mr. Ford's reply, understandably, was more optimistic than was Teng's deterministic reading of events. The President made it clear that Washington will not take instruction from Peking on the matter of relations with third nations, saying our course will be determined only by "our differing position in the world and our perspectives of our national interest."

For an instant reaction, such a statement may have been the diplomatic thing to say.

Nevertheless, we trust that our President will take very seriously the Red Chinese warning as to Communist Russia's intentions. In light of the Communist record of subversion, espousal of revolution, its hold on captive nations, support for Communist aggression in Southeast Asia, efforts to bring Portugal within its orbit, we must concede that Mao and his henchmen are right insofar as Moscow's intentions are concerned.

Even without accepting the pessimistic Peking opinion that we are rushing headlong into global war "independent of man's will," our government must wake up as to the pitfalls of detente. The entire concept has been warped by clever Soviet officials, wrapping our naive negotiators around their fingers. This deception has made possible an increase in Russian attack capabilities while restraining our own defense efforts.

Detente is good insofar as it seeks to increase the real chance for peace on equitable terms. But, if it is a screen for gaining Russia the upper hand throughout the world, while soothing too—trusting American officials with sweet talk, then all we can say is that Washington must wake up—before it is too late.

If we extend trust to Communist schemers who are wholly untrustworthy, we will find ourselves eventually on the toboggan to total submission to overwhelming Soviet power. A mindless detente is the way to U.S. national suicide.

This is not, of course, to whitewash the Peking Communists. We trust them no more than we trust the aggressive Marxists in Moscow. In fact, Teng told President Ford that the factors for revolution (throughout the world) are increasing . . . "the people want revolution." If Russia requires watching, so does Red China.

Nevertheless, at the moment the more powerful of the two is Russia, and even though Peking's warning is based clearly on self-interest, it has a validity which we can ignore only at our peril.

WILLIAM ROY, SUPERB NEW COLOR PHOTOGRAPHER AT THE WASHINGTON GALLERY

Mr. MCINTYRE. Mr. President, 1 year ago at this time, the State of New Hampshire was indeed honored to be represented at the Washington Gallery of Photography, by the excellent artistry of one of this Nation's premier portraitists, Ms. Lotte Jacobi, of Deering.

This year, New Hampshire is again proud to have yet another of her fine photographers, Mr. William Roy, of Lebanon, N.H., exhibited at this same Washington Gallery.

Born and raised in the Granite State, William Roy has spent the past 6 years experimenting in color photography, using as his primary source of material, the color that is found in natural settings. This exhibition currently displays the first major area showing of color photographs printed through the use of the recently developed Cibachrome process. This process is an innovative approach to color photography that involves printing directly from the slide without the use of intermediate negatives. It is the newest, and most exciting professional approach to color photography.

Believing that there is something unique to be found in everything, William Roy has succeeded in orchestrating a successful exhibition that ranges in its form from the realistic, to the abstract; from the solid beauty of the New Hampshire mountains, to the simple fantasy of a country carnival.

The true value of the photographic arts is immeasurable in today's frantic urban society. It is my hope that my colleagues will join me in congratulating and supporting such fine young artists as Mr. Roy, and that they will make it a point of experiencing his superb exhibition at the Washington Gallery of Photography, 216 7th Street SE., on display now through January 10, 1976. The Gallery is open Tuesday through Friday, 10 a.m. to 10 p.m., Saturdays and Sundays, 10 a.m. to 6 p.m.

DR. JOHN RAY DUNNING

Mr. HRUSKA. Mr. President, a group of people gathered at a memorial service a week ago at Columbia University to pay tribute to Dr. John Ray Dunning, one of the scientists who helped lay the cornerstone of the atomic age. They were saddened by his loss but expressed thanks to God for His gift to the world and to America in Dr. Dunning's work, his philosophy, and his contributions to mankind.

A national figure who in 1946 was awarded the Presidential Medal for Merit, highest honor given to civilians, Dr. Dunning holds a special place in the hearts of Nebraskans, who point proudly to the fact that he graduated from Nebraska Wesleyan University in 1929.

From there he went on in the spirit of the "new Renaissance man," the embodiment of his personal philosophy of life, developing his career as a scientist-engineer.

In 1939, Dr. Dunning and his associates proved that splitting of the uranium atom would produce a huge release of energy.

Later, at Columbia University, he directed the development of Columbia's first cyclotron, now on display at the Smithsonian Institution.

Dr. Dunning spent almost 20 years at Columbia, serving as the dean of the faculty of engineering and as professor of Physics and of Applied Science.

It is fitting that he was honored there. And it is fitting that tribute to him was paid by another alumnus of Nebraska Wesleyan University, my respected colleague, CARL T. CURTIS.

Mr. President, I ask unanimous consent to have Senator CURTIS' tribute to Dr. John Ray Dunning printed in the RECORD.

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

SPEECH OF SENATOR CARL T. CURTIS

Mr. Chairman, ladies and gentlemen, friends and admirers of the late Dr. John R. Dunning.

Shelby, Nebraska. The U.S. Census Reports state that in the year 1900 Shelby had a population of 425 people. It lies in a rich farming area, and the community was populated then and is now by the sturdiest of citizens. The land is flat, and there are no hindrances for one who wishes to see the beauties of the sunrise or the sunset. Fourteen miles to the north flows the life-giving Platte River, which has been described as sometimes being one mile wide and one inch deep.

It was at Shelby that on September 24, 1907, there was born to Albert and Josephine Dunning a son, and they called him John Ray.

Little did anyone know, or even dare hope, what would lie ahead of this young boy. The history of his life on this earth has now been written, and a marvelous history it is.

At the age of twelve John Dunning built and operated a radio-sending set. This would be an accomplishment for any twelve-year old boy, but at that time it was a first. There were no other radio stations for miles around. Its message reached out into the country. One of the listeners was a young girl whose name was Esther Blevins, who later became John Dunning's wife, his devoted companion, and his inspiration.

All of John's years were busy years. A recitation of the accomplishments of this great scientist-engineer would be a colossal undertaking. Others have written about these accomplishments and have documented them. I shall but mention a few. There were many good reasons why in 1946 Dr. John Ray Dunning should receive the Medal for Merit, the highest award made by the President of the United States to civilians.

Nebraska Wesleyan University at Lincoln, Nebraska, points with great pride to the fact that John Ray Dunning attended that institution and was graduated in 1929. Throughout his four years in college he constructed and operated the college radio station. In fact, he built two radio stations between 1926 and 1929.

It was at Nebraska Wesleyan University that John Ray Dunning came to know a great and beloved instructor. I refer to the late John Christen Jensen, Head of the Physics Department at Nebraska Wesleyan, who served that institution from 1907 to 1952. Professor Jensen was a great man and

a true teacher. Considering the size of the university, the number of outstanding scientists who sat at the feet of Professor Jensen is an extraordinarily long list. A number of Professor Jensen's graduates were associated with Dr. John R. Dunning at various points in his brilliant and exciting career. Were John Dnnning to speak today, I am sure that he would have some kind words for Professor Jensen.

Those of us who had an opportunity to attend Nebraska Wesleyan University and receive the benefits under dedicated instructors can understand what motivated Daniel Webster to say in his argument before the Supreme Court of the United States, in the famous Dartmouth College case, "Dartmouth is a little college but we love her."

It has truly been said that Dr. Dunning was one of the scientists who helped lay the cornerstone of the atomic age. It was on the night of January 25, 1939, that the crucial experiment was completed by Dr. Dunning and his associates that proved the splitting of the uranium atom would produce a huge release of energy.

Dr. Dunning directed the development of Columbia's first cyclotron, which was built in 1936 in the basement of Pupin Hall, the physics laboratory. This instrument was used in some of the history-making experiments of the early wartime period and is now on display at the Smithsonian Institution at Washington, D.C.

In the biography which appeared in the New York Times on August 28, 1975, we find this significant paragraph: "Dr. Dunning had an 'uncanny feel' for the practical solution to an engineering problem. 'He would see to the end while the theoreticians were spending half a billion on dead ends.' "

Some years later Dr. Dunning in a speech said, "The steam engine contributed more to the theoretical development of thermodynamics than thermodynamics contributed to the practical development of the steam engine."

Dr. Dunning was a doer. He accomplished things. He was a practical man. He was a coordinator for the scientist, the engineer, and the business leader.

I would like to honor Dr. Dunning by further quoting from the same speech of his. This speech reveals this great man's philosophy. It was delivered at Nebraska Wesleyan University on October 30, 1959. On that occasion he said, "I very profoundly believe that the world is being reshaped by science and its applications and that enlightened citizenship is possible only to the man or woman who understands science.

"This time, however, I want to go further. It seems to me that our contemporary revolution is of a special kind. It is, of course, a transformation of our habitat, of our habits of work, of our habits of play and leisure, of our relationships with one another. In this respect it is analogous to the Industrial Revolution, in which the role of man in the economic process was changed."

Dr. Dunning went on to say, "But, nonetheless, there is a new spirit abroad in the scientific world. There is a kind of self-consciousness about creativity, a kind of self-consciousness about emancipation from old mechanistic habits of thought, a kind of self-consciousness about the pre-eminent importance of science which cannot fail to remind us of the Renaissance self-consciousness."

The title of Dr. Dunning's speech on that occasion was, "The New Renaissance—And The New Renaissance Man." And again I want to quote from that speech because it so well reveals his philosophy of life. "The new Renaissance Man is an engineer. That is to say, he is simultaneously a thinker of thoughts and a creator of things. He is amphibious; he lives in that blindingly bright universe in which all the muddy complexities of the physical world become beautifully transparent and orderly and elegant; and he also lives in the muddy, complicated world itself, where his fellow human beings are grubbing for a livelihood and hoping for a little comfort and tranquility."

Dr. Dunning's practical philosophy and the doer that he was is revealed in this thought from that speech, "The academician might work with the leisurely deliberateness of the cloister. But the engineer had to make scientific decisions in a hurry, often with inadequate data, and without the assurance of a fully verified theory. The engineer, in other words, often had to supply science that was not there; and so he had to be a man of keen intuitions, a man who sensed rather than formulated the inherent order of nature. In short, the engineer was an artist."

Dr. Dunning's words reveal not only his philosophy of life but his sense of humor and his well-stated defense of the scientist-engineer, for he said, "To the literary critic, the historian, the theologian, the Latinist, the musician—to these inheritors of the older forms of intellectual and artistic wealth, the engineer seems like an alien and slightly vulgar figure. *They* are the civilized Romans. *He* is the burly and distressingly competent Ostrogoth. He speaks a language they cannot speak. He wins battles. It is not known whether he bathes.

"In actuality he does bathe. He speaks not only his own strange tongue, but also the common tongue of the civilized world. He wins battles, but he is not blood-thirsty. In other words, the modern scientist-engineer is by no means insensitive to or ignorant of the areas of culture outside his own specialty."

Dr. Dunning goes on to say, "I will not regale you with a description of the pride of many English teachers, sociologists, and historians at being too fine-grained and civilized to know what goes on under the hoods of their cars—their snobbishness towards the poor engineer, whom they darkly suspect of sitting all evening in front of a television set watching Westerns, or worse yet, going around in back of it to watch the tubes glow. It must be admitted, I think, that to the *intellectual*, what goes on in the back of a television set is frequently more interesting than what comes out of the front. Note, please, that it is the engineer who is responsible for what goes on at the back; while it is the literary man, the sociologist, and the theatrical artist who are responsible for what comes out of the front.

So today we are gathered to pay tribute to a great scientist-engineer who knew what went on at the backside of the television set—and who also knew what went on in the universe.

Dr. Dunning's years at Nebraska Wesleyan were at the time that that institution was headed by Dr. Isaac B. Schreckengast. This kindly God-fearing gentleman spoke frequently at the chapel services. Oftentimes he would challenge his listeners with this rhetorical question, "What are you going to do with your life?"

Dr. John R. Dunning has answered with a life that has indeed made a mark in the history of the world, with a life of endless contributions to the field of human knowledge. He has earned the benediction, "Well done thou good and faithful servant . . . enter thou into the joy of thy Lord."

THE CURRENT RECESSION IN PERSPECTIVE

Mr. BELLMON. Mr. President, the trauma which the current economic recession is producing for millions of Americans as well as government at all levels is reason for every Member of the Senate to attempt to understand the conditions which brought on our present difficulties. Fuller understanding may make it possible for the Congress to make future decisions which will avoid a repetition.

One of the most thoughtful and understandable reviews of conditions and activities which led to our present economic situation is contained in an address by Arthur Burns, chairman of the Board of Governors of the Federal Reserve System, to the 12th annual meeting of the Society of American Business Writers delivered on May 6, 1975.

While he has his critics, Dr. Burns is one of the most highly respected economists and Government officials in the country. I believe his thoughts and comments deserve the attention of Members of the Senate and I ask unanimous consent that his address 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 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, and so also has the idle capacity in our major industries. 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 fi-

nancial 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.

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. 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 period from 1961 through 1964 may be regarded as the industrial phase of the long upswing. Productivity grew rapidly—increasng 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 of sustained economic expansion, unemployment fell from about 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 too were the serious risks of increased leveraging 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 become 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 1969–1970, 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 "favored fifty" and those of other corporations. Share prices of these "favored" companies were, of course, especially hard hit in the subsequent shakeout 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 cannons 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 move 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 sown 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 eco-

nomic 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 committees 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.

HUMANITARIAN CRISIS IN ANGOLA

Mr. KENNEDY. Mr. President, a great deal is being said these days about the escalating civil war in Angola. And the recent revelations of American involvement have raised deep and troubling questions for many Americans.

Tomorrow in this Chamber we will hear further debate, and hopefully receive some clearer information, on the extent and intent of American involvement in the Angolan tragedy. The responsible committees of Congress must also continue to exercise close scrutiny and oversight of all aspects of American activities in Angola—especially covert activities. For if ever there is a "domino effect," it is how covert activities can easily fall into overt involvement and long-term commitments. The American people will not tolerate this. The United States must avoid this in Angola.

Mr. President, the crisis in Angola properly concerns many Americans, and it is a matter of great concern to the international community. Continued civil war in Angola, and further foreign involvement, simply prolongs the tragedy of the people of Angola.

Today their tragedy is lost in the political clamor of international forums, in the sometimes bitter debate over the future of their country, and in the litany of charges and countercharges over foreign intervention. Lost, too, is the urgent need for diligent new efforts to meet the escalating needs among refugees and civilian casualties and war victims of all kinds.

There is little hard information immediately available on the current humanitarian needs of the Angolan people. But all sources readily agree that the unrelenting conflict is producing a tide of refugees and escalating human misery. International relief organizations, voluntary agencies, government sources, and the press indicate that conditions among the civilian population, in nearly all areas of Angola, are deteriorating steadily. They further report that the modest relief efforts underway by the International Committee of the Red Cross (ICRC) barely scratch the surface, and that the ICRC's future operation is at a "crucial juncture."

The civil war in Angola is not unlike civil wars elsewhere. Untold tens of thousands of Angolans have had to flee their homes to avoid the fighting, and unknown numbers more are wandering fearful and without food through the bush. Civilian casualties have steadily mounted, even as the medical supplies to meet their needs have dwindled.

Once bustling towns are empty, and many rural communities are cut off and isolated. Marketplaces are bare and food is in short supply in cities and towns. Continued conflict and the disruption and blockade of food supplies to certain areas can only mean malnutrition and the threat of starvation. Once again the world will see the pictures and the television film of the gaunt, empty, expressionless faces of children, starving in their mothers' arms.

But can we not learn the lessons of past tragedy, of all civil wars, and begin now to address ourselves to the urgent need for humanitarian relief?

Mr. President, the time is past due for our Government, the international community, and the combatant leaders in Angola to find alternatives to continuing war and to search for new avenues to resolve the crisis of people in Angola. This task will not be easy, but a serious beginning must be made. To this end, I would like to make a few recommendations:

First, the President should join with other world leaders in support of strong diplomatic initiatives to secure an early truce among the warring parties in Angola. A New Year's truce of at least 10 days could provide a useful and timely cooling-off period to promote political and humanitarian objectives in helping to bring peace and relief to the people of Angola.

Second, strong efforts are urgently needed, through appropriate diplomatic channels, to curb all foreign intervention in the fratricidal war and the shipment of new arms which only feeds the conflict. The better future of Angola does not lie in an escalation arms race or the destructive rivalry of Great Powers, but in efforts by these same powers to promote conditions in which the people of Angola can sort out their own future. And the United States should take immediate steps to accomplish this end.

Third, new efforts are also needed to promote meaningful communication and dialog among the combatant leaders in Angola on the future of their country. In this connection, the Council of Ministers of the Organization of African Unity (OAU) will shortly meet in Addis Ababa to consider the crisis in Angola.

The activities of the OAU and many African leaders—in both the political and humanitarian areas—deserve the strong support of the international community.

Fourth, the President should lend his personal support to diplomatic efforts already underway to mobilize an international humanitarian relief effort commensurate with the escalating needs among war victims in Angola.

And fifth, the President should make an immediate contribution, from available funds, to support the modest humanitarian relief efforts of the International Committee of the Red Cross (ICRC) in all parts of Angola. So far the United States has contributed only $200,000 to the current ICRC program of some $5,000,000. This is truly a paltry sum, when compared to the urgent humanitarian needs in Angola, and to the millions and millions of dollars we have apparently poured into this new country for covert political and military operations which helped produce these needs.

I am totally dismayed over the warped sense of priorities reflected in American policy toward Angola. It distresses me, Mr. President, that once again our national leadership has shunted aside humanitarian concerns and the international appeals for assistance, in pursuit of political and military ends which have raised so many troubling questions for Congress and the American people. I believe that the American people expect more of their Government, and I am hopeful that their traditional humanitarian concerns will be reflected in an immediate contribution to the relief efforts of the ICRC in Angola, and the President's personal support for greater humanitarian initiatives by the OAU and the international community.

Mr. President, peace and relief are urgently needed today in Angola—to save lives and a country, and to promote the stability and peaceful development of the entire region. Hopefully, all concerned with the human and political tragedy of the Angolan people, who have struggled so long for their freedom and independence, will work to accomplish these ends.

A SALUTE TO LEADERSHIP—U.S. CITIZENS CONGRESS

Mr. THURMOND. Mr. President, we in America are fortunate to have such a dedicated patriot as William E. Simon serving as Secretary of the Treasury. This is a view which is widely shared by thinking, concerned citizens of this great Nation.

As evidence of this recognition, Secretary Simon was presented a Bicentennial award December 14 by the U.S. Citizens Congress. It was presented in grateful acknowledgement of the dedication, foresight, and outstanding services he has rendered to his country.

The ringing response he gave in accepting this award enunciated clearly and firmly the principles which guide his actions and which led to the honor of this special recognition. His inspiring words stressed individual liberty, initiative and responsibility. At the same time he decried the growth of Government debt, Government intervention, and the attitude of something-for-nothing through big Government. I commend him for his thoughts and concur in his philosophy.

It was also most pleasing to me that my friend and colleague, Senator CARL CURTIS, of Nebraska, was honored by the U.S. Citizens Congress. He is one of the finest and ablest Members of the U.S. Senate and his record of devoted service and patriotism is richly deserving of such recognition.

The U.S. Citizens Congress is an excellent organization which exemplifies the basic principles of strength and liberty in America. The membership of this group recognizes and subscribes to the fundamentals of fiscal responsibility, a strong national defense, and freedom from governmental overregulation.

One of the greatest assets of this organization, however, is its president, Rabbi Baruch Korff. This dedicated American has stood as an outstanding example of fairness and freedom. As one whose parents were killed by the Communist revolutionaries of Russia when he was a child, he knows the price of freedom lost. I congratulate him for his constant vigil in behalf of this land and for his leadership of the U.S. Citizens Congress.

Mr. President, there were a number of distinguished persons who participated in this fine program. In order that my colleagues may have a better understanding of this ceremony, I ask unanimous consent that the program and the stated goals of the U.S. Citizens Congress, along with the outstanding address by Secretary Simon, be printed in the RECORD.

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

A SALUTE TO LEADERSHIP

PROGRAM

National Anthem.

Invocation, The Reverend Joseph Makov, Pastor, All Souls Memorial Episcopal Church.

Dinner chairman, Adm. Elliott B. Strauss.

Greetings, Adm. William Lawrence, on behalf of former Vietnam POW's.

Presentations

Rabbi Herzel Kranz.
Mrs. Mary P. McLaughlin.
Mr. Reed J. Irvine.
Mrs. Gabriele Pitcairn Pendleton.
Mrs. Mildred S. Stein.
Admiral Arleigh A. Burke.
The Hon. Louise Gore, Chairman, Maryland Bicentennial Commission.
Mr. Ralph de Toledano, Author, Columnist.
Gen. James C. Fry.
Mrs. Carol Simon.

Response, Adm. Arleigh A. Burke, former Chief of Naval Operations.

The Hon. Carl T. Curtis.

The Hon. Earl L. Butz, Secretary of Agriculture.

Response, The Hon. Carl T. Curtis, United States Senate.

Dr. Andrei D. Sakharov, Nobel Laureate.

Response, Prisoner of the U.S.S.R.

The Hon. William E. Simon.

The Hon. Strom Thurmond, United States Senate.

Address, The Hon. William E. Simon, Secretary of the Treasury.

Closing remarks, Rabbi Baruch Korff, President, USCC.

Benediction, Father Reginald de Rocquois, Pastor, Church of the Epiphany.

Scrolls by Mrs. Sheila Waters.

WHAT MUST BE DONE

Cognizant of America's great past, of its present weakened fiber, and of its future imperatives, the United States Citizens' Congress consecrates itself to this program:

1. To insist on a strong national defense and to resist suicidal cuts in military spending;

2. To demand self-discipline and a rigorous code of ethics in the media which will protect the public from bias, misrepresentation, and the erosion of national confidence;

3. To combat inflation by securing reductions in wasteful Federal spending;

4. To return public education to public control and to oppose the dangerous social experimentation of the educationists and the sociologists;

5. To resist the usurpation of the people's rights by some elements of the Federal judiciary;

6. To strengthen America's moral fiber by fighting permissiveness in all aspects of our national life;

7. To protect Americans in their daily lives through the swift and forceful administration of justice;

8. To honor the Bicentennial year by demanding of government a re-dedication to the traditions and principles of our Founding Fathers which alone can guarantee a great and free America.

REMARKS BY THE HONORABLE WILLIAM E. SIMON, SECRETARY OF THE TREASURY

Rabbi Korff, Members of the United States Citizens Congress, and Distinguished Guests:

I am deeply honored tonight to receive the first Bicentennial Award from the Citizens Congress, and I want to thank each of you for your kindness in presenting it to me. Through my good friend Rabbi Korff, I have come to learn a great deal about the goals and supreme dedication of your membership. You are fighting for some important causes, and I wish you well in your pursuit of them.

Let me also add this note: as we celebrate this "salute to leadership" tonight, let us not overlook just how much genuine leadership you have right here in your own organization—Rabbi Korff, Admiral Strauss, Carl Shipley, Mrs. Russell—fine Americans who deserve the gratitude of all of us.

The tribute you are paying to me tonight ranks as one of the most complimentary of my public service. It has not always been so positive. For instance:

The day after I was sworn in as Secretary of the Treasury, Art Buchwald told me, "Congratulations, you have just become the purser on the Titanic."

This fall, the New York Times called me the "Cotton Mather of fiscal orthodoxy".

Then not long ago I received a letter from a citizen of New York City reminding me that the first Secretary of the Treasury, Alexander Hamilton, was born out of wedlock. "However, I want you to know," this fellow wrote, "that Hamilton was not the only bastard who has held that office."

I suppose all of us have come to expect slings and arrows for our beliefs, but I want you to know that it is also very encouraging to receive a bouquet from those whose friendships and judgments I value so highly.

On occasions like these, when brevity is in order, one is tempted to encapsulate in just a few words the thoughts that have been building up over several years of government service. Please allow me to do that here tonight.

I share with many of you in this chamber a strong sense of pride and belief in the heritage of our Nation. The values that have defined our national character over the years—personal liberty, the work ethic, self-reliance, compassion for our fellow man, and the supremacy of the individual over the State—all strike me as not only the soul of wisdom but the fount of so much of our progress as a people. They are the bedrock of our democracy.

Certainly we have had our troubles and conflicts as a nation. But there has been much more that has been right than has been wrong about this country. We must always remember both sides of the equation, not just the faults but the virtues of American life as well. Let us never forget that this democracy has given more freedom, more

hope, more opportunity, more dignity, more progress, and more material and spiritual blessings to more people than any nation in history.

Rabbi Korff will probably recall a woman from Virginia who visited the Oval Office once to present a gift to President Nixon: a 3 x 5 foot American flag which she had made herself. The President naturally commented that it must have taken a lot of effort. And she said, "Mr. President, it was a lot of work. There are 78,000 stitches in that flag." But then she added, "But it was all worthwhile because to me every one of those stitches just stands for something that is right about America."

What she said represents the views of many of our people. Yet today we unquestionably suffer from a spiritual malaise in our Nation. Although the fears that once existed about an economic depression have rightfully vanished, we have not yet escaped a national mental depression. Many of our fellow countrymen are angry and disillusioned. They stumble in the darkness of apprehension.

I do not pretend to have all of the answers for rebuilding our sense of confidence and our spiritual strength. Much needs to be done in every home, in every place of worship, and in every community across the country.

I am convinced, however, that in order to restore public faith in our democratic institutions, we must first restore the principles that have been fundamental to the original success of that democracy. And we must have leaders who not only profess a belief in those principles but have the courage to follow them.

In the last 10–15 years, this nation has drifted far from its original moorings. Who among us would have predicted all that we have seen in recent years? A relentless surge toward bigger and bigger government, a continuing inability to live within our means, widespread permissiveness, a failure of nerve among leaders of many of our institutions, and a trail of broken political promises that stretches all the way from the Great Society to the shores of Indochina.

Some say we are floundering today because the principles of the past are outdated, that they are obsolete and irrelevant. I categorically reject that charge. Our principles have not failed us at all; no, it is we who have failed to live up to them.

Just look at the record of mismanagement on the economic front alone:

When President Eisenhower left public office, the Federal budget was nearing $100 billion a year. Since then, it has quadrupled in size.

In the early 1960s, the Federal debt stood at $240 billion. Since then, the debt has more than doubled.

In the early 1960s, the money supply was growing at an average rate of 2½ percent a year. Since then, the growth has more than doubled.

And in the early 1960s, there were about 100 domestic assistance programs. Today there are over 1,000.

The government is now the Nation's biggest employer, its biggest customer, and its biggest borrower.

And what have been the rewards from all these years of trying to regiment our economy, trying to put the Federal Government in charge of our affairs, and abandoning many of the values of our past? The worst inflation in our peacetime history.

The worst recession in a generation. Millions unemployed. Crime breaking new records. Washington becoming the newest "sex center" of the United States. Our children, black and white, being bused against their will. The people of the Asian peninsula whose personal freedom we fought so hard to defend are now under the thumb of the Communists. And most importantly, the public confidence that was once the cement of our democratic institutions has begun to crack and crumble away.

History has not been kind to those who have lost their moral and political fiber. The late historian Arnold J. Toynbee believed that the decline of the great nations of the past can be directly attributed to a lack of spiritual faith during changing times. The Roman Empire lasted about 600 years, and there were few who could foresee its end because its leaders shielded the citizenry from the savage truths about their society. There is growing reason to believe that America is no more unique and exceptional than Rome or any of the other great nations.

The question facing us tonight is whether we can produce strong, firm leadership—not just in government but in all of our institutions—that can face up to the hard truths about America and make the changes that are so clearly needed to become masters again of our own destiny.

On the eve of our Bicentennial, let us ask ourselves: Where are the true statemen of our day—the Washingtons, the Franklins, and the Jeffersons? Where are the men and women who will restore the principles that have been the driving force in our history, who will tell the public not what they supposedly want to hear but what they need to hear, and who will work relentlessly for a strong and free America?

We need a resurgence of strong leadership in the United States.

We need to revive public support for our democratic institutions, recognizing that bad public officials are usually elected by good people who fail to vote.

And we need statesmen who will tell the truth:

That America is great not because of what government has done for people but because of what people have done for themselves;

That more government today means fewer opportunities and less freedom tomorrow;

That the horrendous growth of government, if continued, will ultimately mean the end of our private enterprise system;

That the private enterprise system remains the greatest engine for social progress ever invented;

That if economic freedom disappears in our country, political and social freedoms will also perish;

That through our inability to become more self-sufficient in energy, we are increasingly placing our fate in the hands of foreign rulers and enhancing our image as the pigeons of the Western world;

That in matters of defense, there is no such thing as being second; if we are second, we are last;

That in protecting our national security, a strong intelligence service is just as vital as a strong military service;

And that no nation, just as no individual, can live by bread alone. There are higher values to which we must aspire and they must continue to be the foundation of our civilization.

Certainly, the times often seem to discourage the emergence of forthright and firm leaders. It is never easy to overcome popular cynicism and distrust, particularly that which exists in the press. Certainly it is easier for our so-called leaders to accept conventional wisdom and always "play it safe".

But let us be honest with each other. Most of us in this chamber tonight are extremely fortunate individuals; we have an opportunity to serve our country at a critical time in its history. With that opportunity comes challenge and most importantly there comes an affirmative, moral responsibility to hold ourselves to the highest possible standards. Let us act not just as leaders of today but as the trustees of tomorrow. Let us speak the truth as God has given us the light to see that truth and learn again how to trust in the goodwill and virtue of others so that they can trust in us.

Indeed, as George Washington said at the Constitutional Convention, "Let us raise a standard to which the wise and the honest can repair."

It is in that spirit that I gratefully accept this award tonight.

Thank you.

THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, it has been 26 years since President Truman first submitted the Genocide Convention to the United States for ratification. At that time the United States was in the forefront of those nations which sought to make genocide an international crime. In the intervening years 87 nations have ratified this treaty but the Senate has yet to act. Despite the passage of time, it remains as imperative as ever before that we do so.

Historically, the United States has been known as a champion of human rights. Our concern for fundamental human rights—which extends back to the Declaration of Independence and Bill of Rights—requires us to take a leading role in the international protection of human rights. The fact that we have not done so puzzles our friends and delights our enemies.

Over the years the Genocide Convention has become a symbol of the U.S. failure in this area. It was the first major human rights treaty to be drafted since the Universal Declaration of Human Rights and, moreover, was one which the United States took the initiative in drafting. In fact, former U.S. Ambassador to the United Nations, Charles Yost, a career diplomat, has testified that Senate inaction on this treaty was one of the most difficult aspects of U.S. policy—or lack of it—that he has ever had to explain in international forums.

Mr. President, we must not overlook the psychological impact of U.S. ratification. International law develops incrementally but the support of the major nations of the world remains a sine qua non for this development. The United States remains the only major power that has not ratified this important human rights treaty and I urge my colleagues to join with me in seeking prompt action.

ADVICE TO SPARE: INDIVIDUALS SERVING ON FOUR OR MORE FEDERAL ADVISORY COMMITTEES

Mr. METCALF. Mr. President, examination of the 1,412-page index to the membership of Federal advisory committees that was issued 6 weeks ago as a Senate Government Operations Committee print turns up the unexpected information that 196 persons serve on anywhere from 4 to 15 advisory committees.

This research by the Subcommittee on Reports, Accounting, and Management discloses that 107 persons serve on 4 advisory committees, 47 persons serve on 5 advisory committees, 21 persons serve on 6 advisory committees, and 21

others serve on 7 or more advisory committees.

The source of this information is the alphabetized three-way index to the membership of the 1,242 Federal advisory committees, commissions, boards, councils and other panels in existence at the end of 1974. The index to these 22,702 members lists them alphabetically by name, by affiliation and by the committee(s) on which they serve.

The index also reveals that 29 large companies have from 21 to 95 representatives on advisory committees, that 58 universities and institutes have from 23 to 350 representatives on advisory committees, and that the AFL–CIO has 92, followed by 42 unions having from 3 to 30 representatives on advisory committees. In the trade and other associations category, 3 have from 21 to 34 representatives on advisory committees.

That major corporations welcome the opportunity to place numbers of representatives on advisory committees goes without saying, given the stakes. Consider this excerpt from "Private Influence on Environmental Policy: The Case of the National Industrial Pollution Control Council," by Henry J. Steck, associate professor of political science, State University of New York, College at Cortland, in the winter 1975 issue of Environmental Law:

Advisory committees are a common but obscure method employed by federal agencies to tap the expertise of the private sector, to solicit the advice of private groups and individuals in formulating policies and developing programs, to secure the assistance and assent of affected groups in administering programs and measuring their effectiveness and to introduce public participation into administrative activities. The complex nature of modern government has led both administrators and organized groups to accept the proposition that administrative agencies must have access to and knowledge about the distinctive needs and specialized competence of particular segments of society. Indeed, the participation of organized groups and knowledgeable individuals is regarded as a virtual sine qua non of good administrative practice. The use of advisory committees is so widespread both in the United States and elsewhere that it can be regarded as a regular and legitimate element in the structure of public administration. Advisory committees exist, moreover, not simply to provide advice and assistance in the administrative process. They are looked to by agencies for generating support from their respective social, economic, scientific, or functional constituencies and for providing a form of public and group endorsement for administrative programs. Naturally, the interaction between groups and agencies is complex and subject to variation. Some committees appear to have substantial influence over policies while others are little more than "social clubs" as one official put it, regarded at best as rubberstamps for agency decisions and at worst as nuisances. Nonetheless, the utility of advisory groups is repeatedly acknowledged by both agency officials and group members. So fond are both Congress and agencies of such groups that in 1972 new groups were created at roughly the computed rate of one new committee for each 1.5 working days . . . Overall, the system of advisory committees can be regarded as a long-standing major institutional method for linking private interests and private expertise to public authorities in the administrative process.

Nor does it astonish me that seven universities—California, Harvard, Texas, Massachusetts Institute of Technology, Johns Hopkins, Michigan and Columbia—should between them claim more than 1,000 representatives on Federal advisory committees. In his article, "The Controversy over Peer Review," in the December 12 issue of Science, Thane Gustafson, assistant professor of government at Harvard, acknowledges complaints that have been made about representativeness on scientific advisory groups, including this one:

Another charge is that advisory panels are dominated by representatives from prestige universities. Statistics for NSF and NIH do confirm that the top graduate institutions are heavily represented. An American Chemical Society (ACS) study of 11 NIH study sections in biochemistry showed that of 113 institutions represented, 32 contributed more than two-thirds of the advisers, and the eight institutions most heavily represented supplied nearly one-quarter of the advisers. In NSF the picture is similar: the 18 top institutions, which employed 9 percent of the nation's academic doctorate-holding scientists in 1971, contributed more than a third of the advisers.

What does astonish me is that so many persons can find the time to serve on so many advisory committees, although for Government officials there can be extenuating circumstances: often they serve ex officio, and the Federal Advisory Committee Act requires that there "shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee."

Professors, for example, grumble that departmental and other campus committees—quite apart from Federal advisory committees—increasingly demand time they would rather spend on classroom and laboratory activities.

Time is a no less precious commodity to the businessman. In an article, "The Saudi Arabian Connection," Kenneth C. Crowe, an Alicia Patterson Foundation award winner on leave from Newsday, traces the career of Charles W. Robinson, the Under Secretary of State for Economic Affairs, who before moving to Washington was president of San Francisco's Marcona Corp., an international mining and shipping concern. "By his own account," Crowe writes, "he spent 50 percent of his time as president of Marcona on quasi-government bodies."

Interestingly, only one of those bodies was a Federal advisory committee, but through his performance on that one—a State Department advisory committee on international economics—he attracted the attention of then Secretary of State William Rogers. Robinson turned down the post of Under Secretary of State for Economic Affairs when Rogers offered him the job in 1972, but changed his mind about going to Washington when Henry Kissinger became Secretary of State. Crowe writes:

Senate sources said that Kissinger personally selected Robinson because of his performance as a dynamic, aggressive executive and because of his ties to the multinational corporate world. Robinson said that his selection came after "a survey was made of business leaders through the country."

Mr. President, John D. Harper, chairman of the Aluminum Co. of America, was serving on six Federal advisory committees at the end of 1974. There has been at least one change in those commitments this year, in that his resignation from the President's Export Council was accepted by President Ford effective November 24. I would guess that Mr. Harper finds the time to serve on these advisory committees because of their enormous potential for corporate influence.

One of these advisory committees is the President's Labor-Management Committee, whose ambitious recommendations of May 21 for increasing electric utility construction and output were accepted and endorsed by President Ford with considerable fanfare. The nature and procedures of the President's Labor-Management Committee, which has held nothing but closed meetings since it was created by Executive order on September 30, 1974, were explored at an August 1 hearing before the Subcommittee on Reports, Accounting, and Management, at which the committee's coordinator, Secretary of Labor John T. Dunlop, testified.

That hearing and much additional information were published and are available from the subcommittee.

While serving as a member of the President's Labor-Management Committee, Harper doubles as chairman of the policy committee of the Business Roundtable, a potent assembly of more than 150 giant corporations. Incredibly, five other members of the President's Labor-Management Committee also serve as members of the policy committee of the Business Roundtable: Richard C. Gerstenberg, member, board of directors, General Motors Corp.; Reginald H. Jones, chairman, General Electric Co.; Rawleigh Warner, Jr., chairman, Mobil Oil Corp.; Arthur M. Wood, chairman, Sears, Roebuck & Co.; and Walter B. Wriston, chairman, First National City Bank.

In other words, of the eight nonlabor members of the President's Labor-Management Committee, six are members of the policy committee of the Business Roundtable—an outfit described this way in the lead of a New York Times article of November 16 by Eileen Shanahan:

A carefully organized lobbying effort, chiefly directed by a little-known organization whose members are all giant corporations, has succeeded in killing a proposed major amendment to the antitrust laws. Similar efforts against other legislation are in process and planned.

If that lead strikes you as a trifle grand, consider the opening of a Wall Street Journal article of July 15 by James Gannon discussing the electric utility financing recommendations of the President's Labor-Management Committee:

Labor Power. Big Business Power. White House power. Pork barrel power. Put them all together and you have Washington's big electric power play of 1975.

That's partly pun, but the subject isn't funny. It is no laughing matter when big corporations and big unions together concoct a scheme to siphon $600 million a year

from the U.S. Treasury, sell the idea to the President, and then get the Secretary of the Treasury to set aside his principles and act as their special interest lobbyist in Congress.

With stakes like these, with influence to be wielded on so grand a scale, it is no wonder that people like John D. Harper find the time to serve on several advisory committees. What better way could there be for people to work from the inside—behind the acceptable facade of a Federal advisory committee—to promote Government giveaways while working together on the outside to defeat legislation perceived as threatening to big business?

Mr. President, I ask unanimous consent to have printed in the RECORD the subcommittee's tables of multiple representation on advisory committees and of individuals serving on four or more advisory committees, a copyright article from CQ of November 23, 1974, headed "Business Roundtable: Big Corporation Bastion," the portion of the Group Research Report of December 3, 1975, dealing with the Business Roundtable, and Professor Gustafson's Science article on peer review.

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

MULTIPLE REPRESENTATION

BUSINESS-INDUSTRY

1. AT&T	95
2. RCA	95
3. ITT	86
4. General Electric	80
5. Communications Satellite Corp	64
6. Exxon Corp	48
7. IBM	40
8. Mitre Corp	37
9. Boeing	36
10. Western Union	35
11. General Motors	33
12. Westinghouse	33
13. Raytheon	31
14. Lockheed	30
15. Rockwell International	29
16. Ford Motor Co	28
17. Rand Corp	28
18. Hughes Corp	27
19. Honeywell	26
20. Mobil Oil	26
21. Aeronautical Radio	25
22. Motorola	25
23. United Airlines	25
24. Dupont	24
25. Gulf Oil	22
26. GTE	22
27. Bendix Corp	21
28. R&D Assoc	21
29. TRW, Inc	21

UNIVERSITIES-INSTITUTES

1. University of California	350
2. Harvard University	167
3. University of Texas	110
4. Massachusetts Institute of Technology	108
5. Johns Hopkins	103
6. University of Michigan	103
7. Columbia University	102
8. University of Wisconsin	96
9. University of Washington	93
10. Stanford University	91
11. State University of New York	85
12. University of Pennsylvania	85
13. Yale University	85
14. University of Illinois	84
15. University of Chicago	71
16. University of Minnesota	64
17. Washington University	62
18. Duke University	59
19. Princeton University	54
20. University of North Carolina	54
21. University of Maryland	49
22. New York University	48
23. University of Colorado	48
24. University of Pittsburgh	44
25. University of Iowa	43
26. Howard University	42
27. Indiana University	42
28. University of Utah	42
29. Caltech	40
30. University of Southern California	39
31. Penn State	38
32. University of Rochester	38
33. University of Arizona	37
34. Michigan State	34
35. Northwestern	34
36. Ohio State	34
37. University of Virginia	33
38. Purdue	30
39. University of Alabama	30
40. City University of New York	29
41. Mayo Clinic	28
42. University of Massachusetts	28
43. University of Miami	27
44. Georgetown University	26
45. George Washington University	26
46. Boston University	26
47. Oregon State	26
48. University of Oregon	26
49. Rutgers University	26
50. Vanderbilt University	26
51. Brown University	25
52. Lawrence Radiation Labs	25
53. Stanford Research Institute	25
54. University of Florida	25
55. University of New Mexico	25
56. Yeshiva University	25
57. University of Kansas	24
58. Rockefeller University	23

FEDERATIONS, NATIONAL UNIONS, AND EMPLOYEE ASSOCIATIONS

1. AFL-CIO	92
2. ALPA	30
3. USA	16
4. IBEW	15
5. CJA	12
6. ACWA	11
7. AFGE	11
8. IAM	11
9. IWA	8
10. LIUNA	8
11. PAT	8
12. SEIU	8
13. CWA	7
14. NMU	7
15. GAIU	7
16. AWU	6
17. BRASC	6
18. ILGWU	6
19. IUE	6
20. IUUE	6
21. TWU	6
22. URW	6
23. APWU	5
24. OCAW	5
25. RWDSU	5
26. SCME	5
27. TWUA	5
28. UPIU	5
29. BBF	4
30. BCW	4
31. BRS	4
32. ICW	4
33. ILA	4
34. RCIA	4
35. SMW	4
36. AIW	3
37. GBBA	3
38. IAFE	3
39. IAW	3
40. ICWU	3
41. IMAW	3
42. OPEIU	3
43. PPF	3

TRADE AND OTHER ASSOCIATIONS

1. Air Transport Association of America	34
2. Aircraft Owners & Pilots Association	26
3. National Business Aircraft Association	21

Individuals on 7 or more Federal advisory committees and their affiliations:

NO. OF FAC MEMBERSHIPS

A. Corporations, businesses, banks, and associations:

1. Baer, Charles M., Communications Satellite Corp., 15.
2. Benham, Edward E., ITT Corp., 10.
3. Highton, Francis E., consulting economist, 7.
4. Huck, Michael V., Aircraft Owners & Pilots Assoc., 7.
5. Lyons, Walter, Singer/Tele-Signal Corp., 7.
6. Mills, William W., Systems Engineering Facility, 8.
7. Simonds, Raymond E., RCA Frequency Bureau, 8.

B. Government (Federal):

1. Crowell, Raymond B., FCC, 9.
2. Dent, Frederick D., Dept. of Commerce, 8.
3. Fine, Harry, FCC, 8.
4. Gage, Stephen J., Council on Environmental Quality, 8.
5. Gatti, Joseph, FAA, 10.
6. Hurwitz, Irvin, FCC, 7.
7. Stone, Robert S., National Institutes of Health, HEW, 12.
8. Weinberger, Caspar, HEW, 7.
9. Yeutter, Clayton K., Dept. of Agriculture, 8.

C. Labor:

1. Loope, Nicholas R., CJA, 8.
2. Oswald, Rudolph A., SEIU, 8.
3. Spector, Eugene P., NMU, 7.
4. Teper, Lazare, ILGWU, 8.
5. Webber, Clyde, AFGE, 7.

Individuals on 6 Federal advisory committees and their affiliations:

A. Corporations, businesses, banks and associations:

1. Ball, John E. D., Public Broadcasting Service.
2. Bartlett, George W., National Assoc. of Broadcasters.
3. Harper, John D., Aluminum Company of America.
4. Jones, Reginald Harold, General Electric.
5. Kelleher, John J., Natl. Scientific Laboratories.
6. Meaney, Martin H., Jr., Natl. Broadcasting Company.
7. Nesti, Anthony J., Natl. Electrical Manufacturers Assoc.
8. Sackett, John C., Doyon Ltd/Tanana Chiefs Conference.
9. Schneider, Stanley S., Aeronautical Radio, Inc.
10. Strauss, Willis A., Northern Natural Gas Company.
11. Thomas, Elmer, Page Communications Engineers, Inc.
12. Weppler, H. E., AT&T Company.
13. Wheeler, John L., Xerox.

B. Government (Federal):

1. Feltner, Richard L., Department of Agriculture.
2. Long, Robert W., Department of Agriculture.
3. Stever, H. Guyford, National Science Foundation.

C. Labor:

1. Abel, I. W., USA.
2. Burkhardt, Francis X., PAT.
3. Fisher, Ronny G., URW.
4. Fitzsimmons, Frank E., International Brotherhood of Teamsters.

Individuals on 5 Federal advisory committees and their affiliations:

A. Corporations, business, banks and associations:

1. Allen, Ethel D., physician/city councilperson.
2. Blaker, H. T., Collins Radio Company.
3. Dykstra, Jacob J., Pt. Judith Fishermen's Coop. Assoc., Inc.
4. Ferrari, Walter J., Air Transport Assoc.
5. Gibson, Owen B., AT&T.

6. Gladieux, Bernard L., Jr., Grocery Manufacturers of America, Inc.
7. Holcomb, Benjamin F., US Steel Corp.
8. Hult, John L., Rand Corp.
9. Kimball, Thomas L., National Wildlife Federation.
10. Kuhfuss, William J., American Farm Bureau Federation.
11. Lokken, Harold E., Fishing Vessel Owner's Association, Inc.
12. Long, William G., Jr., Computer Sciences Corporation.
13. Partridge, John W., Columbia Gas System, Inc.
14. Reinhart, Edward E., Rand Corporation.
15. Rich, William L., Jr., International Organ. of Masters, Mates and Pilots.
16. Shea, Joseph F., Raytheon Company.
17. Smith, Hillyer S., Aeronautical Radio Company, Inc.
18. Tankersley, G. J., Cons. National Gas-East Ohio Gas Co.
19. Tuft, Leonard W., RCA Global Communications, Inc.
20. White, Frank C., Air Transport Assoc.
21. Winger, John G., Chase Manhattan.

B. Government (Federal):
1. Brennan, Peter J., Dept. of Labor.
2. Connor, James E., Atomic Energy Commission.
3. Coriden, Guy E., Dept. of State.
4. Craig, John, CIA.
5. Dotson, Larry D., U.S. Army.
6. Gregory, John M., Jr., Dept. of State.
7. Hashimoto, Richard, U.S. Air Force.
8. Knauer, Virginia H., Office of Consumer Affairs.
9. Robinson, John T., FCC.

C. Labor:
1. Brubaker, Otis F., USA.
2. Donovan, Harry A., AIW.
3. Froh, Walter O., APWU.
4. Kimble, Charles C., IUE.
5. Newell, Reginald, IAM.
6. Perkell, George, TWUA.
7. Roberts, Markley, AFL-CIO.
8. Sheets, James R., LIUNA.

D. Universities, Institutes:
1. Baldeschweiler, John D., Cal Tech.
2. Carry, Charles R., Tuna Research Foundation.
3. Flax, Alexander H., Institute for Defense Analyses.
4. Ginzberg, Eli, Columbia University.
5. Goland, Martin, Southwest Research Inst.
6. Hagen, John P., Penn State Univ.
7. Hertzberg, Abraham, Univ. of Washington.
8. Linden, Henry R., Institute of Gas Technology.
9. Woodson, Herbert H., Univ. of Texas.

Individuals on 4 Federal advisory committees and their affiliations:

A. Corporations, business, banks, and associations:
1. Amram, Philip W., Attorney (American Bar Association).
2. Avery, Ben F., rancher-reporter (Arizona Republic).
3. Bagge, Carl E., National Coal Assoc.
4. Bennett, Ralph D., consulting engineer—Martin-Marietta.
5. Biddle, James, National Trust for Historic Preservation.
6. Brown, Carl F., Ford Motor Company.
7. Catucci, Henry G., Western Union International, Inc.
8. Clothier, Ernest A., American Pilots Assoc., Inc.
9. Corey, Gordon R., Commonwealth Edison Company.
10. Cranmer, Victor H., AT&T.
11. Culbertson, J. Steele, Nat'l. Fish Meal & Oil Assoc.
12. Dickinson, A. Wright, rancher.
13. Ellison, Stanley C., rancher.
14. Elmer, William M., Texas Gas Transmission Corp.
15. Flournoy, Robert L., rancher.
16. Ford, O'Neil, architect-Ford, Powell & Carson.
17. Fowler, Charles A., Raytheon Company.
18. Fubini, Eugene G., E. G. Fubini Consultants, Ltd.
19. Gomes, Abilio A., ITT World Communications.
20. Greenwald, Douglas, McGraw-Hill Publishing.
21. Hagedorn, George G., Nat'l. Assoc. of Manufacturers.
22. Heery, George T., Heery & Heery, Inc.
23. Height, Dorothy I., National Council of Negro Women.
24. Heine, Edward J., Jr., U.S. Lines.
25. Herzfeld, Charles M., ITT.
26. Holleb, Arthur I., American Cancer Society.
27. Kajander, John, Pennzoil.
28. Kreutzer, Arthur C., National LP-Gas Assoc.
29. Lohse, E., Burroughs Corp.
30. Lyng, Richard, American Meat Institute.
31. Mack, Wilbur H., Michigan Consolidated Gas Co.
32. Madden, Carl H., U.S. Chamber of Commerce.
33. Madgett, John P., Dairyland Power Coop.
34. Martin, Edward J., Communications Satellite Corp.
35. Martinka, Paul D., American Electric Power Service Corp.
36. McGuire, George F., Western Union Telegraph.
37. Mitchell, George P., Mitchell Energy & Development Corp.
38. Murray, Ralbern H., CNG Energy Company.
39. Netshert, Bruce C., Nat'l. Econ. Research Associates.
40. Parker, James D., CBS.
41. Post, John, Business Roundtable.
42. Potts, James B., Communications Satellite Corp.
43. Quinby, G. F., NARCO Scientific Industry.
44. Rensch, Joseph R., Pacific Lighting Corp.
45. Roche, James M., General Motors.
46. Roddis, Louis H., Jr., Consolidated Edison Co. of N.Y.
47. Sabacek, Ronald, TRT Telecommunications Corp.
48. Salsburg, Sidney W., Chrysler Corp.
49. Serafin, John, ABC.
50. Sierzenski, Ray, General Electric Company.
51. Silbert, Myron S., Myron S. Silbert Company.
52. Smith, James R., American Waterways Operators.
53. Smith, William H., Federated Employers of the Bay Area.
54. Strohbehn, Edward L., Natural Resources Defense Council.
55. Thomas, Robert E., Mapco., Inc.
56. Van Drimmelin, Frederik E., Foxboro Company.
57. Warner, Thomas R., U.S. Independent Telephone Assoc.
58. Weese, Harry M., Harry Weese & Associates, Ltd.
59. Weiss, H. J., Communications Satellite Corp.
60. Wright, Myron A., Exxon Co., U.S.A.
61. Wriston, Walter B., First Nat'l. City Bank, N.Y.
62. Yeh, Leang P., L. P. Yeh & Associates.
63. Young, Roy, rancher.

B. Government (Federal and State):
1. Armstrong, Robert P., U.S. Navy.
2. Arnett, G. Raymond, Calif. Dept. of Fish & Game.
3. Bidstrup, Dudley, Dept. of Agriculture.
4. Blackburn, William B., Dept. of Agriculture.
5. Campbell, J. Phil, Dept. of Agriculture.
6. Cutts, Robert L., FCC.
7. Dixon, Julian T., FCC.
8. Endicott, Kenneth M., HEW.
9. Foster, Charles H. W., Mass. Exec. Office of Envir. Affairs.
10. Freibaum, Jerry, NASA.
11. Jacobs, George, USIA.
12. Keys, Carlton A., FAA.
13. Kratz, Jeremiah F., AEC.
14. Lee, Charles Edward, So. Carolina Dept. of Archives & History.
15. Martin, Edgar T., USIA.
16. Morton, Rogers C. B., Dept. of Interior.
17. Myhen, E. MacDonld, Dept. of Commerce.
18. Olson, Kenneth B., HEW.
19. Padgett, Joseph E., EPA.
20. Pogue, Forrest C., Eisenhower Inst. for Historical Res.; George C. Marshall, Res. Found.; Smithsonian Institution.
21. Pomerance, William, HEW.
22. Schmidt, Alexander M., HEW.
23. Smith, E. K., Dept. of Commerce—Inst. for Telecom. Sci.
24. Train, Russell E., EPA.
25. Utlaut, William F., Dept. of Commerce—Inst. for Telecom. Sci.
26. Whedon, G. Donald, HEW.

C. Labor:
1. Biemiller, Andrew J., AFL-CIO—Dept. of Legislation.
2. Cantor, Arnold, AFL-CIO.
3. Madison, Joseph J., TWU.
4. Miller, Vera, ACWA.
5. Pillard, Charles H., IBEW.
6. Woodcock, Leonard, UAW.

D. Universities/Institutes:
1. Ashley, Holt, Stanford Univ.
2. Balzhiser, Richard E., Electric Power Research Institute.
3. Betts, Austin W., Southwest Research Institute.
4. Bobrow, Davis B., Univ. of Maryland.
5. Campbell, Rita Ricardo, Stanford Univ.
6. Dils, Robert E., Colorado State Univ.
7. Hargis, William J., Jr., Va. Institute of Marine Science.
9. Parker, Eugene N., Univ. of Chicago.
8. McElroy, Michael B., Harvard Univ.
10. Schuller, Gunther, New England Conservatory of Music.
11. Teller, Edward, Lawrence Livermore Lab.
12. Villard, Oswald G., Jr., Stanford Research Inst.

[From the Congressional Quarterly, Nov. 23, 1974]

BUSINESS ROUNDTABLE: BIG CORPORATION BASTION

Unlike other special interest groups that rely on professional lobbyists to bargain with Washington legislators and bureaucrats, the Business Roundtable uniquely leaves that responsibility to its members—150 chief executives of the nation's largest corporations.

"Businessmen needed to do more in Washington. They rely too heavily on trade associations," John Post, the roundtable's executive director explained in an interview. "The roundtable does more to encourage executives to express themselves than they would do otherwise."

Established in early-1973, the roundtable "seeks to strengthen the economy and make clear the role of business in our society," according to a lobby registration form filed in July with the House clerk that listed economic stabilization, energy and tax proposals as major legislative interests. (Registration, Weekly Report, p. 2843)

A far more colorful description of the organization was offered by The Kiplinger Washington Letter in 1973: "They (business executives) . . . can go to the top and get attention, call a senator directly or the head of a government department. Thus get the business view planted, and the reasons behind it. Make government sit up and listen . . . roll a little thunder here . . . a heavy-

weight business outfit . . . ready to use its heft . . try to polish up the business image."

The roundtable "can very effectively bring together Washington officials and executives of major corporations," Post said. "I don't know of any other organization that exists where you can get them together."

METHOD OF OPERATION

But because industry traditionally has depended on trade associations to do its Capitol Hill leg work, "businessmen are not accustomed to the advocacy position," said Post. He monitors issues that could affect roundtable members and then encourages corporation leaders to personally contact Washington officials. Referring to Sen. Henry M. Jackson's (D Wash.) grilling of oil officials last winter, Post remarked, "Look what happens to them."

While there have been reports of some "uneasiness" with the roundtable role by other business groups, such as the Chamber of Commerce and the National Association of Manufacturers, Post indicated that the roundtable was "sensitive" to their activities. "I talk with them frequently."

Addressing this "territorial issue," an internal roundtable prospectus states: "In all of its work the roundtable cooperates with other business organizations. . . . It avoids duplicating the work of other organizations. In a real sense the roundtable helps other business organizations and they help it."

Yet questions remain inside the roundtable about its purpose and activities. "Is this organization necessary? Is it relying too heavily on chief executives? It's the reason we don't build a staff," according to Post.

Since its formation, one or two companies have dropped out of the roundtable, Post said, "not because of any disagreement on issues but because they felt their needs were best served in other ways."

FOCUS

While most business lobby groups concentrate on a wide range of issues pending in Congress, the roundtable limits its focus. In 1974, for example, the organization's major lobby efforts were directed against land use legislation (HR 10294) and the Senate consumer protection agency bill (S 707). "Trade associations with wider membership than the roundtable become hostage to more issues," Post said. "The advantage of this organization is that it doesn't try to cover everything."

A troublesome issue for the roundtable and one that has occupied much of its time is the question of granting food stamps to striking workers and their families. In 1973, the House passed an amendment that would have denied the stamps to strikers, but the amendment was later stricken from the 1973 farm bill (HR 8860) during a House-Senate conference. The roundtable contends that "governmental intervention by way of subsidization of strikers tends to alleviate the strikers' economic stress, enabling them to prolong strikes."

During the legislative battle on the issue, the roundtable dispatched a letter and fact sheet to its membership stressing the need for direct lobbying: "Personal contact with senators and congressmen to explain the scope and impact of food stamps for strikers is essential. Letter writing campaigns will help but are not enough."

Whether the roundtable members follow up on such alerts is not entirely known to the Washington headquarters. "Some of the members become involved but they often don't tell us what they did," Post said.

HISTORY

The roundtable is the offspring of two business groups, the Construction Users Anti-Inflation Roundtable, set up in the late 1960s to slow inflation in the construction industry, and the Labor Laws Study Committee, which worked for changes in labor laws.

The organization's 150 members pay from $2,500 to $35,000 in annual dues depending on a company's gross revenues and stockholder equity. Membership is open to any company, but the roundtable, which does not solicit new members, is a bastion for large corporations rather than small business interests.

The membership of the roundtable seldom meets as a group, leaving management decisions to a policy committee that convenes every two months and issue selection to a construction committee and a labor management committee. Four other panels—litigation, public information, government relations and economic research—carry out roundtable policies.

REGISTRATION

Although the Business Roundtable itself has not registered to lobby with the House clerk, Post filed a registration form July 11. Explaining that his work involves "legislative intelligence"—reading, following legislative developments and contacting congressional staff members on occasion—rather than meeting with members of Congress, Post said the decision to file a lobby report was made after Common Cause brought suit against the National Association of Manufacturers for failing to register.

Post said the roundtable's lawyer, Edward A. McCabe, originally had advised him not to register because "you're not involved in lobbying."

In a spending report filed with the House clerk for the third quarter of 1974, Post listed receipts of $100 and expenditures of $5, explaining that the figures reflect "those amounts which might be said to come within the purview of the (lobbying) act."

The roundtable filed for a tax exemption with the Internal Revenue Service on Nov. 10, 1972, with the exception granted Feb. 14, 1974. Its first tax form will not be available for public inspection until 1975.

LEADERSHIP

Topping the roundtable's organizational structure as its policy committee, chaired by John D. Harper of Aluminum Company of America. Co-Chairmen of the committee are John D. deButts of American Telephone and Telegraph and Howard J. Morgens of Procter and Gamble. The three also serve as chairmen of the roundtable's executive committee elected annually by the policy committee members.

Members of both the policy and executive committees, according to roundtable stationery, are these chief executives: Richard C. Gerstenberg, General Motors Corp.; Shearon Harris, Carolina Power & Light Co.; J. B. Jackson, J. C. Penney Co. Inc.; J. K. Jamieson, Exxon Corp.; Reginald J. Jones, General Electric Co.; Frank R. Milliken, Kennecott Copper Corp.; David Packard, Hewlett-Packard Co.; Irving S. Shapiro, E. I. du Pont de Nemours & Co. Inc.; J. Stanford Smith, American Newspaper Publishers Association, and Edgar B. Speer, U.S. Steel Corp.

Other members of the policy committee are: William O. Beers, Kraftco Corp.; Benjamin F. Biaggini, Southern Pacific Co.; Donald C. Burnham, Westinghouse Electric Co.; Frank T. Cary, International Business Machines Corp.; Henry Ford II, Ford Motor Co.; Robert S. Hatfield, Continental Can Co. Inc.; Ralph Lazraus, Federated Department Stores Inc.; Ian K. MacGregor, American Metal Climax Inc.; Brooks McCormick, International Harvester Co.; Louis W. Menk, Burlington Northern Inc.; Roger Milliken, Kennecott Copper Corp.

Also, Charles J. Pilliod Jr., Goodyear Tire and Rubber Co.; Harold A. Shaub, Campbell Soup Co.; Mark Shepherd Jr., Texas Instruments Inc.; Shermer L. Sibley, Pacific Gas & Electric Co.; Donald B. Smiley, R. H. Macey & Co. Inc.; George A. Stinson, National Steel Corp.; J. E. Swearingen, Standard Oil Co. (Indiana); O. Pendleton Thomas, B. F. Goodrich Co.; C. C. Tillinghast Jr., Trans World Airlines, Inc.; Lynn A. Townsend, Chrysler Corp.; Rawleigh Warner Jr., Mobil Oil Corp.; Maurice J. Warnock, Armstrong Cork Co.; F. Perry Wilson, Union Carbide Corp.; J. Robert Wilson, Kansas-Nebraska Natural Gas Co.; Arthur M. Wood, Sears, Roebuck & Co., and Walter B. Wriston, First National City Bank of N.Y.

[From Group Research Report, Dec. 3, 1975]

BUSINESS ROUNDTABLE BECOMES A SUPER LOBBY

A loose affiliation of industrial executives called Business Roundtable has converted itself from a group of salesmen for free enterprise into a potent, well-organized lobby for big business across a wide front.

On February 26 we reported that the organization had teamed with Reader's Digest to sponsor a series of articles extolling the virtues of business. On November 16, the New York Times reported on page one that the Business Roundtable killed a bill in Congress which would have given the 50 state attorneys general authority to bring treble damage suits for violations of the antitrust laws.

Congressman Wright Patman, the liberal Democrat from Texas, put the Times article in the Congressional Record with a reminder that the Business Roundtable helped defeat an effort two years ago to have Congress audit the books of the independent Federal Reserve System.

OPERATIONS OF THE ROUNDTABLE

The organization has a New York City office as well as a Washington office where its Executive Director, John Post, is a registered lobbyist. The Times reported that the Roundtable has 158 corporate members who include "the three largest automobile manufacturers, the three largest banks, seven of the largest oil companies, the largest steel companies, major retailing organizations and many of the largest utilities, including American Telephone and Telegraph Company." The annual budget was put at about $1,500,000.

Supplementing the formal budget are the lobbying efforts of corporate executives, such as general counsels and plant managers, brought to Washington for specific lobbying assignments.

Other issues in which the Roundtable is involved include decontrol of oil and gas, tax status of international corporations and environmental legislation. It recently boasted that it worked "in concert with some 30 other organizations" against the common situs picketing bill which is favored by labor.

One of the items distributed from the Washington office is a 1975 public opinion poll on "unions today," which is highly critical of organized labor. It was conducted by Opinion Research Corporation of Princeton, N.J., an outfit used frequently by the National Right to Work Committee and other conservative groups.

[From the Science magazine, Dec. 12, 1975]

THE CONTROVERSY OVER PEER REVIEW

(By Thane Gustafson)

One of the most striking features of federal support of fundamental science is heavy reliance on scientists outside the government and on the decentralized decision-making process of the scientific community. Much of the overall direction of federal support for fundamental science depends on the individual decisions of working scientists about which fields to enter and which lines of investigation to pursue. These decisions are communicated to government agencies through requests for funds for project support and through the opinions of nongovernment scientists who advise the government

at many different levels. This advice is principally of two sorts: evaluations of requests for project support for their scientific merit and relevance to agency goals; and expressions of opinion as to which fields and lines of investigation are especially worthy of federal support.

The outstanding example of such decentralized mechanisms in federal science policy is "peer review," used by the National Institutes of Health and the National Science Foundation. In its purest form, peer review relies on the flow of unsolicited grant applications from individual researchers ("proposal pressure") (1) as the funding agency's principal guide for the planning of research support, and uses committees of nongovernment scientists as the main instrument of proposal evaluation and policy assessment (2).

In practice, peer review procedures and patterns of proposal vary widely from one government body to another and even within a single agency. In some agencies peer review is elaborate, proposals are largely unsolicited, and the influence of advisory committees is great; in others peer review is cursory, the influence of agency staff outweighs that of outside advisers, and research proposals originate in response to requests from the agency.

The most influential advisory committees and the most highly developed system of peer review are to be found in the NIH, which funds 75 percent of the biomedical research performed in American medical schools as well as more than 40 percent of all university research. The NIH peer review mechanism has two parts. Initial review of proposals for research grants is delegated to approximately 50 study sections composed entirely of nongovernment scientists. They are organized by scientific discipline and rank grant applications according to their scientific merit. The recommendations of the study sections are then forwarded to the pentinent NIH institute. By law, each institute must maintain an advisory council of nongovernment scientists and informed laymen. The advisory council, by working its way down the project ranking as established by the study sections, decides how far the institute's available funds can extend (thus eliminating many projects approved by the study sections). In addition, the councils may raise the priority of projects that are considered to be especially relevant to the institute's objectives. Without the prior approval of their council, institute officials cannot make research awards.

The result is a unique type of dual review which ranks projects at the first stage according to their scientific merit, and at the second stage according to their relevance to the institute's objectives as well as the nation's (the latter is reflected in the size of each institute's appropriations.)

Thus, peer review, even in its purest form, is far from a device for giving a blank check to nongovernment researchers. Its interest as an administrative mechanism lies in the fact that it combines the intrinsic criteria of the scientists with the extrinsic criteria of government agencies, yet in such a way that the two types of criteria remain distinct.

In addition to two-stage review, which is unique to NIH, two further types of peer review that are widespread in the federal government are single-stage review and mail review. Single-stage review is used by certain divisions of the NSF (3). The initial evaluation of proposals is done by NSF program directors, who make a preliminary ranking. Although advisory panels of outside experts exist for each NSF program, their role is confined mainly to a review of cases considered borderline by the program director. The outside experts do not assign priority scores, and the final assignment of priorities is left to the program director. Outside scientists are not without influence, however, in some NSF programs the influence of the panels is greater than that of the program director (4).

Mail review, which is also used in NSF as well as in other federal agencies, is the form of peer review that gives the greatest role to the program director. Project proposals are sent by mail to outside reviewers around the country, but the opinions of the reviews are not binding on the program director. Even in this form of peer review, however, the influence of the program directors is limited by the fact that all large projects are subject to the approval of the National Science Board (5).

Peer review relies heavily on the discretion, integrity, and good judgment of working scientists and agency staff. The opinions of reviewers are confidential (6). Accountability is maintained (at least in principle) through the review of funding decisions by agency superiors and through periodic oversight by congressional committees.

Peer review has its critics, however. The system has undergone recurrent attacks from several sources and is currently under fire once again. A few conservative members of the House of Representatives have recently attacked the confidentiality of peer review in NSF and have questioned the integrity of its program officers. For example, Representative R. E. Bauman of Maryland denounced the peer review system in bitter terms on the floor of the House (7):

"I suggest that there is a need for revision of the basic system by which . . . research grants are made. They are handed out in an unregulated and secretive manner known as the "peer review system." This system allows cronies to get together and finance their pet projects, where grant application writing has become an art and where many people are not devoting themselves to basic research needs but rather to feathering their own needs."

Another congressman, Representative John Conlan of Arizona, has charged that in some instances the peer review system has been deliberately tampered with by program officers of NSF. Specifically, Conlan stated that in two instances the comments of outside reviewers had been misrepresented by NSF program directors. Representative Conlan further objected to the secrecy which has traditionally shrouded the identity of outside reviewers and criticized the refusal of NSF officials to make their reviews public (8).

However, these congressmen are not the only figures in government who are skeptical about peer review. The Office of Management and Budget in 1973 issued a sharply worded critique of the peer review system in NIH (9). Criticism also comes from outside the government. Representatives of small liberal arts colleges have complained that the peer review system is biased in favor of the major graduate universities (10). Feminist groups have charged that peer review and advisory groups are heavily biased against women scientists (11). And, there are protests that peer review groups, in choosing new members, discriminate against younger scientists (12).

Despite the dark suspicions of congressional critics, we should begin by noting that integrity is not the main issue; it is most unlikely that the integrity of external advisers and agency staff will be found wanting. In NIH study sections, for example, great care is taken to avoid conflicts of interest. Grant applications of study section members are never assessed by the section to which the applicant belongs. Study section members who belong to the same institution as the applicant whose proposal is under consideration are required to absent themselves during the debate and final vote (13). Recent statistical studies have shown that, in NSF, applications from top-ranked universities do not receive preferential treatment in the assignment of reviewers; no correlation exists between the rank of an applicant's department and that of the reviewer's (14).

What is at issue depends on the position of the critic. One can discern three principal preoccupations.

The first concerns the management of the peer review system, especially its integrity and its accountability to political authority. The second is directed at the principle which governs the choice of research proposals and of advisors—whether it should be that of merit, equity, or relevance to national goals. The third preoccupation focuses on the functions and limits of peer review. Under this category come questions as the extent to which new techniques of programming and evaluation, such as benefit-cost analysis, should be substituted for peer review and proposal pressure as policy-making instruments and whether peer review should serve chiefly as a one-way signaling mechanism from the scientific community to the funding agencies, or as a two-way channel that includes a feedback link for the communication of agency priorities to the scientific community.

These three concerns—over management, principles, and functions—are present simultaneously in the three most prominent criticisms of the peer review mechanism. They are: (i) that there is favoritism and discrimination in the selection of advisory committee members and in their behavior; (ii) that agency staffs play excessive or improper roles in the selection of research projects; and (iii) that the peer review system is not the most reliable way to coordinate federal funding of basic research with the political goals of the government. My principal purpose is to review the evidence on these issues and to determine, where possible, their impact on the progress of fundamental research.

BIAS IN STRUCTURE AND BEHAVIOR OF SCIENCE ADVISORY COMMITTEES

According to critics, members of external advisory committees are predominantly white, male, and more than 35 years of age, they are drawn disproportionately from prestige graduate universities, they discriminate against younger researchers and untried approaches, and they perpetuate these biases by their long terms of service and by their tendency to maintain an entrenched "old boy network" by nominating their personal acquaintances to succeed them.

Most of the critics share the premise that the selection of committee members and of research projects should be based primarily on professional achievement and scientific merit according to universalistic standards. Their principal concern is that biases in representation will lead to biases in evaluation of the "state of science" that is, of the intellectual opportunities facing the scientific community. Some critics, however, feel that to be representative in their advice, panel members must be representative in their socioeconomic characteristics. This is a popular viewpoint among reformers (15). However, it assumes that social characteristics or institutional affiliation influence the panel members' scientific judgment; and, as we shall see, this assumption is not easy to substantiate in the case of science advisory bodies for fundamental science.

Other critics are less concerned about scientific merit than about equity, defined as equality of funding among regions or as adequate representation for minority groups or less prestigious institutions. This is a more fundamental challenge, for it calls into question the concept of universalistic pro-

fessional standards on which the peer review system rests.

THE EVIDENCE ON REPRESENTATIVENESS

Membership on scientific advisory groups in the federal government is publicly available in most cases; the names, occupations, and addresses of nearly all the 20,000-odd individuals who advise the government in formal committees are published annually, as required by the Federal Advisory Committee Act of 1973 (16). In addition, the composition of NIH and NSF committees has long been made available in annual reports. Recently a major gap has been filled as a result of the decision of the National Science Board to make public the names of the approximately 35,000 reviewers throughout the country who advise NSF on project selection (17).

Unfortunately, this abundance of information has not yet been used for systematic studies of the characteristics of scientists serving on peer review committees. Published studies of other types of scientific advisers, if used with caution, can be used to gain an approximate idea of the characteristics of peer review groups. Since peer review groups tend to be more prestigious than most advisory committees but somewhat less so than policy-making advisory bodies, it seems reasonable to speculate that the characteristics of their members may fall somewhere between those of the two types of bodies.

The most thorough analysis now available of the social and professional characteristics of scientific advisers is contained in a study of the National Research Council (NRC) (12). The study reports that NRC advisers are an average of 10 years older than the population of scientific doctorate holders in the United States. While 50 percent of the advisers studied were more than 50 years old, only 3 percent were less than 35 (12, p. 53). The situation was similar in another agency investigated in the study; for the five senior advisory bodies of the Department of Defense the median age was 50 years (12, p. 54). The median age of NSF advisers in 1970 was also in the same range (47 years) (18).

National Research Council advisers were predominantly male. Whereas 7 percent of the holders of scientific doctorates in the United States in 1969 were women, 1 percent of the NRC advisers were female. Subsequent studies have shown that similar ratios prevail in NIH; in 1972 women accounted for 2 percent of the advisory body membership (11). This pattern is not universal, however, female scientists in NSF make up nearly 8 percent of the advisory group panels (19).

Certain regions were found to be better represented in the NRC than others, although the pattern varied with the importance of the advisory committee involved. For the NRC system as a whole, the South Atlantic region was the best represented (12). But on 35 policy-related committees the New England, Pacific, and Mid-Atlantic regions were dominant, while the South Atlantic trailed behind. The latter pattern is also characteristic of NSF panels; the New England, Pacific, and Mid-Atlantic states together, while employing about 50 percent of the nation's doctoral scientists and engineers (20), account for nearly two-thirds of NSF advisers (19). As for NSF reviewers, data for fiscal year 1974 show that California, Massachusetts, Maryland, and Washington, D.C., are represented considerably more than proportionately in relation to their populations of scientists (14).

Another charge is that advisory panels are dominated by representatives from prestige universities. Statistics for NSF and NIH do confirm that the top graduate institutions are heavily represented. All American Chemical Society (ACS) study of 11 NIH study sections in biochemistry showed that of 113 institutions represented, 32 contributed more than two-thirds of the advisers, and the eight institutions most heavily represented supplied nearly one-quarter of the advisers (21). In NSF the picture is similar, the 18 top institutions, which employed 9 percent of the nation's academic doctorate-holding scientists in 1971, contributed more than a third of the advisers (22).

In contrast, there is little evidence that the science advisory apparatus consists of a small number of individuals who spend long years on one committee or rotate from one committee to another. The ACS study of NIH biochemistry study sections found that only seven out of 366 advisers from 1964 to 1973 served twice. This appears to be in part the result of deliberate policy, for NIH's practice is to make no immediate reappointments to its study sections. Similarly, a study of science advisers to the U.S. Public Health Service (which included NIH study sections at the time of the study) showed that over the period from 1957 to 1964 fewer than 15 percent of the advisers served two full terms and fewer than 20 percent served more than one full term. The median seniority of Public Health Service advisers was a little more than 1 year during the period covered by the study (23).

If periods of service are so short, then recruitment must be very large. The study of the Public Health Service concluded that the intake of its panels would eventually include one out of every two active biomedical researchers in the United States. The ACS study of NIH biochemistry panels, which used a different approach, came to a similar conclusion.

In contrast to the rank and file of science advisers, there is evidence that the consistently influential advisers that serve the most important committees come from a smaller pool of individuals and rise in the science advisory hierarchy over a period of several years (23). Nevertheless, the dominant picture is one of great mobility among science advisers, which is consistent both with the extraordinary fluidity of the active research population in the American scientific community and with the high turnover rates in the professional staffs of science-funding agencies.

To sum up the evidence I have reviewed so far, the available studies confirm that the membership of science advisory committees does not strictly reflect the composition of the doctorate-holding scientific community, at least in some overall social and institutional features. The next question is what to make of this point.

First, there may be more appropriate criteria by which to judge representativeness. For example, although the prestige universities may appear to be overrepresented in comparison to the number of Ph.D.'s they employ, they seem underrepresented when one looks at the number of Ph.D.'s they train since the top 20 doctorate-granting institutions account for more than two-thirds of the output of doctorate-holding scientists.

Defenders of the peer review system assert that the selection of peer reviewers mirrors scholarly achievement. There is some evidence for this; according to a recent statement by Deputy Director of NSF Richard Atkinson, the distribution of NSF reviewers by state approximates the geographical distribution of scholarly publications. By that measure, the only overrepresented states are New York and the District of Columbia, and in the latter case the explanation is that many NSF proposals are reviewed by officials of other federal agencies, so as to ensure coordination (14, p. 11, figure 3).

A better indicator of merit would be the impact of research publications on the scientific community. Sociologist Hagstrom of the University of Wisconsin, by counting the frequency with which the publications of scientists from prestige institutions are cited, has concluded that the impact of those institutions is roughly in line with their representation on science advisory committees in Washington (24).

Most important, the representativeness of committee membership is significant only if we accept the premise of the advocates of representative reviewship that skewed membership leads to a skewed pattern of awards. I now turn to the evidence on distribution of research awards among institutions and among individuals in order to determine whether it is true.

PATTERNS OF AWARDS

Raw data on patterns of funding indicate a strong advantage for prestige institutions. In NIH, according to a recent memorandum by the Office of Management and Budget, applicants from ten institutions accounted for 46 percent of all grant funds in 1971, and their share then was greater than it had been 5 years before (9, p. 9). Similar patterns prevail in NSF. In 1974, research grant awards to the top 20 institutions represent one-third of total NSF obligations for all programs (24, p. 15). In the field of chemistry alone, according to an in-house study, the top 20 departments, employing 18 percent of the country's graduate chemistry faculty, received 49 percent of the NSF chemistry awards in 1973, an increase of 5 percent over 1972 figures (25). Moreover, the success rate of the top 20 departments was 53 percent, compared to 30 percent for all other departments (26).

However, the issue of concentration in funding is more complicated than it appears at first glance. For example, concentration does not always work to the advantage of the prestige institutions. A study of the allocation of NSF project grants in metallurgy and materials research shows that they are clustered among the middle-ranked institutions rather than the top-ranked ones (27, 28). In addition, the more significant pattern of concentration may not be among institutions, but within them. Several studies have found that when one takes into account the size of each institution, and particularly the number of faculty members capable of performing or supervisor graduate-level research, the funding distribution among institutions becomes more nearly uniform. Thus, on a per capita basis, most of the inequality is among faculty within a single department. Whether the department is rated high or low, approximately 70 percent of the outside funding is received by the more productive half of the faculty, the half which receives more than 90 percent of the citations in the scientific literature (29).

A related issue is the extent to which concentration increases in times of budgetary crisis. Critics complain that in hard times the representatives of prestige institutions act to protect their own. Data from NIH provide some evidence on this point: from 1967 to 1970, when the purchasing power of NIH funding declined sharply, the number of institutions funded declined from 330 to 227 (30). However, during a similar period (1966 to 1972) the total pool of NIH grant recipients declined much less—from 10,250 to 8,150 (31). The implication is that the concentration of NIH funding in the prestige institutions, even when reckoned on a per capita basis, increased during this period, a point which receives confirmation from Office of Management and Budget data (9). Since the early 1970's the number of institutions funded by NIH has expanded again, although much of the increase is due to the new prosperity of the National Cancer Institute (NCI). In 1974 alone the NCI allocated its funds among 367 institutions (32).

In times of reduced funding, how new proposals and younger researchers fare in comparison with scientists applying for renewals is of interest. At first glance, hard times seem harder for the research seek-

ing his first grant. From 1967 to 1970 the share of NIH research grants awarded to new projects declined from 23 percent to 16 percent (33). Since that time the downward trend in the percentage of NIH grants awarded to new applicants has continued for all NIH institutes except the NCI and the National Heart and Lung Institute (34). Particularly in the NCI the increased flow of money since 1971 has had a dramatically different effect. Despite the enormous influx of new-project applications (proposals to NCI now account for roughly half of all applications to NIH), the success rate of new principal investigators (that is, the ratio of awards to applications) has risen from 30 percent in 1970 to 54 percent in 1974 (34, p. 479).

Even in bad times, however, younger researchers among the new applicants have not been neglected. For NIH as a whole in 1971, applications of young scientists (age 36 and less) for traditional project grants were approved (that is, recommended by the study sections) at a higher rate than those of older scientists (34, p. 48). Funding data for 1972 and 1973 for NCI give the same picture (31, pp. 240 and 241).

Of those investigators 35 years of age and under applying for research support, 52% were funded . . . in fiscal year 1972, and 35% were funded . . . in fiscal year 1973. Of those applicants older than 35, only 32% were funded . . . in 1972 and 25% . . . in 1973.

A similar pattern has been observed in internal studies of NSF, funding of younger investigators (35).

Once again, we must question the meaning of these data and then ask whether the observed pattern of awards is unfair or inefficient. For those who value equity over scientific merit, the existing pattern is discriminatory. However, for those whose principal concern is scientific merit, the key question is whether the existing distribution of awards is out of line with the distribution of scientific quality in the country's research institutions. In order to find the answer some reasonable indicator of the quality of research is required (36).

One possibility is the response of the scientific community itself to the present pattern of awards, for presumably researchers are good judges of whether NSF and NIH are funding the best science. Until recently most researchers gave the appearance of being satisfied. But this was primarily because, until the late 1960's, most worthy proposals could find support from one federal agency or another. Unsuccessful applicants usually recast their proposals in response to reviewers' comments and tried again. In NSF, for example, the number of rejections was never so great as to warrant a separate review and appeals procedure. In recent years, however, funding for fundamental research has dropped and the number of funding sources has declined. More and more front-rank scientists find themselves the unhappy recipients of "declination" notices from NIH and NSF. The two agencies are now faced with mounting protests from these disgruntled applicants. Consequently, in order to justify the pattern of funding produced by the peer review system, more objective indicators are necessary.

One measure that is attracting increasing attention is the rate at which scientific publications stemming from NSF and NIH grants are cited in the scholarly journals. Although subject to certain distortions, the citation rate does provide a rough indicator of the impact of a scientific work within the scientific community. This makes it possible to cross-check the judgment of peer review groups by comparing it to the reaction of the scientific community as a whole. A study by the Rand Corporation is enlightening (37). By surveying the 15-percentile fraction of NIH grants that produced the most heavily cited publications, the study showed that their greater merit was recognized from the beginning by NIH study sections, which awarded that fraction a significantly better priority score than they did to the remaining group. Figures on applications for renewal were also revealing: the most frequently cited researchers received a much higher priority score in applications for renewal than they had in their initial applications. These findings appear to indicate that peer review groups have a good capacity for recognizing potential in a research proposal, and for recognizing outstanding achievement when they see it (38).

The Office of Management and Budget's charge that NIH study sections deliberately approve more applications than can be funded in order to make a case for higher appropriations for the agency (9) can also be illuminated by these points. Their claim appears to be weakened by the fact that the average priority score awarded to new grant proposals by NIH study sections has remained much the same since 1967 (37). This suggests that the study sections are doing much as they have always done; what has changed is the amount of funding available to cover the proposals they approve.

The link between citation rates and peer review scores also provides a means for judging the claim that peer review groups award too much money to prestige institutions. For example, an internal study of NSF awards in chemistry shows a striking correlation between the distribution of citation rates and the allocation of NSF funds. Of NSF awards in chemistry, 80 to 85 percent go to departments whose faculty averaged more than 60 citations per author during the 5-year period ending in 1972; the top four or five departments, which received the lion's share of NSF grants, averaged around 400 citations per author (39). If one accepts the premise that citation rates reflect the quality and impact of research results rather than simply the visibility of their authors, then the charges of bias leveled at peer review groups lose much of their force.

On balance, however, these conclusions are still tentative. There has been too little research into the impact of the peer review system of funding patterns and on the quality of the resulting research. At this writing, several major studies are under way. It seems certain that, in view of the growing popularity of citation analysis and the controversy that surrounds the peer review system, the questions addressed in this article will soon be much better understood (24).

Up to this point we have concentrated exclusively on the use of outside scientists in the peer review system. However, in many programs and agencies professional staff officers play an important or even dominant role. Let us now examine their influence in peer review.

AGENCY STAFFS AS A FORCE IN PEER REVIEW

Program officers of funding agencies such as NIH and NSF play an important role in the evaluation of proposals. In several important respects the program officers are themselves the peers of the applicants for research funds: they are professional scientists with a background in research; they are often not career employees of their agencies; and their length of service is usually short (40).

However, program officers in many cases (the executive secretaries of NIH are an exception) are expected to further the program objectives of their agencies, and these do not necessarily coincide with those of the scientific community. Consequently, the program director may feel torn by competing criteria and he may find himself at odds with the external advisory committee attached to his program.

However, the potential for conflict varies, because the role of the program manager differs from agency to agency and from program to program. In comparison with that in NIH, the peer review process in most other agencies is less formal and sharp, and the influence of agency staff is generally greater.

The question of how much influence agency staff members have in the process of peer review is also relevant. Even where the influence of outside scientists is greater, as in NIH, agency staffers such as executive secretaries of study sections play an important, if discreet, role. In NIH, the staff of the Division of Research Grants has the power to rearrange study sections (2, p. 26). The executive secretary appoints the study section chairman and together they recommend replacements for panel members (41). When applications first reach the NIH Division of Research Grants, it is an executive secretary, temporarily acting as referral officer, who decides to which institute to assign the application (42)—a crucial decision since institutes differ widely in the number of approved projects they can fund. Executive secretaries in NIH decide which study section members shall have primary responsibility for reviewing a given proposal; in NSF the program director selects the reviewers for each proposal. During the processing of applications, the program officers of both agencies are the principal contacts between reviewers and applicants (43). In NIH the executive secretary acts as the link between the study section and the net stage of review by interpreting the decisions of the study sections to the advisory council of the institute. In NIH advisory councils it is the professional program manager who has the responsibility for recommending departures from the priority ranking established by the study sections whenever he deems a proposal especially relevant to the institute's mission (2, p. 28). Finally, the program directors of both NIH and NSF have final authority in funding decisions, although they will only very exceptionally make awards to proposals that have been disapproved by reviewers or panels.

Thus, even in the programs in which external peer review panels have the greatest sway, there appears to be the opportunity for the agency staff to influence the process of proposal evaluation by shaping the agenda, channeling the flow of information to and from the outside advisers, or actually altering or overriding their decisions. In NIH this influence is discreet and informal while in NSF it is usually more important than that of the external advisers. In both agencies the importance of the professional staff appears to be growing.

Of late, program officers find themselves increasingly involved in controversy. There are several reasons for this: funds are short and researchers are anxious; agency leaders are under pressure to pursue a wide array of social objectives; reformers call for openness in administrative procedures and for direct accountability to the public; and in mistrustful times the good faith of all administrators is under suspicion. As the chief points of contact between scientists and agency leaders, the program officers are caught in the middle.

Recent congressional attacks on program officers have focused mainly on their integrity. For example, Representative Conlan has charged (8, p. 4):

"It is common knowledge in the scientific community that NSF program managers can get whatever answer they want out of the peer review system to justify their decision to reject or fund a particular proposal. Since program managers soon learn, like college students, which professor is good for an easy "A" and which can be counted on for an almost certain "C" or "D," it's no trick to rig the system."

Such charges are extreme. The real issue, just as in the case of the external advisors, is not the program officers' integrity, but rather their accountability. According to the congressional critics, NSF section heads and division chiefs do not have time to give more than a cursory look at program officers' recommendation (8, p. 7), and reviewers' reports are not made public; therefore, in this view there is no effective mechanism to check up on the decisions of program officers. The issue of accountability arises also in NIH, since several institutes have shifted their emphasis from grants (which require the traditional two-stage peer review) to contracts, in which the major decisions are made by staff officers (44).

Critics in Congress propose to remedy the problem of accountability both by making reviewers' names and comments public and by making information available to Congress about individual research projects in advance of final approval (45).

Such remedies would make a major departure from the accepted administrative doctrine, which has evolved out of long experience in dealing with technical programs in government. Three points are central to the doctrine: (i) in the assessment of scientific merit, a certain degree of confidentiality is required in order to encourage candor on the part of reviewers and to guard against the danger of plagiarism; (ii) congressional oversight is best conducted after the fact, not before, and should be devoted to assessment of overall policy rather than detailed review of individual projects; and (iii) accountability is best achieved by focusing responsibility on visible and answerable superiors, not on their subordinates. The measures recently proposed in Congress would discourage candor or even participation by outside reviewers; they would involve congressmen directly in "legislative service" in support of scientists from their districts; and they would place the political spotlight directly on the program officers rather than on their policy-making superiors.

These dangers were clearly present in the minds of several members of the House Subcommittee on Science, Research, and Technology at congressional hearings on peer review this summer.

If the Conlan-Bauman proposals are not adopted—and it seems unlikely that they will be—the question is raised as to what reforms of the peer review system are needed. To answer this question it is necessary to look carefully at the purposes of the peer review system and its inherent limitations.

PURPOSES AND LIMITATION OF PEER REVIEW

Peer review and proposal pressure are signaling mechanisms for providing funding agencies with information about the possibilities of science. The decentralized systems of rewards and communications of the scientific community supply external advisory panels with the necessary knowledge and cues for appraising proposals and recommending new policies. Most important, the peer review system is based on the assumption that the flow of proposals to funding agencies will provide a reasonably accurate sampling of the universe of research opportunities arising in all fields of science. The objective of any reform should be to safeguard the accuracy of this signaling device.

Recent developments in the support of fundamental science may make this objective difficult to attain. The bulk of funding for basic research is now concentrated in four federal agencies, all of which are under growing pressure to promote "targeted" research programs. Such concentration creates new networks of communications and rewards alongside the traditional ones, altering the "market" mechanisms of the scientific community. There is the danger that proposal pressure, filtered through peer review, will no longer provide a reliable guide to the best science. An illustration of this problem is the remarkable flood of proposals to the NCI since 1971, or the recent surge of energy-related applications to NSF. In both cases researchers appear to be responding to the news of increased funding. The question is whether their response really matches the actual distribution of intellectual opportunities in science.

Distortions in the signal generated by the proposal pressure-peer review system can arise from four sources.

1) The structure and mechanism of the peer review system itself can distort the signals reaching the funding agency from the scientific community, thus producing a false impression of the intellectual opportunities available in each field (selective channeling).

2) The application of extrinsic criteria and funding constraints by agency staff, by encouraging some directions of research and neglecting others, may sharply affect the distribution and content of proposals submitted in the next time period (indirect feedback).

3) Agency staff may influence the generation of proposals through direct publicity, requests for proposals, seminars, and other. External advisors may carry back to their departments information on new funding priorities in Washington or informal lore on which proposals will be best received (direct feedback).

4) The practice of funding by project rather than by institution may cause a pattern of over response by researchers to short-term swings in agency priorities, because of the necessity of applying for new funding at frequent intervals.

Some observers of the peer review system, particularly in government, would say that these features of the peer review system are virtues, not defects. Items 2 through 4 above stimulate a fast response by the scientific community to national needs as they are perceived in Washington. Nevertheless, the signaling function of proposal pressure and peer review is vital. Without an accurate picture of the state of science, funding agencies run the risk of pouring public money into fields whose titles are politically appealing but which are not scentifically ripe for major advances, and of neglecting others in which gains might be made, but which appear esoteric or unintelligible to the layman.

Ways of limiting distortions in the signaling function must be found. One method is to move away from the traditional project grant and make greater use of funding by institution, thus leaving project selection to local institutional management as is currently done in national laboratories and coherent area programs. Funding takes the form of subvention for the institution as a whole, or a particular research center or broad field within an institution, and leaves allocation of resources as a responsibility of the local management, to be justified only after the fact. High scientific merit is maintained through the use of outside visiting committees, overseeing corporations, or various kinds of internal peer review. Institutional funding is already widely used in programs that require an interdisciplinary, well-coordinated approach.

An institutional approach helps to reduce several of the sources of distortion discussed above. It reduces the risks bearing on the individual researcher. When project grants are the sole source of research funds, the funding of a particular proposal nearly becomes a life and death decision for the career of a scentist or the survival of a department. This exacerbates the sensitivity of researchers to news of changing priorities in Washington (46). In addition, funding by institution clearly separates decisions on the political relevance of a field of research from those on the scientific merit of individual proposals.

However, many of the institutional funding mechanisms currently in use have been criticized by the scientific community. Many scientists argue that in national centers and area programs scientific merit is not as carefully scrutinized as in universities. An example is the National Center for Atmospheric Research (NCAR), which is funded as a unit by NSF. Until 1973 NCAR scientists were given wide latitude in their selection and execution of research proposals. Peer review took the form of general supervision by a University Consortium. According to a recent evaluation of NCAR, however, the results of this approach were disappointing (47). Scientists at the NCAR had few publications to their credit in proportion to the support provided to them, their research was not interdisciplinary as had been advertised in justifications of the NCAR approach; and the work and the quality of its personnel were not as highly regarded among atmospheric scientists as should have been expected, given the amount of funding and of logistic support. According to critics, one of the reasons for the undistinguished performance of the NCAR was a lack of close supervision by the managing consortium.

Another example of the mixed results of funding by institution is the center-grant program of NIH. Research funds in such centers are allocated at the local level. However, critics charge that this system produces "peer reviews at home rather than peer review at a distance," which carries the potential for conflicts of interest and personality (13). Similar problems plagued the NCI in the management of its Cancer Chemotherapy National Service Center in the early 1960's (42, p. 206).

Thus, while institutional funding may be the answer for certain large and closely coordinated programs, it will not necessarily enable funding agencies to obtain a reliable sampling of the best research opportunities. For most types of fundamental research the traditional project grant, selected by peer review, with overall priority among fields and subfields determined at least in part by proposal pressure, appears to provide the best available guarantee of scientific merit and accurate information. It is important, however, to extend existing safeguards: to choose advisors and agency staff who are representative of the best science; to limit their terms of service; to separate as much as possible the evaluation of scientific merit from that of funding so as to reduce the dependence of researchers on the priorities or biases of any one agency or congressional committee; and finally, to subject the entire system to periodic review and criticism. Given the present—admittedly tentative—state of our knowledge about the impact of the traditional peer review system, there is not a convincing case that the system's defects warrant the risk of sacrificing its virtues.

REFERENCES AND NOTES

1. Most project proposals come from an individual "principal investigator," who represents a small group of junior colleagues and collaborators, including graduate students. The advantage of this system is that it focuses scientific accountability, the "principal investigator" serves as the channel of responsibility between the project team and the sponsor.

2. J. G. Wirt, A. J. Lieberman, R. E. Levien, *R & D Management: Methods Used by Federal Agencies* (Rand Corporation R-1156-HEW, January 1974).

3. For background information on the various types of proposal review, see Wirt *et al* (2). Specific details on the roles of program directors, advisory panels, and outside reviewers in each NSF program may be found in *Peer Review and Proposal Evaluation: Staff Study* (National Science Foundation, Washington, D.C., June 1975).

4. An interesting question for future in-

vestigation is the mechanism of the distribution of power between the program director and his advisory panel. In some cases, it may be a matter of tradition; in other cases, power is wrested from the advisory panels by the section head. For example, before 1966 the advisory panel for chemistry is said to have played a very influential part in NSF chemistry awards. With the arrival of a new section head, however, the panel's powers were sharply reduced. It is interesting to speculate, incidentally, on the connection this fact may have with the remarkable subsequent stability of the chemistry section staff. Turnover among program directors could conceivably be inversely related to the power they enjoy.

5. Projects involving more than $500,000 during the first year or more than $1,000,000 over the lifetime of the project must be approved by the National Science Board (NSB). However, the NSB rarely rejects a basic research project after it has received a favorable recommendation from the NSF staff; such rejections, when they occur, are based on considerations of policy, not of scientific merit. By contrast, the NSB has never succeeded in reinstating any project rejected by the top level staff of NSF, even though the project may have been energetically recommended by the program officers at the disciplinary level.

6. Paraphrases of the opinions of reviewer may be made available to applicants upon request. The NSB is considering whether to release the names of reviewers under some circumstances.

7. *Congressional Record*, 24 June 1975, p. 20553.

8. Statement by Representative John B. Conlan (R-Ariz.) before the Subcommittee on Science, Research, and Technology of the U.S. House Committee on Science and Technology, 22 July 1975.

9. Office of Management and Budget, *Drug Research Reports*, 16 (No. 22), 4 (1973).

10. See for example, the statement by J. L. Powell, Provost of Oberlin College, before the Subcommittee on Science, Research, and Technology of the House Committee on Science and Technology, 24 July 1975.

11. D. Shapley, *Science* 175, 1090 (1972).

12. Charges such as these led to the formation by the National Academy of Sciences of a Committee on the utilization of Young Scientists and Engineers in Advisory Services to Government. See the report of the Committee. *The Science Committee* (National Academy of Sciences, Washington, D.C., 1972).

13. N. Wade, *Science* 179, 158 (1973).

14. Statement by R. C. Atkinson, Deputy Director, NSF, before the Subcommittee on Science, Research, and Technology of the House Committee on Science and Technology, 23 July 1975.

15. For a review of the issue of representative bureaucracy, see C. Mosher, *Democracy and the Public Service* (Oxford Univ. Press, New York, 1968); K. J. Meir, *Am. Political Sci. Rev.* 69, 526 (1975).

16. Public Law 92-463. A crucial exception to the coverage of the act is the many advisory committees of the National Academy of Sciences—National Research Council, which account for nearly half of the total number of advisory committees in the federal government.

17. *Science & Government Report* 5 (No. 13), 8 (1975).

18. The median age of NSF advisers has undergone some interesting changes over the last 20 years. From 51 years in 1954, it dropped to 44 in 1966, and rose again to 47 years in 1970. (These data are drawn from a forthcoming study by N. Mullins et al. at Indiana University. I thank Professor Mullins for making some of his findings available to me.)

19. National Science Foundation, *NSF Management Statistics* (prepared by the NSF Administration Directorate, July 1975), p. 19. It should be observed that the apparent sex bias is no doubt a reflection of the age bias. That the percentage of Ph.D.'s awarded to women has been increasing in scientists would reflect the sex discrimination of graduate education 20 or 30 years ago.

20. NSF Administration Directorate, *An Analysis of the Geographical Distribution of NSF Awards as Compared with Other Selected Indicators* (National Science Foundation, Washington, D.C., 1975), p. 1.

21. Findings of the Public Policy Committee, Division of Biological Chemistry, American Chemical Society. I thank E. W. Westhead, professor of biochemistry at the University of Massachusetts (Amherst), for a summary of the committee's data.

22. Preliminary results of a study of the NSF advisory system by N. C. Mullins, *Social Stud. Sci.* (1 July 1975).

23. N. C. Mullins, *Sci. Stud.* 2, 7 (1972).

24. Hagstrom's work is described in N. Wade, *Science* 188, 429 (1975). It is conceivable, however, that this finding would not hold for peer review panels; since the latter are highly prestigious, they may draw more than proportionately from prestige institutions.

25. Data presented by NSF to the Committee on Science and Public Policy of the National Academy of Sciences, cited with permission.

26. Atkinson (14, pp. 13, 23). The success rate is defined as the ratio of successful applications to total applications.

27. D. Kuhlmann-Wilsdorf, University of Virginia, before the Subcommittee on Science, Research, and Technology of the House Committee on Science and Technology, Washington, D.C., 29 July 1975.

28. Kuhlmann-Wilsdorf's statement has aroused considerable controversy, which is discussed in D. Shapley, *Science* 189, 622 (1975). The explanation may be that metallurgy-materials research in the prestigious institutions is generously supported through the Materials Research Laboratory program, which is block-funded.

29. Kuhlmann-Wilsdorf (27, p. 607). Similar conclusions were reached by the Westheimer Panel in the mid-1960's. See National Academy of Sciences—National Research Council, Committee for the Survey of Chemistry, *Chemistry: Opportunities and Needs* (National Academy of Sciences, Washington, D.C., 1965).

30. T. J. Kennedy, Jr., J. F. Sherman, R. W. Lamont-Havers.

31. C. D. Douglass and J. C. James, *Science* 181, 241 (1973).

32. F. J. Rauscher, Jr., *ibid.* 189, 115 (1975).

33. Kennedy *et al.* (*30*, p. 604). In NSF the percentage of funds awarded to new proposals has averaged about 10 percent in recent years. NSF memorandum, *Selection of Physics Research Proposals for NSF Support.*

34. Data drawn J. T. Kalberer, Jr., *Cancer Res.* 35, 473 (1975).

35. The NSF studies were performed under C. Falk at the behest of the NSB.

36. In practice, the various categories are not as neat as I have painted them here. The NSF, for example, applies several criteria such as scientific merit primarily and geographic and disciplinary distribution secondarily. As Deputy Atkinson explained in a recent statement, NSF program officers have no set formula for weighing the merit and equity criteria; rather, when choosing between two proposals of roughly equal merit, they decide to a large extent on the basis of geography. But as Atkinson stressed, it is done largely "by intuition" (14).

37. G. M. Carter, *Peer-Review, Citations, and Biomedical Research Policy: NIH Grants to Medical School Faculty* (Rand Corporation, R-1583-HEW, December 1974).

38. Evidence in the same direction comes from D. Kuhlmann-Wilsdorf's study. For NSF as a whole, she found a close relation between the size of the NSF grant and the rate at which the applicants' overall work was cited (27, p. 7).

39. NSF report to National Academy of Sciences, Committee on Science and Public Policy, 1972. Cited with permission of K. Wilson.

40. To document this point it is instructive to compare the rosters of program officers listed in NSF's Annual Report for 1969 and 1974. Although reorganizations and expansions of disciplinary categories occasionally make comparison difficult, the overall picture that emerges is one of remarkable movement. Sections such as physics, atmospheric sciences, and oceanography underwent almost complete turnover. In fact, the only major research section for which the program officers in 1974 were the same as in 1969 was chemistry.

41. Wirt *et al.* (*2*, p. 60). On the other hand, in NSF all external advisors are appointed by the director.

42. U.S. Office of Science and Technology, *Biomedical Science and its Administration: A Study of the National Institutes of Health* (Government Printing Office, Washington, D.C., 1965), p. 193.

43. G. N. Eaves, *Fed Proc.* 31 (No. 1), 3 (1972).

44. The NCI, which was the leader in this trend, is beginning to reverse itself. Some programs that were funded by contracts will be funded via special cancer research emphasis grants.

45. Representative Conlan has introduced legislation (HR 9892) that would establish a "peer review office" in NSF, which would maintain a detailed record of applications, reviews, and final actions. See J. Walsh, *Science* 190, 253 (1975).

46. For interesting illustrations, see G. N. Eaves, *Fed. Proc.* 32 (5), 1541 (1973).

47. N. Wade, *Science* 182, 36 (1973).

48. This article is based on a survey of American policy on fundamental science conducted for the Joint Working Group on Science Policy under the U.S.–U.S.S.R. Agreement on Cooperation in Science and Technology. A similar survey of Soviet science policy is being conducted simultaneously by the U.S.S.R. Academy of Sciences. I thank H. Brooks, D. K. Price, and W. W. Lowrance for advice and comments.

JOINT ECONOMIC COMMITTEE NEW YORK HEARING

Mr. HUMPHREY. Mr. President, on November 11, 1975, the Joint Economic Committee held the second of a series of regional economic hearings. This one was in New York City. These regional hearings are an attempt to find out why we have not been meeting the goals established by the Employment Act of 1946.

In New York City the committee also examined the possibility of a default by the Nation's largest city and the impact of such an event on the regional and national economy. We received testimony from public officials, distinguished businessmen, union officials, economists, and private individuals.

Many of the witnesses who testified in New York expressed concern about the administration's policy toward New York City's financial crisis and the problems of other cities.

Mayor Beame testified at the hearing that:

This Administration apparently pursues an anti-New York, anti-large city policy. It publicly defends a local assistance policy which

aggravates the fiscal problems of local governments. It drags its heels on a housing policy which should be ten times as massive and aggressive if our nation's slums are to be eliminated. And most unwise of all, it consciously fostered an increase of unemployment as a way to combat inflation. It methodically kept interest rates high and sent the construction industry in many parts of the country into a depression.

This point was reinforced in the testimony of Albert Shanker, president of the United Federation of Teachers, who pointed out some of the problems New York City will face in its attempt to retain a solid tax base and maintain essential services:

If you take any of the estimates (regarding expenditure cuts New York City must make to get financial assistance)—the fact is that over a period of one and a half years the city will have to cut its services approximately in half. I submit to you that a city with half of its fire force, half of its educational system, half of its cultural institutions—that city is not going to get the tax revenues two years from now that it has today.

All of the witnesses drew attention to the fact that the recession has increased New York City's unemployment rate by about 70 percent in the last year alone. Citing statistics from the New York State Economic Development Agency, Mayor Abraham Beame, said:

New York City's 11.9% unemployment rate is expected to increase to 16% in the next 12 to 18 months.

Governor Carey added:

If unemployment in New York City alone were reduced by half, to an acceptable level of 6%, do you realize we would generate in terms of revenues on the present base over $800 million for the City, State and Federal coffers.

Mayor Beame and Governor Carey supported the findings of a recent study by the staff of the Joint Economic Committee entitled "New York City's Financial Crisis, an Evaluation of its Economic Impact and of Proposed Policy Solutions." This study noted that a New York City default could mean a loss of 100,000 jobs in the New York City metropolitan area in the next 2 years, and a nationwide loss of possibly 300,000 jobs in the next year alone. This study pointed out if default does occur, it will seriously impede economic recovery and this would increase the Federal deficit by as much as $4 billion.

Further testimony in New York City indicated that the employment policies being implemented in New York City are confusing and contradictory. Victor Gotbaum, executive director, American Federation of State, County and Municipal Employees testified that:

About 35,000 jobs have been cut out of the public service economy in the City of New York and 16,000 CETA workers are back on the job. These are new workers. So it means in terms of total overall progress, there are now 19,000 more people unemployed in the public service sector. Our members are bewildered . . . those working can't quite comprehend what sort of policy there is that consigns some people to a junk heap and brings in 16,000 others in the name of progress.

All of the witnesses agreed that the impact of a New York City default will not be confined to New York alone. Many suggested that default will lead to higher interest rates for other States and local govenments across the country, many of which are already experiencing financial difficulties. In fact, the mere prospect of default has already increased interest rates on the municipal bond market forcing many States and localities to withdraw their proposed issues of securities and bonds. C. Douglas Dillon, chairman of the U.S. Foreign Securities Corporation testified:

Because of the crisis (in New York City) interest rates on municipal securities of all types have risen. Because of it, various agencies of the state of New York can no longer market their securities in the normal fashion and are threatened with imminent default . . . default would increase pressures on the municipal market. It could even lead to the inability of New York State to roll over forthcoming maturities of its debt . . . There is also likely to be the tendency to shun all city issues because it will simply be too difficult for investors to distinguish among city borrowers.

Perhaps the most important aspect of our regional hearings is the discovery that the forces pushing New Yok City toward bankruptcy are at work in other large American cities.

Working people have been leaving the central city at a rapid rate; while, at the same time, there has been an inflow of the poor and unskilled to the cities. Between 1960 and 70, about 1 million working-class residents left New York City, while the same number of very low income people entered the city. The result has been a growing economic and racial gap between the cities and the suburbs.

The problems facing New York and other large cities are extremely serious and we desperately need more responsible policies from this administration. I commend the record of this hearing to any of my colleagues interested in reaching a better understanding of these problems and their implications for our entire Nation.

Mr. President, we received very valuable testimony from all of the witnesses at our hearing in New York. Unfortunately space does not allow inclusion of all the testimony in the RECORD. However, I would like to ask unanimous consent to have printed in the RECORD the full statements of Mayor Abraham Beame and Gov. Hugh Carey.

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

TESTIMONY BY MAYOR ABRAHAM D. BEAME

Senator Humphrey, members of the Joint Economic Committee:

Thank you for inviting me to testify on the problems of unemployment, especially as it exists in New York City.

This is a particularly important forum—especially for this City—because it cuts away much of the superficial speculation regarding the immediate financial crisis confronting us, and focuses on the root causes of the urban dilemma. I speak of the poor performance of the national economy since 1969.

National economic policies in the past six years can be summed up as an abdication by the central government of its responsibilities to all the people. Those policies discriminate unjustly against some segments of our society. Moreover, they foolishly jeopardize the well-being of the whole country.

This Administration apparently pursues an anti-New York, anti-large city policy. It publicly defends a local assistance policy which aggravates the fiscal problems of local governments. It drags its heels on a housing policy which should be ten times as massive and aggressive, if our nation's slums are to be eliminated.

And, most unwise of all, it consciously fostered an increase in unemployment as a way to combat inflation. It deliberately intensified the recession in a vain attempt to reduce prices. It methodically kept interest rates high and sent the construction industry in many parts of the country into a depression.

This is an Administration which experimented with the lives of millions of people only to prove the correctness of an economic model; a theory that prosperity would come for some, if all took a small dose of recession and hard times.

Well, it turned out to be a runaway experiment, whose bad effects were mostly felt in the nation's large cities. The national effort to increase unemployment, intensify recessionary trends and keep interest rates high especially hurt New York City, which is now highly vulnerable to national business downcycles.

Yet when we sought relief from the Federal governmnet from a condition which was greatly generated by national policies and actions, we were scolded publicly and made political targets.

We are witnessing the acting out of an incredible national policy of hostility towards the nation's urban centers. Cutting back assistance to urban centers is myopic, because it means local communities have to take up an increased tax burden or drop and reduce the services. Either choice means erosion and the urban economic base and acceleration of unemployment.

Day after day, the central cities of our nation are reaping the bitter fruits of a national housing policy which is failing miserably to stem the tides of spreading slums and housing abandonments. This unaggressive housing policy, you will recall, was preceded by a two-year moratorium on Federal housing subsidies imposed during the Nixon Administration.

That was a foolish policy which seriously depressed the construction industry and aggravated living conditions for millions of residents in our large cities.

We are also the unwilling victims of a stubborn Federal tight money policy. That policy was devastating. It was a knockout blow to the construction industry and added to the burden of hard-pressed local governments by driving up the cost of borrowing for capital projects.

It's interesting to note that Federal officials are now easing up on the money supply. There is speculation that the reason for such action is not because lower interest rates are needed to increase employment, but only because they will blunt the impact of a possible New York City default on the credit market and the financial community.

Implicity, the Federal Administration is acknowledging that the default, which they find desirable, will have wide national repercussions.

Finally, the whole nation is suffering from the Federal failure to cope with the national recession.

More than 13 months ago, when the newly inaugurated President was limiting his receptivity to ideas on how to "whip" inflation, my position was that Federal action was needed not only to check inflation, but also to check the recessionary trends—including unemployment—which were already quite obvious in our big cities.

And, herein lies the basic injustice against our cities in general, and New York City in particular.

The national economy, in terms of real rate of growth and employment, reached a

peak in 1969. From that year to 1972, the economy was characterized by an underperformance whose effects were largely felt in the cities. In 1972, a presidential election year, there was a slight surge. Since then, it's been all down hill for the nation, which experienced the worst economic setback the nation has seen since the Great Depression.

Let me tell you first what this has meant to New York City's government and then to the labor force in both the private and public sectors.

The long national slide from 1969 on meant an even sharper declining local economy, in terms of tax receipts related to fiscal potential. We have estimated that the tax levy revenue lost to New York City since 1969 because of the recession has been over $1.2 billion. In the last fiscal year alone, that loss is estimated at $400 million.

Those estimates are based upon a comparison of the tax levy growth rate between 1969 and 1975 with the corresponding growth rate, which was relatively even, between 1961 and 1969.

On the expenditure side, we estimate, by the same method, that the recession alone forced the City to increase its welfare contributions without Medicaid by $310 million since 1969, and of that sum, $40 million occurred in the last fiscal year alone.

The recession also forced the City to increase its Medicaid payments by $336 million since 1969, of which $46 million occurred in the last fiscal year.

All those figures show primarily the effects of the recession and do not include the impact of certain inflationary trends since 1969.

Therefore, in the face of mandated increases in costs caused by recession, inflation and unemployment, the budget cuts which I have been forced to make were in such remaining vital services of police, fire sanitation and education.

During that seven-year period, the City attempted to keep pace with the deepening recession by raising taxes. Despite that, we were swamped by increased shortfalls of revenues and added expenditures required to deal with the effects of the recession.

It is estimated that the accumulated revenue shortfalls and the added expenditure burdens between 1969 and 1975, attributable to the recession, total nearly $2 billion—more than $500 million of which occurred during this last fiscal year.

This accumulated $2 billion caused by the recession is a big chunk of our accumulated deficit over the years. I am convinced that if we did not have a business recession with its rising unemployment, New York City would be in relatively good financial state today.

Now, what does this mean to the labor force in our City?

Since January 1st of this year, I have reduced the payroll by some 35,000 full-time positions.

This alone represented an increase in the City's unemployment rate by more than a full percentage point.

When you consider that the spending of those families has been reduced and that the City has also had to reduce its purchases from vendors and contractors, there is a multiplier effect working here that has hurt the entire City economy.

In September of this year, the unemployment rate was 11.9%. Some 376,600 men and women willing and able to work, and looking for work, were unemployed.

In September of 1974, the rate was 7.3% (or) 228,600 persons were out of work.

So, in one year's time, the number of unemployed men and women in New York City increased by 65%.

Now, this is not a case of jobs leaving the City for the suburbs. The whole New York City area, which includes several New York suburban counties has been affected. The area's unemployment rate is 10.9%, compared with 6.6% in September of 1974.

And, similar statistics prevail in the consolidated New York area which includes several northeastern New Jersey counties. The unemployment rate for that area was 10.7%, compared with a 6.3% rate in the previous year.

What this means for the entire area is that 721,000 men and women are unemployed in the New York Metropolitan region.

What is significant about the statistics is that the unemployment rate has been a double-digit rate since January. And, there doesn't seem to be an end in sight to the increase in unemployment.

The State Economic Development Board recently reported that New York City's 11.9% unemployment rate would increase to 16% in the next 12 to 18 months.

That report said the number of newly unemployed persons would be between 145,000 and 165,000 in government and seven other fields—apparel, printing, construction, transportation, utilities, wholesale and retail trades, and finance, insurance and real estate.

Consider just the construction field alone which is in a real state of shock and depression.

In New York City, jobs in the construction field dropped from 107,600 in 1973 to 82,000 in 1975. These, incidentally, are all September figures for the year cited.

In Westchester, construction jobs dropped from 18,500 in 1973 to 13,200 in 1975. In Nassau and Suffolk, construction jobs dropped from 48,600 in 1973 to 34,100 in 1975.

These are massive drops, and I hate to say that the City government's fiscal problems will aggravate this condition even more.

As you know, the State Equalization Board recently came out with new equalization rates which forced me to rescind hundreds of millions of dollars of capital projects.

Recently, too, I was forced to eliminate another $390-million out of the capital budget as part of the Emergency Financial Control Board fiscal plan.

The shock of these cuts in capital projects to the construction industry must be measured in the light of the fact that the City had been providing roughly half of the construction work available in the City, with private business supplying the other half.

As a result of the City cutbacks, we have estimated that another 8,000 construction workers will be out of work, bringing construction employment down in the City to 74,000 jobs—a drop of 33,000 from 1973.

Over the long haul between 1969 and 1975, total jobs in New York City declined by 510,000, and virtually all of them can be attributed to the recession.

New York City is not alone in suffering from the Ford Administration's refusal to face the facts of recession.

The Detroit and Boston areas have unemployment rates of 13% or more. The Newark and Philadelphia areas are at 11%. The Atlanta, San Francisco, Los Angeles and Seattle areas have nearly 10% of their workforces unemployed.

Those are area figures including the suburbs and the unemployment rates in the central cities are higher, and in the ghetto areas, they are much higher.

Unemployment probably has more socially corrosive effects that any other condition in our lives. Long-term unemployment can demoralize a working man or woman, destroy the human spirit, loosen the bonds which keep a family together, and reduce that family to a state of dependency and humiliation which usually does not exist in other tragedies.

I cannot understand Federal officials who insist on pursuing policies which can only continue and increase the unemployment which exists now in the country.

One is moved to anger that the present national Administration has virtually "engineered" this recession, in order to vindicate its misguided position of fighting inflation.

The need for full employment is imperative now.

We must implement the social policy of full employment first stated in the Unemployment Act of 1946.

We support the bills introduced by you, Senator Humphrey, and co-sponsored by other Senators, that would establish a national machinery for guaranteeing full employment for any and all Americans able and willing to work.

Further, we cannot let local governments and especially New York City fall into bankruptcy, which will further aggravate the unemployment problem in this country.

A study prepared for the use of this Joint Economic Committee, notes that a New York City default would result in a further contraction of construction activity through the country, a loss of 100,000 jobs in New York City and a loss of 300,000 jobs throughout the country.

In order to prevent all that, we must avoid default.

In order to do that, we need Federal guarantees backing our bonds and notes.

This is the first order of business, if we are to keep unemployment throughout the country from rising. I know I can count on the support of the Chairman and several members of this Joint Economic Committee to see that New York City will get the loan guarantee it is seeking.

On a long-term basis, we need the implementation of full employment in this country. We need an easier money policy and lower interest rates. We need counter-cyclical revenue-sharing for local governments in times of recession. We need aggressive Federal housing programs to stimulate employment and rebuild our country. We need a massive Federal public works program. And, we need the Federal government's assumption of all local welfare and Medicaid costs, in order to relieve local governments and local taxpayers of a burden which rightfully belongs to the Federal government.

The people of the City of New York are becoming united behind these programs. What we need is to convince the people in the rest of the country that it is to their benefit to prevent New York City from collapsing, it is to their benefit to seek full employment, and it is to their benefit to push for a change in the national attitude toward the urban centers of our country.

TESTIMONY BY GOVERNOR HUGH L. CAREY

We meet today to discuss what government can do to achieve full employment in America. We realize that the right to find employment, to live in dignity and security has been denied to millions of Americans by economic policies of the Federal government over the last decade.

But before we can address that subject, we must face the national economic emergency which emanates from New York City. For unless the government of the United States acts to prevent the default and bankruptcy of New York City, there will be a vast and unnecessary addition to the already devastating numbers of unemployed in this city, this state, and the entire nation.

In protecting this nation from the consequences of default, the Federal government will be protecting the right of people to work—the right of teachers, firemen, nurses, laborers, policemen and workers in every part of the private sector.

Unless we obtain the guarantee of New York securities we seek—a guarantee which I must say again and again will not cost the taxpayers of this nation a cent—New York City will default and be in bankruptcy.

Nationally respected economists estimate that the private sector in New York City will

lose at least 15,000 and perhaps as many as 60,000 jobs as a result of the financial cuts and loss of public employment necessary to put New York City's finances in order.

Default and bankruptcy will cause countless thousands of private sector jobs elsewhere in the nation to disappear.

Jobs will be lost as businesses which depend on New York City cannot collect their bills. For example the New York Telephone Company estimates that it will lose from $40 million to $60 million in one year if the city defaults. Such losses in revenues and profits ultimately mean layoffs.

Then other corporations like New York Telephone in at least 22 states which do business with New York City.

Jobs will be lost as businesses which hold New York City paper for collateral on their loans are forced into foreclosure.

Jobs will be lost as businesses not willing to exist under federal occupancy leave the city.

We have to keep in mind that unemployment as a result of Federal policies is already nearly 12 percent in New York City—the city has lost 370,000 jobs since 1969 and 100,000 jobs in the last year alone.

If the Federal government were to begin honoring its obligations to this nation as enunciated in the Full Employment Act of 1946—if as a result, New York city's unemployment was cut only in half—to a mere 6 per cent—200,000 more people would have jobs, the city's economy would get a $1.3 billion shot in the arm and $350 million would be generated in additional city, state and federal taxes.

We have heard financial experts from coast to coast—including the Chairman of the Federal Reserve—tell us that default will harm our present economic recovery.

Respected economists, including staff members of this Committee have developed an estimate that default will reduce the growth rate of the Gross National Product by one per cent.

That means this nation will lose $14 billion dollars of new business, $4.5 billion in new taxes and a half a million jobs which would have been created.

A recent report by the Municipal Finance Officers Association shows us how the fear of default alone has already harmed the nations economy.

That report states that 107 municipal bond offerings from areas all across that nation either received no bids, were postponed or completely withdrawn from the market.

Those offerings totaled nearly $1.5 billion. That means that schools and hospitals and homes for the aged all across this nation have not been built. It means citizens all across this nation have been deprived of the services of those planned facilities. And it means that we have lost thousands and thousands of jobs.

Default is despair: It is disaster: It will mean devastation to the right of Americans to work and provide food and shelter to their families.

As the specter of default hangs over New York State we find nearly every determined effort we have made to initiate and retain jobs this year in a state of paralysis.

Because we cannot borrow, we cannot build. The most urgent problem is the severe danger of default by four major state agencies—The Housing Finance Agency, The Medical Care Facilities Financing Agency—The Dormitory Authority and the Environmental Facilities Corporation.

Those agencies' financial situations are sound. They have the unquestionable ability to pay their debt service. But because their securities bear the name "New York," there is no market for them.

Unless we can obtain the loan from the Federal Reserve, which we officially asked for last week, those agencies will default.

The first will be the Housing Finance Agency which has financed more than 800 projects worth more than 5.8 billion dollars over the past 15 years.

That may occur as early as this week if we do not obtain federal assistance.

These state agencies are stricken with the contagion, the crisis in financial confidence caused by New York City's problems. If they default, our state will stand dotted with $2.5 billion dollars worth of half-built classrooms, public and private hospitals, nursing homes, and housing for low-income families.

And more than 50,000 additional jobs will be lost.

Because local governments and the state of New York cannot borrow, the future of our $2.7 billion accelerated environmental public works program which will create 141,000 jobs in 50 counties is in jeopardy.

Because we cannot borrow, we cannot rebuild our railroads at this point. We cannot create the 7,500 jobs and $675 million in economic activity mandated by the passage of the Rail Preservation Bond Act which I signed this June.

I am here today to tell you that the difficulty Congress is having in passing measures to save New York City and this nation from financial disaster, the difficulty the President is having coming to grips with the real issues involved—these difficulties are symptoms of how New York and other major industrial cities and centers of the urban industrial belt are exposed to economic hardship by poorly planned federal policies.

Federal subsidies spurred the mechanization of agriculture in the South after World War II and recharged the greatest migration in the history of the world—the migration of poor rural farmers to the big cities.

But it became the cities responsibility to educate and reemploy the American migrants.

The Federal Government in its policies of tax deductions on home mortgage interests and in the billions of dollars poured into the federal highway network has benefited suburbia while ignoring urban renewal and urban mass transit.

When we examine exactly where the federal tax dollars collected from our nation's industrial centers go, we find they go most heavily to finance industrial development in the South and West.

In the last reported years, we find that the federal government extracted $7.4 billion more from New York State than it spent here for all purposes.

By contrast, California received $2 billion a year more than it paid to the federal government.

Virginia netted $1.3 billion and Texas received $1 billion more than it paid each year. The civilian industrial centers of the Northeast and Midwest have been financing the growth of the military bases and military industry elsewhere for more than 20 years.

In the past 10 years, New York State has lost 18,000 military personnel and 26,000 federal civilian jobs. While federal civilian employees increased by half a million between 1969 and 1974, New York State suffered a net decrease of 11,000 federal civilian jobs.

In 1958, New York State received only 8.2 percent of federal employment. Today it receives about 6 per cent.

When we examine what New York State has received from the Economic Development Administration since 1965, the picture becomes more clear.

We received 3.1 per cent of their economic development grants and loans; 2.7 per cent of their public works money; 4.4 per cent of their business development loans; 5.6 per cent of their technical assistance grants and only 2.8 per cent of their regional planning grants.

New York City and New York State share this common problem with many other cities and centers of America in the older industrial centers of the Northeast, Mid-Atlantic and Midwest.

New York City's population remained fairly constant from 1960 to 1973. But hundreds of thousands of middle class white and blue collar workers moved to the suburbs and hundreds of thousands of the less fortunate moved in.

From 1960 to 1973 Pittsburgh lost more than 20 per cent of its population; Boston lost more than 11 per cent; Chicago more than 10 per cent; Cleveland more than 22 per cent. The list goes on and on.

Yet cities in the south and west gained population. Jacksonville's population increased more than 159 per cent; Houston's more than 40 per cent and Phoenix's population grew 45 per cent and Los Angeles grew by nearly 11 per cent.

By contrast, in the northeast region, job opportunities in the 1960's grew 40 per cent more slowly than the national average. And by the 1970's, job opportunities in the northeast were growing 70 per cent more slowly than the national average.

These facts underline my overwhelming concern, not only for New York, but for its neighbors as well. The problems of our city and state today will be the problems of countless others tomorrow.

Today, New York City cannot borrow and it cannot rebuild itself. Because credit may be denied to many other American cities tomorrow, they will not be able to build.

We need to do more than prevent default of New York City. We need—as Senator Humphrey has said so often—we need a Marshall Plan for the cities of America—we need more than a survival plan—we need a plan to rebuild our cities—to rebuild their physical structures and their inner character.

Every day the industrial cities of America decay. Every day, people of means move out and people without means move in.

Every day business moves away. Every day industrial and commercial sites decline in value. The problems of the cities long ago emerged as the most pressing problems within this nation. They have been ignored too long by this Federal Government. We can no longer accept urban blight as a matter of course. We no longer can simply count our poor and unemployed. We can no longer simply quote studies and statistics about our dying cities. We must develop a national recovery program for our cities.

We must, on a national level, give our cities the breath of life they so desperately need. We don't expect more for our cities than for our suburbs and rural areas. We just want to be treated fairly and equally.

A Federal Economic Development Board committed to long range economic planning as proposed by Senators Hubert Humphrey and Jacob Javits this year could be one effective instrument to begin correcting the built-in economic injustices in urban industrial America.

That proposed national economic planning board is similar to the Economic Development Board I set up in New York State this year.

It is composed of talented individuals from labor and management from every area of the state, and staffed by a top calibre professional team.

The purpose of our Economic Development Board is to bring government, management and labor together to plan for our own economic rebuilding; to help business cut through unnecessary government red tape and to evaluate the economic impact of government programs in every region of our state.

Last weekend top officials of labor and management from every area of this state including members of the state's Economic Development Board held a conference in Buffalo to study the short range and long

range prospects for rebuilding the economy of New York State.

Labor and management agreed that the federal government should completely take over the welfare system, an arbitrary and unmanageable burden on the states. And they expressed equal concern about New York State taxes which are already the highest in the nation.

We have learned from our past that increased taxes drive business from our state.

Between 1965 and 1972, state taxes in New York increased 135.3 per cent—increased from 4.7 of the personal income in the state to 7.2 per cent.

During the same time more than 300,000 manufacturing jobs and more than a million people left our state.

But, this year there is a new and determined spirit of cooperation and understanding between business and government and labor in our state.

What this nation needs is for business and labor and government to come together—as they are in New York State—in the common purpose of making the right to a job a reality to every able and willing American.

In the Employment Act of 1946 and in the Universal Declaration of Human Rights in the United Nations in 1948, this nation set forth our principles of social and economic justice.

It is the law of the United States of America that every man and woman in this nation who is willing and able to work has a right to a job.

Yet, who is upholding that law? When it was passed, even two per cent unemployment was unacceptable.

In the past seven years, instead of designing programs to create jobs, the national administration of this nation has simply changed the definition of what it considers "acceptable" unemployment.

Eight per cent unemployment may be "acceptable" to President Ford, but it is certainly not acceptable to the eight million Americans who are out of work.

In the last seven years we have seen wheat deals and an increasing dependency on foreign oil; we have seen the tariff on energy and the one shot tax cut.

But we have not seen a commitment or a desire or a plan by this national administration to make full employment more than just a phrase in a speech.

We have a policy of welfare in this country instead of a policy of employment.

Unemployment in New York State is nearly 11 per cent. If we had federal policies and programs to reduce it to a mere 5 per cent, half a million more New Yorkers would have jobs; our state's economy would receive a $3.2 billion shot in the arm and $800 million in new state local and federal taxes would be generated.

We ended the great depression in this nation by innovative experimentation. We were not afraid to try programs and policies designed to put people to work. The lesson of the 1930's needs to be put into practice in the 1970's.

And, if the Federal Government remains unwilling to use all of its resources and energy to put the people of America back to work, then give the states the funds and the flexibility to try new and creative programs as well as old and proven programs of employment.

I recognize that achieving full employment while reckoning with inflation will not be easy. But just because it is a complex problem, that does not relieve the Federal Government from its responsibility to solve it.

Full employment is the best cure this nation can prescribe to its ailing cities.

Full employment is the best cure the Federal Government can prescribe for the recession of its economy and the depression of its people's confidence.

When our nation was founded, we called it the United States of America.

The test before Congress: the test before our national government in the last quarter of the 20th century is more than a test of economic responsibility.

It is a test of whether or not we will once again be a nation united in spirit, united in purpose and united in the related convictions that every American has a right to a job and our cities and industrial centers of this nation have the right to survive and thrive.

That challenge is to pass legislation to put the people of America back to work; that challenge is to standardize and nationalize our welfare program for people who cannot work; the challenge is to rebuild our cities, physically and spiritually; the challenge is to live up to all this nation ever hoped to be on its 200th anniversary.

CATHOLIC BISHOPS OFFER CONSTRUCTIVE HOUSING PROGRAM

Mr. HUMPHREY. Mr. President, no one will deny that we are presently facing an enormous housing crisis, affecting both producers and consumers of housing. At present, our rate of new housing is woefully inadequate—less than half of our national goal. Mortgage rates are sky high—often above 9 percent. Only 1 out of every 6 American families can afford the median-priced, new home and only 1 out of 5 families can afford the median-priced existing home. Almost 20 percent of our Nation's families are living in housing that is inadequate to their needs for one reason or another. It is a pretty sad story about Federal Government policy failures.

Yet, we have had no change in Federal policy to reverse this devastating course of events. We simply have a policy of business as usual which has turned our national goal of "a decent home in a suitable living environment for every American family" into an empty promise and a sham.

Despite this lack of governmental policy, there are several groups that recently have produced innovative and constructive programs for correcting many of our Nation's housing problems. One of these groups, the Catholic Bishops of the United States, has recently produced an extremely thoughtful document titled, "The Right to a Decent Home." This pamphlet details many of the developments that have weakened the country's commitment to our national housing goals, and offers many creative ideas for getting our housing industry back on the right track.

Mr. President, I would like to share the fine work of the Catholic Bishops with my colleagues. I highly recommend their pamphlet, "The Right to a Decent Home," to all of my colleagues and ask unanimous consent that it be printed in the RECORD.

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

THE RIGHT TO A DECENT HOME

A PASTORAL RESPONSE TO THE CRISIS IN HOUSING

I. Introduction

1. The United States is in the midst of a severe housing crisis. This is a broader, more pervasive and more complicated phenomenon than the customary photographs of urban slums and rural shacks indicate. It involves more people, more neighborhoods and communities than was thought to be the case even a few years ago. It touches millions of poor families who live in inhuman conditions, but it also involves many middle-income families whose ability to provide themselves with decent housing is being painfully tested. Rising costs of shelter, maintenance and utilities—as well as high interest rates and regressive property taxes—are forcing many families to live in inadequate housing or to do without other basic essentials. Other low- and middle-income families have been confined to neighborhoods without adequate services, minimal safety or necessary community life.

2. The dimensions of our housing crisis are apparent in the following statistics:

One of every five families in the United States suffers from serious housing deprivation. They either live in physically inadequate buildings, suffer from severe overcrowding, or spend an excessive proportion of their income for shelter.[1]

Housing costs have increased to the point that millions of families cannot obtain decent housing unless they deprive themselves of other essentials of life. Only 15% of American families can afford to purchase a median-priced new home.[2]

4.7 million housing units lack adequate plumbing facilities and 5 million families live in overcrowded housing.[3]

80% of those with incomes under $5,000 experience some form of housing inadequacy.[4]

Two-thirds of officially substandard housing is in rural areas and small towns.[5]

It is estimated that over 23.3 million new homes will be needed between 1970 and 1980, yet housing production for the first quarter of 1975 was at the lowest level since World War II.[6]

40% of our available housing stock is more than 30 years old and the accompanying deterioration and abandonment are threatening many neighborhoods.[7]

It is authoritatively estimated that 13.1 million American families suffer serious housing deprivation.[8]

3. Over 25 years ago, the United States Congress declared the housing policy of this country to be "a decent home in a suitable living environment for every American family."[9] This goal has not been achieved. The harsh and frustrating reality is that it certainly will not be achieved in the near future and may never be achieved at all. This means that millions of American families are condemned to live in poor housing or in unsuitable environments unless dramatic action is taken.

II. Housing: A Pastoral Imperative for the Church

4. In the face of this cruel and discouraging condition, we, the Bishops of the United States, cannot remain silent. The reality of this housing crisis provides a challenge to our country as we approach the Bicentennial. In the past 200 years our nation, with the abundant blessing of God, has overcome many other complex problems and has provided a standard of living previously unknown to the world.

5. We are not so naive as to believe that there are easy solutions to this crisis. The housing crisis is overwhelming. It touches facets of our economic, political and social life that are extremely complicated. Any attempt to solve these intricate problems can give rise to petty self-interest and alarming divisions. Addressing ourselves to our own people and to the whole country, we plead with all, in both the private and the public sector, to confront our housing crisis with the courage, conviction and talent that have brought about our greatest achievements in the past.

6. As preachers of the gospel, we proclaim

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the message of Jesus Christ who identifies Himself with the needs of the least of the brethren. The second great commandment is to love our neighbor. We cannot deny the crying needs for decent housing experienced by the least of the brethren in our society. Effective love of neighbor involves concern for his or her living conditions.

7. We begin with the recognition that decent housing is a right. Our Catholic tradition, eloquently expressed by Pope John XXIII [10] and Pope Paul VI,[11] insists that shelter is one of the basic rights of the human person. The Second Vatican Council has said with great directness: "There must be made available to all men everything necessary for leading a life truly human, such as food, clothing and shelter. . . ." [12]

8. As teachers, pastors and leaders, we have the responsibility to articulate the principles and values that govern the Church's concern for housing. We believe that each individual possesses an inherent dignity and priceless worth because he or she is created in the image and likeness of God. We also believe each person should have the opportunity to grow and develop his or her potential to the fullest extent possible. Human dignity and development are threatened whatever social and economic forces imprison or degrade people. We call on Catholics and all citizens to join us in working against these debilitating forces.

9. In particular, we take this opportunity to reflect on the consequences of poor housing. The physical and social environment play an important role in forming and influencing the lives of people. We cannot ignore the terrible impact of degrading and indecent living conditions on people's perception of themselves and their future. The protection of the human dignity of every person and the right to a decent home require both individual action and structural policies and practices.

10. Our faith teaches us that "the earth is the Lord's" (Psalm 24) and that wealth and private property are held in trust for others. We are trustees of God's creation, and as good stewards we are required to exercise that trust for the common good and benefit of our brothers and sisters.

11. The role of those who own land or other wealth is one of stewardship. While the Church has traditionally recognized the right to private property, that right is always subject to certain limitations. As the Second Vatican Council pointed out:

> God intended the earth and all that it contains for the use of every human being and people . . . Whatever the forms of ownership may be, as adapted to the legitimate institutions of people according to diverse and changeable circumstances, attention must be paid to the universal purpose for which created goods are meant. In using them, therefore, a man should regard his lawful possessions not merely as his own but also as common property in the sense that they should accrue to the benefit of not only himself but of others.[13]

12. This teaching is central to a discussion of the ethical and moral dimensions of the housing crisis. It imposes major responsibilities on those whose land and shelter resources or skills might help society guarantee the right to a decent home.

13. This concept of stewardship must be reflected in our concern and action on housing. It must be practiced not only by individuals, but also by institutions. The Church must give witness to this trusteeship in the use of its own property and resources. Just as individual property holders are bound by this principle, so it must be reflected in public policy at each level of government.

14. Our concern is not simply for houses or programs but for the people who inhabit these dwellings or are affected by these programs. These include families whose attempts to create a stable and wholesome family life are inhibited by inadequate living conditions; people and parish communities in neighborhoods without the housing services or community life which foster love and Christian service; the many elderly whose meager incomes are consumed by housing maintenance costs, utility bills and property taxes; and countless young families who lack the resources to acquire decent housing. The statistics we cite are not simply numbers or points on a graph; they are individual human tragedies. We are shocked by the pervasiveness and depth of our housing crisis and what this means for our country and our people.

III. National housing goal

15. We affirm the national housing goal first articulated in 1949: "a decent home and a suitable living environment for every American family." We believe this inclusive goal is in line with the values and principles we have already articulated, and is a suitable basis for national policy. We take this opportunity, however, to suggest two needed qualifications of this goal. First, decent housing must be within the means of each family. The cost of such a home or apartment should not deprive the family of other essentials. Secondly, our housing goal must allow families freedom of choice as to where they will live and whether they will rent or own their homes. Equal housing opportunity and the possibility of home ownership for those who desire it should be integral components of our national housing policy.

16. As we have already stated, this national goal is far from being realized. Even now, social and economic forces—and current housing policy—make its realization more and more difficult. We are faced with the cruel paradox of urgent and growing housing needs and the inability of our present system of housing production, delivery and financing to meet this challenge.

17. The achievement of this housing goal will require a reordering of priorities and a substantial increase in expenditures for housing and community development. A realistic appraisal of our housing needs indicates that the resolution of our present crisis will be expensive and difficult.

18. In many ways the housing crisis is an institutional one, reflecting the limitations of our political, economic and social institutions. Effective action for better housing will depend on a competent analysis and significant changes in the structures and policies that have helped create and maintain our current housing delivery system. Our present way of financing and building housing seems not to lend itself to the resolution of our problems. The traditional law of supply and demand has not proved adequate to the task of providing decent housing for all our people. The demand, as we have seen, is present and growing, yet the response is clearly inadequate, especially for low- and middle-income people.

19. The housing crisis is, of course, part of a larger pattern of neglect. It is intricately linked to other social and economic problems. In fact, poor housing is often cited as an index or symptom of general social deprivation. We do not undertake here as in-depth examination of the relationship between housing and employment, income, education, health, crime, discrimination, environment or transportation. However, we recognize that a lasting solution to our housing problems will require a comprehensive attack on a variety of social injustices. An essential dimension of comprehensive housing strategy is action on unemployment and inadequate income, which severely limit the ability of families to acquire decent housing. A comprehensive response to our shelter needs will include more than increased housing production and elimination of blight. This broader response requires a serious analysis of economic and tax policies, the treatment accorded neighborhoods and rural areas, the use of land and resources, as well as issues of environmental preservation and civil rights.

IV. Housing issues

20. Questions of housing and community development are extremely complex and often technical. They involve a variety of interests: private enterprise and government participation; maximum production and environmental and consumer protection needs; increased housing needs and tight budgetary restraints; public interest and private gain; as well as questions of equity and efficiency.

A. Housing and the Economy

21. The housing crisis and proposed solutions to it are often stated in economic terms. The present housing crisis itself is often attributed to the critical state of the economy in a period of inflation and recession. However, there has been a serious housing problem for at least the last 25 years, during which we have experienced unparalleled prosperity. Since the problem has persisted in both good and bad economic times, it is apparent that we cannot rely on economic recovery alone to meet our housing needs.

22. Nonetheless, it is obvious that current economic difficulties have greatly intensified housing problems. For example, during the recent recession, housing production has been approximately one-half of the annual need of over 2.3 million units.[14] At this level of production, almost no housing for the poor is being constructed. Recession, inflation and monetary policies have combined to leave the housing industry in a lamentable condition. The recent steep decline in housing production was the fifth and sharpest in the last 20 years. This situation is particularly ominous for low-income families and apartment dwellers since the production of multi-family developments is even lower. Recent economic projections show some signs of hope, but even the most optimistic forecasters predict a level of housing starts well below our requirement.

23. Another serious factor in our current difficulties is the devastating impact of inflation. Rising construction costs, high interest rates and increasing utility bills have combined to make decent housing an unrealizable goal for many families. Studies indicate that 85% of American families cannot afford to purchase the median-priced new home.[15] The price of that median home rose from $23,400 in 1970 to $39,900 in May of 1975.[16] An income of $21,170 is needed to support the median-priced *existing home*.[17] Declining production, shrinking real income and the tendency of builders to produce higher-priced homes have severely limited the number of new homes available to middle- and moderate-income families. Low-income people face even bleaker prospects. Their rents and utility costs are climbing, yet they have virtually no place to go.

24. Another important economic factor is the availability and cost of housing credit. High interest rates substantially increase the cost of housing and often lead to a downturn in housing production. For example, the increase in the cost of buying a $25,000 home at 10% interest rather than 6% is $19,800 over the life of a 25-year mortgage.[18] National monetary policy must insure an adequate supply of affordable credit for socially desirable purposes such as housing.

25. The number, intensity and durability of these economic downturns in housing point out the necessity for fresh approaches. More efficient use of land and materials must be sought through the use of attached dwellings,

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planned unit developments and other innovations.

26. The focus of the housing crisis is shifting from problems associated with the condition of the structure to problems associated with the cost of housing. It is not that the problem of substandard housing has been solved, although progress has been made. Rather, the impact of economic factors has become so great that they must now become the central focus of efforts to remedy our housing problems.

B. Neighborhoods

27. Housing conditions cannot be separated from the surrounding environment. City services, education, community cohesiveness, safety, government responsiveness, and taxation policies are critical factors in the creation and maintenance of decent housing.

28. In our view, the key element in the deteriorating urban environment is the decline of neighborhoods. In the past, the neighborhood has played a critical role in the lives of its residents. More recently, neighborhoods have lost some of their influence and importance. Centralized decision-making, suburban migration, deteriorating city services and the loss of ethnic identity have contributed to this decline and resulted in less responsibility for local concerns. A psychological and physical process of abandonment has set in, and fewer resources and people have been available to assist neighborhoods in combating blight and indifference.

29. Our cities are composites of smaller communities. Strong neighborhoods are the cornerstone of strong cities, and decent housing is a critical factor in the survival and viability of neighborhoods.

30. We applaud the renewed interest in neighborhoods by those who live in them and govern them. The neighborhood is the most logical basis for a positive housing policy. We hope that recognition of this fact will be translated into policies and provide neighborhoods with the tools and resources necessary to survive. The local parish has a critical role to play in the revitalization of neighborhoods. Effective use of revenue-sharing and community development funds can be a step in promoting neighborhood recovery.

C. Disinvestment

31. We are particularly concerned about the abundant evidence of "red-lining" or disinvestment. This is the practice by which financial institutions deny or restrict mortgage and home improvement loans in particular areas. This practice often becomes a self-fulfilling prophecy leading to the rapid decline of a neighborhood or community. Where it exists it must be condemned; discrimination based on geography is as destructive as other forms of discrimination. We must insure fair and equal access to available credit.

32. We urge banks and savings and loan associations to meet their responsibilities in central city areas. We commend financial institutions which have chosen to intensify programs of investment in these neighborhoods. We support the principle of disclosure of lending patterns. Savers and consumers are entitled to information about the lending practices and patterns of the institutions seeking their business. We also urge individual depositors and those responsible for Church funds to encourage a responsible and sensitive lending policy on the part of the financial institutions which they patronize.

D. Racial and Economic Segregation

33. There are disturbing signs of increased racial and economic segregation in urban areas. We deplore discrimination, still present in our society, against persons because of their race, economic status, sex, or religion. Such attitudes contradict the Christian belief in the equality and inherent dignity of all people and they must be opposed.

34. Central cities are increasingly becoming islands of economic hardship populated by the elderly, racial and ethnic minorities and the working poor. The eroding tax base of cities follows the trend of suburban migration. Exclusionary zoning continues as a major factor which limits housing opportunities for low and middle income families and minority persons in suburban areas. In addition to these economic hurdles, many persons still find their housing choice limited by discriminatory practices in the sale or rental of housing. Suburban communities must recognize and act on their responsibilities without utilizing improper zoning, overly rigid building codes, onerous referendum requirements, or other barriers to avoid contact with the less affluent.

35. Continued vigilance is necessary in the struggle to expand equal housing opportunity. We take this occasion to renew our support, expressed in 1966, for:

Sound programs to assure equal housing opportunities for all, without discrimination of race, creed or color. Here is a unique chance for responsible dialogue, for learning from successes and failures and thus constructing harmonious communities in every part of the nation.[19]

36. The uniqueness of neighborhoods and diversity of communities are healthy signs. We have a pastoral responsibility to respond creatively to questions of ethnicity and race. Positive ethnic identity, whether it be Black-American, Hispanic-American, Irish-American, Italian-American, or any other, recognizes the worth of the individual and respects his or her particular cultural heritage and lifestyle.

37. However, heightened awareness of ethnic background cannot be allowed to lead the exclusionary practices or intergroup competition. Rather, a healthy sense of cultural pluralism should lead to a greater ability to interact with neighbors of different backgrounds in a positive way.

38. The housing needs of racial minorities remain critical and the unfulfilled dream of open housing cannot be abandoned. An absence of racial discrimination is no longer enough. We must insist upon effective programs to remedy past injustice.

E. Rural Housing

39. The housing crisis is often thought of as a predominantly urban problem. This misconception has resulted in unfortunate consequences for rural people. According to 1970 Census figures, 30% of Americans live outside metropolitan areas; at the same time, over 60% of all overcrowded housing or units without plumbing are in rural areas and small towns.[20] The housing crisis is at least as severe in rural areas as in urban centers.

40. The housing delivery system is inadequate in many small towns and rural areas. Almost half of all rural counties have no public housing agency. In addition, many rural areas do not have sufficient construction or financial institutions which make private development feasible. While some progress has been made, disparities remain.

41. Economic factors also account for widespread housing deprivation in rural areas. The gap between housing costs and income is even wider in rural communities than in cities. Only one rural family in twenty can afford the median-priced newly constructed home. In recent years, one-third of all new housing units in rural areas have been mobile homes.

42. The simple fact is that neither rural people nor rural communities have the resources to solve their housing problems without outside assistance. It is clear that too often national housing policy has neglected rural areas.

F. Special Needs

43. Several groups in our society have particularly severe housing problems. The poor suffer disproportionately in this regard. They lack the income and economic resources to acquire and maintain adequate housing. Rising rents and utility costs, as well as a decline in the availability of low-cost housing, have intensified their problems. Four out of five families with incomes below $5,000 suffer some form of housing deprivation.[21]

44. Many elderly people have special housing problems resulting in part from their small fixed incomes, growing isolation, rising property taxes and housing maintenance costs. New approaches to housing maintenance and health care are needed to enable the elderly to remain in their own homes and communities. Present government housing programs for the elderly do not begin to meet the need. A recent survey of federal housing for the elderly revealed that, for every senior citizen in an apartment for the elderly, there is another on a waiting list for such an apartment. The average waiting time is over twenty months.[22]

45. Migrant farmworkers also suffer serious housing deficiencies. Their high mobility, low income and regular periods of unemployment seriously hamper their efforts to obtain decent shelter. The housing available in migrant farm labor camps is often deplorable, yet effective enforcement of housing standards is rare.

46. The high levels of poverty and unemployment among Native Americans in both rural and urban areas have seriously affected their ability to acquire good housing. On Indian reservations the problems are particularly severe. Two-thirds of the housing on reservations either lacks adequate plumbing or is overcrowded. Most lending institutions are reluctant to make loans to Native Americans whose reservation land is held in Federal trust. In addition, housing assistance is often caught in the bureaucratic maze surrounding the provision of services on Indian reservations.

47. People with physical handicaps often experience difficulty in obtaining suitable housing at a cost they can afford. The planning and construction of housing often restrict it to able-bodied people. Architectural barriers are often put in the way of handicapped in conventional housing as well as public buildings and accommodations.

48. Housing policy must be more sensitive to the needs of these particular groups, whose problems have too often been neglected or intensified by past housing practices.

G. Housing Stock

49. The existing housing stock of nearly 70 million units is perhaps the largest single component of our national wealth. According to the 1970 Census, 27.4 million of these units are more than 30 years old. We must act now to preserve and maintain this valuable resource or it will be abandoned and lost to us.

50. Too often older housing has been allowed to simply deteriorate. Conservation of existing housing must be encouraged by modifying tax and fiscal policies which penalize those who seek to maintain and rehabilitate existing housing. These approaches can help preserve part of our housing supply and prevent the destruction and large-scale displacement of people which marked earlier urban renewal efforts.

51. Rehabilitation and housing maintenance programs which are innovative, imaginative and economically feasible should be encouraged and implemented. The preservation of existing housing is an essential and economical approach to meeting our housing goal.

H. The Resource of Land

52. There is increasing awareness of the limitations of land and resources and the

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implications of these limitations on efforts to house our citizens. Since only a fixed amount of land is available and housing needs are growing, legitimate questions may be raised regarding the amount of land a person owns, the manner in which that land is used and regulation of land ownership by society.

53. The principle of stewardship discussed earlier has specific application to this question. As Pope Paul said in *Populorum Progressio:*

. . . Private property does not constitute for anyone an absolute and unconditional right. No one is justified in keeping for his exclusive use what he does not need, when others lack necessities. In a word, according to the traditional doctrine, as found in the Fathers of the Church, and the great theologians, "the right to property must never be exercised to the detriment of the common good." [23]

54. Land speculation is a particularly vexing problem. Where basic human rights are concerned, one person simply must not take an unreasonable gain at the expense of another. Huge increases in the cost of land, resulting in part from such speculation, seriously impair efforts to provide affordable housing to people of low- and moderate-income.

55. The demand for land to meet a variety of competing growth needs, such as urban expansion, highway and mineral development, parks and recreation, is forcing upon us difficult decisions with respect to the use and control of our land resources. These decisions can no longer be left to the private market alone to resolve. Since land use decisions are characteristically irreversible and hold consequences for the nation as a whole, they should be opened to some degree of public participation.

V. Government housing activity

56. The federal government has for decades exerted a major influence upon the production and consumption of housing. Its involvement in the housing field is intricate and tangled, including economic and taxation policies, regulation of mortgage financing, as well as provision of housing subsidies.

57. Since decent housing is a human right, its provision involves a public reponsibility. The magnitude of our housing crisis requires a massive commitment of resources and energy. Government must supplement and regulate the activities of private individuals and institutions in order to achieve our housing goals. A creative partnership of private enterprise and government is necessary. Public agencies have a particular responsibility to aid those in need as well as to oversee the development of a comprehensive housing and community development policy.

58. Fiscal and monetary policy has a dominant influence on housing. The rise and fall of inflation, employment and productivity are felt to a pronounced degree in the housing market. Monetary policy, the availability and rate of credit are likewise critical factors in the system of housing production and consumption.

59. Beyond these broad economic policies the federal government utilizes two basic approaches in housing: indirect subsidies to homeowners through the tax system and direct subsidies to producers and consumers of housing.

A. Indirect Action

60. Indirect housing subsidies through the tax system make up the largest share of federal housing activity. In 1972, federal housing expenditures and tax subsidies rose to a level of $15 billion of which only $2.5 billion went for direct housing subsidy programs. This indirect tax subsidy consists primarily of the deduction of mortgage interest and property taxes by homeowners. It is estimated that this deduction alone will cost $11.3 billion in 1976.

61. The higher a person's income, the more likely it is that he will be entitled to this kind of subsidy, and the higher the subsidy is likely to be.[24] In 1972, less than 5% of the taxpayers with incomes below $5,000 were entitled to this kind of subsidy, as against more than 80% of all taxpayers with incomes above $20,000.[25] This means:

Four out of five households with incomes over $20,000 received housing subsidies through the tax systems.

Only one out of 20 households with incomes below $5,000 received this form of housing subsidy.

In addition, it is estimated that in 1976: [26]

The 1% of the population with incomes over $50,000 will receive more than 10% of both direct and indirect housing subsidies (an estimated $1.4 billion in 1976).

The 14% of the population with incomes below $3,000 will receive less than 7% of either direct or indirect housing subsidies ($0.9 billion).

62. We do not quarrel with the objectives of these policies. The use of tax incentives to achieve desirable social goals (i.e., home ownership) can be appropriate, but it inevitably raises questions of equity which must be addressed through public policy.

B. Direct Housing Programs

63. Since the 1930s the federal government has used seven basic approaches to provide more direct forms of assistance to builders and consumers of housing.

1) Mortgage insurance, begun during the Great Depression, enabled millions of middle-income families to buy homes with long-term, low down payment mortgages.

2) Insurance of bank deposits and purchase of mortgages from private institutions—sometimes with a subsidy—have provided a flow of credit into housing and sustained construction during periods of tight money.

3) Low interest rates for rental and sales housing have been direct subsidy programs since 1958. Under these programs, the federal government can reduce interest costs, thus substantially lowering the monthly cost to the consumer.

4) Public housing is the oldest direct housing subsidy program. Begun in 1937, it provides for building, buying, or renting housing by local housing authorities. Over one million public housing units are occupied primarily by families with incomes below $4,000.

5) Block grants recently have been made available to assist local communities in their efforts to provide adequate community development.

6) Housing assistance payments to families and individuals are currently being tested as a new approach to the housing problems of low-income people.

7) Large-scale leasing of housing units is a relatively new and untested approach to assist low-income people in gaining decent housing.

64. The Department of Housing and Urban Development (HUD) is responsible for administering a variety of programs in metropolitan areas across the country. The Farmer's Home Administration serves rural areas with direct lending and other programs. In the past, many of these federal programs were designed to encourage the participation of non-profit housing development corporations. A large number of these have been established by religious organizations or community groups.

65. Currently, the federal government relies almost exclusively on its leased housing program to meet national housing needs. This is not enough. The housing crisis requires a variety of tools responsive to the many dimensions of housing need. No single program will be the answer. Programs which might be improved and used as effective vehicles for the production of housing should not be abandoned. The country needs a firm commitment by the federal government to meet our housing goal. The agencies charged with this duty must move forcefully and creatively to meet their responsibilities. Adequate funds and administrative staff must be made available to them. The free market, acting alone, cannot supply a sufficient quantity of low- and moderate-income housing to meet our needs. A new commitment of will and resources is needed if we are to make progress in providing "a decent home and suitable living environment" for all Americans.

C. Local and State Activity

66. Local governments control housing development through zoning and building codes and the provision of such community facilities as streets or roads, water, sewers, schools and health and recreation centers. Many communities with older housing also have housing codes which set basic standards for all existing housing.

67. Unfortunately, on some occasions these local controls have been used to exclude minorities and the less affluent from communities and to evade common responsibilities for housing and community development. On a more positive note, however, many communities have initiated housing rehabilitation and construction programs aimed at providing adequate housing at costs which low- and middle-income people can afford.

68. Recently, many state governments have set up housing finance agencies or departments of community affairs. They assist local communities with advice and resources, sometimes providing financial assistance and often using federal subsidy programs to help local groups.

69. These local and state efforts to provide greater housing opportunities for all our people are encouraging and should be expanded. We urge state and local governments to develop sensitive and responsible policies regarding land use and zoning disputes. We also hope local governments will use their new community development funds to assist the victims of housing deprivation.

VI. The role of the Catholic community

70. The Catholic community has a responsibility to act effectively to help meet the needs of those who lack adequate housing. We must confess that we have not done all we could. It is not enough for us to point to the reality of poor housing and recommend that government and other institutions take appropriate action. We must also reflect on our own responsibilities and opportunities for action. We call on individual Catholics, dioceses and parishes, as well as other Catholic organizations, to join us in a new commitment to those who suffer from poor housing.

71. The Church alone cannot provide a significant quantitative answer to the cries for better housing. This is not its specific role, nor does it have the financial and technical resources to build all the required homes. However, it is our responsibility to proclaim the Gospel of Jesus Christ and its implications for our society. We must analyze in a competent and critical manner the aspects of housing which pertain to social justice. We must point constantly to human rights—and human suffering—involved in this issue. We must apply Christian social teaching to the resolution of the problem. We must seek to have a qualitative impact on the problem of housing deprivation in our society by attempting to change the systems and the policies that result in housing deprivation. There seem to be five possible approaches for Church involvement in housing: awareness, advocacy, providing services, stewardship and community-building.

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A. Awareness

72. The first element of the Church's response is building awareness of the extent of the housing crisis and our participation in it. Christ's concern for those in need is an essential dimension of our faith. The Catholic community must remind itself and all others that indecent housing is a moral and ethical issue demanding a response.

73. We cannot be at peace with ourselves while so many of our brothers and sisters suffer from inadequate housing. We are often unconscious participants in the systems that result in poor housing. All of us, through our involvement in the community, can assist in the development of humane and just policies pertaining to shelter. We encourage individual Catholics to join and support organizations which have demonstrated a sincere and effective concern for better housing for all people.

74. Particular persons have particular responsibilities. Those who own rental property must maintain and manage it in a way that provides decent, sanitary and safe housing. Landlords must respect the human dignity and rights of tenants and observe the principles of justice in setting their rents. Tenants must cultivate a respect for property and their neighbors and meet their financial obligations. Those employed in the housing field should seek to encourage a sensitive response on the part of private industry, labor unions and government agencies.

75. We urge parishes and organizations within the Catholic community to undertake programs to promote understanding of housing problems and the role each of us might play in meeting those needs.

B. Advocacy

76. As an advocate, the Church should analyze housing needs in the light of the Gospel, make judgments and offer suggestions. On the national level, we should attempt to educate people regarding the demands of justice in the area of housing and suggest principles upon which proposals for change might be based. We should also involve ourselves in the ongoing dialogue over housing policy and underline the moral dimensions of the problem.

77. The United States Catholic Conference will continue to monitor and participate in the development of housing and community development policy. In line with the following principles we shall encourage governmental action that:

1) Affirms and advances the realization of the national housing policy of "a decent home and suitable living environment for all American families."

2) Provides a variety of programmatic tools and sufficient resources to meet the housing needs of low- and moderate-income families, including the continued participation of non-profit, community-based housing corporations.

3) Focuses programs and resources on the special needs of the following: low-income people, rural Americans, the elderly, farmworkers, Native Americans and the handicapped.

4) Adapts our housing delivery system to meet the economic realities of inflation, recession and unemployment.

5) Recognizes the central role of the neighborhood in the survival of viable urban areas by encouraging rehabilitation and reinvestment in central cities.

6) Encourages land use policies that provide for adequate planning and effective controls on unreasonable and wasteful development and speculation.

7) Encourages a monetary policy and credit allocation system that provides a sustained supply of affordable credit for housing production.

8) Encourages the integral participation of housing consumers and tenants in decisions regarding housing at local, regional and national levels.

9) Encourages equal housing opportunity, within a framework of cultural pluralisms, through voluntary compliance and, where necessary, legal remedies.

78. We applaud the involvement of the National Conference of Catholic Charities, the National Catholic Rural Life Conference and the Interreligious Coalition for Housing in this area. We hope to work in collaboration with them and other groups in advancing these principles.

79. The same responsibility for action exists on the local and regional levels. We encourage local and regional organizations to work with their people and political leaders to achieve these same ends.

80. The parish is the setting for perhaps the most important Catholic response to poor housing. With its roots deep in the community, the parish can play a critical advocacy role regarding the housing problems of its people. Working with individuals, community organizations and members of the private sector, it can harness its own resources and energies to combat decay, blight and indifference. Parish programs of rehabilitation and housing maintenance could be initiated. In addition, parishes can join with others to utilize government programs and monitor public and private efforts to alleviate poor housing.

81. Through education and involvement, the local church can help its people gain a wider measure of justice in the area of housing.

C. Providing Services

82. The Catholic Church in this country has a long tradition of providing services to those in need. Our concern must also extend to the shelter needs of people.

83. Many dioceses, Catholic Charities and parishes have already sponsored the development of housing for low-income people and the elderly or have initiated rehabilitation programs. Using federal programs, Catholic institutions and organizations have provided a substantial amount of housing for low- and middle-income people and for the elderly. A 1974 survey of 60 dioceses conducted by the National Housing and Human Development Alliance indicated that more than 25,000 units have been built under Catholic sponsorship in the past ten years. Over 20 congregations of religious men and women are involved in housing, with 2,600 units already constructed.

84. We strongly support these efforts and are deeply impressed by what has been achieved thus far. Given the compelling need for new housing, we believe there is an important role for non-profit developers willing to sponsor viable and creative housing where the private market is unable or unwilling to build.

85. This special "housing ministry" requires sensitivity and adequate technical expertise. Housing sponsorship inspired by Christian values should bring a qualitative difference to housing. The housing development motivated by Christian concern must reflect a lively awareness of human need and the dignity of the person in its treatment of tenants, in its relationship to the local community, in its planning, location and employment practices.

86. There are a variety of other social and human services relating to shelter. Housing management, education in tenant rights and responsibilities, financial and personal counseling, housing rehabilitation and maintenance assistance are other important and appropriate services provided by Catholic organizations and individuals.

87. Providers of housing services should endeavor to involve tenants and the local community in an integral way in housing management and the provision of services. Housing sponsorship and management under Church auspices should provide models for others. This housing ministry must be encouraged, for it offers us an opportunity to act on our principles and give witness of our concern for the poorly housed.

D. Stewardship

88. In proclaiming the principle of stewardship, we must take note of the fact that the Church is also an institution possessing land, economic and personnel resources. While speaking to other organizations about the promotion of human rights and social justice, the Church must examine its own conscience and actions to determine if its efforts and use of resources are just. In the 1971 Synod document, *Justice in the World*, the Bishops state:

While the Church is bound to give witness to justice, she recognizes that anyone who ventures to speak to people about justice must first be just in their eyes. Hence we must undertake an examination of the modes of acting and of the possessions and lifestyle found within the Church itself.[27]

89. In the particular area of housing, we might take an inventory of our property and real estate, reflect upon its utilization and examine how it might better be put at the service of those who lack adequate shelter. We might also consider how we could make better use of our economic and personnel resources to assist those who need housing. In addition, a review of our investment policies may indicate how we might better harness our economic resources to assist in resolving the housing crisis.

E. Community Building

90. The alienation and isolation in our communities are important components of the housing problem. This more subtle concern is central to the resolution of the housing crisis. The Church is called to reconcile people with God and with one another, to bring them into a community of mutual support and love. We have noted that the Church must identify with the needs and aspirations of the community it serves. The Church should encourage the development of community organizations, neighborhood institutions and programs concerned with housing. As Pope Paul VI pointed out in *A Call To Action:*

There is an urgent need to remake at the level of the street, of the neighborhood, the social fabric whereby man may be able to develop the needs of his personality. Centers of special interest and of culture must be created or developed at the community and parish levels with different forms of associations, recreational centers, and spiritual and community gatherings where the individual can escape from isolation and form anew fraternal relationships.[28]

91. It is important to recognize that historically neighborhoods often developed side by side with the growth of the local parish. If the neighborhood is the foundation stone of the city, it is obvious that the local parish plays a critical role in many neighborhoods. Often in rural areas and small towns a similar relationship exists between the local church and the community.

92. This fact imposes great responsibilities and provides important opportunities for the local church. With the encouragement of the local diocese, Catholic parishes in urban areas should seek out a creative pastoral role in the development of sound and healthy neighborhoods. In metropolitan and rural areas alike, parishes must develop a ministry of "community-building," helping to identify and resolve serious problems through education and participation in the life of the community. It should encourage its members to become informed and involved in community affairs and housing issues.

93. The parish itself should join with other

Footnotes at end of article.

community groups and churches to gain greater housing opportunities for all people. Traditionally, the Catholic parish has rendered a major service in meeting the educational needs of communities; it should now also attempt to meet other critical human need of a decent home and a suitable living environment.

VII. Conclusion

94. The dimensions of the crisis in housing seem overwhelming in the number of people and communities affected, the complexity of the problem, and the magnitude of the effort required to meet our housing needs. There is a temptation to feel discouraged in the face of this situation.

95. However, we do not address this crisis to emphasize the difficulty, but to issue a challenge. The greatest obstacle is apathy and indifference. We ask all those in our society—individuals, private enterprise, government, social and religious organizations—to reexamine what role they might play in eliminating poor housing in our nation. Responsibility for this problem has been passed from one segment of the community to another for too long. We pray that this statement will not further divide, but rather unite us in a common effort to meet our housing needs. For our part, we pledge to work with others in a renewed effort to promote awareness and action on the housing crisis. Shared responsibility, ecumenical coordination and cooperation with any group sharing our concern will mark our housing activities.

96. We are hopeful. We have faith in the basic values of people. We believe that once they understand the nature and extent of housing problems and their moral responsibility, they will respond with individual and collective action to meet housing needs. They believe, as we do, that every person has a right to a decent home in a decent environment.

97. Our hope flows from the core of the Gospel: new life springs from suffering and death. We believe our cities and rural areas can be resurrected and bloom again with renewed vitality and community life. As the prophet said:

"They shall rebuild the ancient ruins, the former wastes they shall raise up
And restore the ruined cities, desolate now for generations. (Isaiah 61,4).

98. Our Faith tells us that men and women are called by God to continue the work of creation, to fashion a better, more just society as we wait for the coming of the Kingdom of God. Effective action for decent housing is an essential dimension of this continuing creation.

99. This is a time for renewed dedication and action. Decent housing for all our people is a moral imperative. We pledge our support to those who carry out the demand of the traditional corporal work of mercy, "to shelter the homeless."

100. We are not suggesting a project or a program for this year or the next, nor are we calling for a reassertion of a public policy already declared, but never realized. What we are proposing is a long and determined effort, with all its frustrations, toward a better life for millions of Americans. This task is more than an element of a better society or an aspect of the common good; it is indispensable to the future health of America and its people.

101. In this undertaking, we summon our fellow Catholics and all who recognize this pressing concern to a task that calls for intelligence, resiliency and unremitting vigor. We will find allies in this work, and we must welcome them; we will find foes who think our dream utopian and unrealizeable, and we must persuade them. The one thing we cannot do is to acknowledge the immoral situation of indecent, inadequate housing and do nothing about it. We seek in this statement to initiate a fresh response to the unanswered pleas for help that come from the oppressed, neglected and forgotten. We pledge our continuing efforts as we set out on the long road that offers a lasting hope for decent shelter to this nation and its people.

References

[1] "America's Housing Needs: 1970 to 1980," Joint Center for Urban Studies of the Massachusetts Institute of Technology and Harvard University. (Cambridge, 1973), pp. 4–7.

[2] "Availability of Homes for Middle-Income Families," Congressional Research Service, Library of Congress. (Washington, 1975), p. 19.

[3] "General Housing Characteristics for the United States: 1970." Bureau of the Census, U.S. Department of Commerce, March 1972, p. 1–53.

[4] "America's Housing Needs: 1970 to 1980." *Op. cit.*, pp. 4–12.

[5] "General Housing Characteristics for The United States: 1970." *Op. cit.* Officially substandard refers to units lacking adequate plumbing and overcrowded conditions.

[6] "America's Housing Needs: 1970 to 1980." *Op. cit.*, pp. 3–13. Also, Bureau of the Census U.S. Department of Commerce: (1) *Housing Construction Statistics, 1889 to 1964*, p. 18, table A–1; (2) *Construction Reports, Housing Starts 1959 to 1971*, C 20 supplement; and (3) *Construction Reports, Housing Starts*, series C 20.

[7] "Detailed Housing Characteristics for The United States: 1970." Bureau of the Census, U.S. Department of Commerce. June, 1972, pp. 1-287.

[8] "America's Housing Needs: 1970 to 1980." *Op. cit.*, pp. 4–7.

[9] *The Housing Act of 1949*. Section 2.

[10] *Peace on Earth*, 11. Pope John XXIII. April 1963.

[11] *A Call to Action*, 11–12. Pope Paul VI. May 1971.

[12] *Pastoral Constitution on the Church in the Modern World*, 26. December 1965.

[13] *Ibid.*, 69.

[14] The National Association of House Builders estimates that housing starts for 1975 will not exceed 1.2 million starts. The Harvard-MIT Study previously cited estimates a ten year need of 23 million new units.

[15] "Availability of Homes for Middle-Income Families." *Op. cit.*, Page 19.

[16] "New One-Family Houses Sold and For Sale," Bureau of the Census, U.S. Department of Commerce. Series C–25.

[17] "Availability of Homes for Middle-Income Families." *Op. cit.*

[18] Interest on a $25,000 mortgage, payable in 25 years, at 6% is $23,300; at 10%, $43,100.

[19] "On Poverty and Race Relations." United States Catholic Conference. November 1966.

[20] "General Housing Characteristics for the United States: 1970." *Op. cit.*, pp. 1–53.

[21] "America's Housing Needs: 1970 to 1980." *Op. cit.*, pp. 4–12.

[22] Senate Subcommittee on Housing for the Elderly. July 1975.

[23] *Populorum Progressio*, 23. Paul VI. March 1967.

[24] In 1973, 112,000 people with incomes below $3,000 claimed these subsidies, and the average subsidy was $23. At the other end of the income scale, 118,000 people with incomes of $100,000 or more claimed these subsidies and the average subsidy was more than 100 times the subsidy for the low income person: $2,449.

[25] *Housing in the Seventies*. Report of the Department of Housing and Urban Development (HUD). (Washington, 1973). Pp. 2–8.

[26] By the National Rural Housing Coalition. Washington, D.C., 1975.

[27] *Justice in The World*. November 1971.

[28] *A Call To Action*, 11. Pope Paul VI. May 1971.

INFLUENTIAL BUSINESSMEN CALL FOR CONTINUATION OF TAX CUT

Mr. HUMPHREY. Mr. President, I urgently commend to all Members of Congress the just released statement by the Program Committee of the Committee for Economic Development: "The New Congressional Budget Process and the Economy." The statement strongly recommends a continuation of the 1975 tax cut which is to expire on January 1 and which the President says he will veto.

It also takes issue with the President's demand on Congress to pass a $28 billion expenditure cut 9 months after his proposed $28 billion tax cut. In this connection it lauds the newly established congressional procedures for review of the Federal budget, and points out that the President's proposal flies in the face of this process.

A summary of the statement was released to the press of December 8. I ask unanimous consent to have this summary printed in the RECORD, together with the names of the members of the Program Committee.

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

COMMITTEE FOR ECONOMIC DEVELOPMENT

NEW YORK.—A group of national business leaders today called for a temporary continuation of the personal income tax reduction voted by Congress earlier this year. According to the program committee of the nonpartisan Committee for Economic Development (CED), expiration of the tax cut on January 1 would in effect result in a $12 billion tax increase, and would thus be inconsistent with stabilization policy required under present economic conditions. But, the committee said, the tax cut "should be promptly modified or reversed once the economic situation makes this appropriate."

The panel also gave strong support to a permanent extension of the 10 percent investment tax credit. Such a move, the group asserted, would not only bolster recovery of the economy but also provide greater incentives for the capital investment needed to control inflation in the future.

At the same time, the business panel voiced concern about the inflationary risks of adding greatly to the present amount of fiscal stimulus, either through a substantial tax cut that is not immediately offset by expenditure reductions or through a major breach in the expenditure ceiling that Congress has imposed for the 1976 fiscal year.

The panel's statement, entitled "The New Congressional Budget Process and the Economy," said that the budget reform act, which achieved wide-ranging changes in congressional budgetary procedures during the past year, has committed Congress to make explicit decisions on fiscal policy to improve the health of the economy in 1976.

The statement noted that the administration's proposal for immediate enactment of a spending ceiling for the fiscal year beginning October 1, 1976 "would run counter to the procedures" of the budget reform act. "It would require Congress to make its key decisions on the fiscal 1977 budget before having seen the detailed proposals contained in the President's annual budget message and before the new process for considering these proposals has gotten under way."

The budget reform act requires Congress for the first time to consider and to vote on total federal expenditures and revenues simultaneously. The law established new budget committees in the House and Sen-

ate, and a new Congressional Budget Office, and set specific timetables for congressional action on the budget.

The committee praised Congress for its "impressive" accomplishments during the "trial run" in the first year of the budget reform act and urged the legislators to continue to press for improvements in its budgetary procedures. "In the past, the absence of an adequate congressional budget mechanism has been a major impediment to the conduct of effective fiscal policies aimed at stabilizing the economy at a high level."

"The crucial test of the new process and of the willingness of Congress to be governed by its own law" will occur in the coming year when the provisions of the budget reform act become fully mandatory, the panel said.

To strengthen the budget process, the statement calls on Congress to:

Distinguish clearly between decisions on short-term stabilization policies and decisions on longer-term budget priorities and resource allocation;

Base budget decisions on program effectiveness measured in terms of specific program objectives;

Plan and implement budgeting on a multi-year basis whenever possible; and

Assure that fiscal and monetary policies work in harmony.

As Congress assumes a firmer hold on fiscal policy, "the stabilization burden that has tended to fall on monetary policy should be reduced," the panel emphasizes. A shift in the fiscal-monetary mix "is desirable to help create a financial climate conducive to adequate long-term growth in capital formation."

The statement by the 10-member program committee is based on extensive studies by the CED Research and Policy Committee dating from 1947, when the organization first recommended procedures that would allow a comprehensive review of both the expenditure and revenue sides of the budget, and a mechanism for determining the impact of the budget on the economy.

The Committee for Economic Development is an independent, nonprofit, and nonpolitical research and policy organization of two hundred corporate and university executives.

PROGRAM COMMITTEE

1. Mr. Philip M. Kultznick, Chairman, Kultznick Investments.
2. Mr. John L. Burns, President, John L. Burns and Company.
3. Mr. John R. Coleman, President, Haverford College.
4. Mr. E. B. Fitzgerald, Chairman, Cutler-Hammer, Inc.
5. Mr. William H. Franklin, Chairman, CED Board of Trustees, Chairman of the Board (retired), Caterpillar Tractor Co.
6. Mr. Franklin A. Lindsay, Chairman, Itek Corporation.
7. Mr. Alfred C. Neal, President, Committee for Economic Development.
8. Mr. Howard C. Petersen, Chairman, The Fidelity Bank.
9. Mr. Melvin J. Roberts, Chairman, Colorado National Bankshares, Inc.
10. Mr. Wayne E. Thompson, Senior Vice President, Dayton Hudson Corporation.

THE HUMAN DIMENSIONS OF UNEMPLOYMENT

Mr. HUMPHREY. Mr. President, I am increasingly concerned with the so-called social costs of unemployment—the relationship of joblessness to mental illness, crimes against property, aggression and so on.

There has been far too little attention paid this subject. We are able and ready to condemn the obvious economic costs of unemployment, especially the value of lost output.

Yet, these values pale beside the human suffering and mental anguish brought about by unemployment; brought about by a diminished self-esteem, a heightened tension resulting in serious illness, and reduced living standards.

The Catholic Bishops of the United States were addressing the human dimensions of unemployment long before many of us in Washington became seriously concerned with that aspect of unemployment. And we still have a great deal to learn from them.

In that regard, I ask unanimous consent to have printed at this point in the RECORD, the most recent statement on the human dimensions of unemployment, by the Catholic Bishops of the United States, as distributed by the U.S. Catholic Conference.

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

THE ECONOMY: HUMAN DIMENSIONS

"This unemployment returning again to plague us after so many repetitions during the century past is a sign of deep failure in our country. Unemployment is the great peacetime physical tragedy of the nineteenth and twentieth centuries, and both in its cause and in the imprint it leaves upon those who inflict it, those who permit it, and those who are its victims, it is one of the great moral tragedies of our time."—The Bishops of the United States, Unemployment, 1930.

1. This was the judgment of our predecessors as they responded to the economic crisis of 1930. As pastors, teachers and leaders, we recall and emphasize their words as our country faces important economic social and moral decisions in the midst of the highest unemployment since the 1930s.

I. THE CHURCH'S CONCERN

2. Despite recent hopeful signs, the economy is only slowly and painfully recovering from the recent recession, the worst since World War II. We are deeply concerned that this recovery may lack the strength or duration to alleviate the suffering of many of the victims of the recession, especially the unemployed. It is the moral, human and social consequences of our troubled economy which concern us and their impact on families, the elderly and children. We hope in these limited reflections to give voice to some of the concerns of the poor and working people of our land.

3. We are keenly aware of the world-wide dimensions of the problem and the complexity of these issues of economic policy. Our concern, however, is not with technical fiscal matters, particular economic theories or political programs, but rather the moral aspects of economic policy and the impact of these policies on people. Our economic life must reflect broad values of social justice and human rights.

II. THE CHURCH'S TEACHING

4. Our own rich heritage of Catholic teaching offers important direction and insight. Most importantly, we are guided by the concern for the poor and afflicted shown by Jesus, who came to "bring good news to the poor, to proclaim liberty to captives, new sight to the blind, and to set the downtrodden free" (Luke 4:18). In addition, the social encyclicals of the Popes and documents of the Second Vatican Council and the Synod of Bishops defend the basic human right to useful employment, just wages and decent working conditions as well as the right of workers to organize and bargain collectively. They condemn unemployment, maldistribution of resources and other forms of economic injustice and call for the creation of useful work experiences and new forms of industrial organization enabling workers to share in decision-making, increased production, and even ownership. Again and again they point out the interrelation of economics and ethics, urging that economic activity be guided by social morality.

5. Catholic teaching on economic issues flows from the Church's commitment to human rights and human dignity. This living tradition articulates a number of principles which are useful in evaluating our current economic situation. Without attempting to set down an all-inclusive list, we draw the following principles from the social teachings of the Church and ask that policy-makers and citizens ponder their implications.

a. Economic activity should be governed by justice and be carried out within the limits of morality. It must serve people's needs.[1]

b. The right to have a share of earthly goods sufficient for oneself and one's family belongs to everyone.[2]

c. Economic prosperity is to be assessed not so much from the sum total of goods and wealth possessed as from the distribution of goods according to norms of justice.[3]

d. Opportunities to work must be provided for those who are able and willing to work. Every person has the right to useful employment, to just wages, and to adequate assistance in case of real need.[4]

e. Economic development must not be left to the sole judgment of a few persons or groups possessing excessive economic power, or to the political community alone. On the contrary, at every level the largest possible number of people should have an active share in directing that development.[5]

f. A just and equitable system of taxation requires assessment according to ability to pay.[6]

g. Government must play a role in the economic activity of its citizens. Indeed, it should promote in a suitable manner the production of a sufficient supply of material goods. Moreover, it should safeguard the rights of all citizens, and help them find opportunities for employment.[7]

6. These are not new principles. They are drawn directly from the teachings of the Church, but they have critical relevance at this time of economic distress. Under current conditions, many of these principles are being consistently violated.

III. DIMENSIONS OF THE ECONOMIC SITUATION

7. In these reflections we wish to examine briefly the dimensions of our economic problems in three areas: unemployment, inflation and distribution of wealth and income.

A. Unemployment

8. In October, government figures show eight million persons were unemployed, representing 8.6% of the work force.[8] Millions of other persons have given up seeking work out of discouragement or are in part-time jobs although they desire full-time work. Taking this into account, the actual level of unemployment in our country is over 12%. It is estimated that 20 million people will be jobless at some time this year, and that one-third of all Americans will suffer the traumatic experience of unemployment within their families.

9. The official unemployment rate does more than underestimate the true extent of joblessness. It also masks the inequitable distribution of unemployment. The figures for October indicate that minorities, blue collar workers, young people and women bear a disproportionate share of the burdens of joblessness.[9]

Footnotes at end of article.

10. These realities clearly indicate that the nation's commitment to genuine full employment has been seriously eroded, if not abandoned. Since World War II, unemployment has been substantial, persistent and drifting upward. In fact, when joblessness rose dramatically during the latest recession, it took the form of an acute and visible crisis, superimposed on a long-term unemployment problem which has persisted for decades.

11. The costs of this tragic under-utilization of our country's human resources are enormous. In economic terms, these high levels of unemployment cost literally hundreds of billions dollars in lots productivity and tens of billions of dollars in lost revenue and increased expenses for all levels of government.

12. As lamentable as these financial costs are, the social and human impact is far more deplorable. In our society, persons without a job lose a key measure of their place in society and a source of individual fulfillment; they often feel that there is no productive role for them. Many minority youth may grow up without meaningful job experiences and come to accept a life of dependency. Unemployment frequently leads to higher rates of crime, drug addiction, and alcoholism. It is reflected in higher rates of mental illness as well as rising social tensions. The idleness, fear and financial insecurity resulting from unemployment can undermine confidence, erode family relationships, dull the spirit and destroy dreams and hopes. One can hardly bear to contemplate the disappointment of a family which has made the slow and painful climb up the economic ladder and has been pushed down once again into poverty and dependence by the loss of a job.

13. The current levels of unemployment are unacceptable and their tremendous human costs are intolerable. Unemployment represents a vast and tragic waste of our human and material resources. We are disturbed not only by the present levels of joblessness, but also by official government projections of mass unemployment for the rest of this decade. We sincerely hope that these figures do not represent resignation to the human and economic waste implied in these rates of unemployment. As a society, we cannot accept the notion that some will have jobs and income while others will be told to wait a few years and to subsist on welfare in the interim. For work is more than a way to earn a living. It represents a deep human need, desired not only for income but also for the sense of worth which it provides the individual.

B. Inflation

14. There are those who insist that we must tolerate high levels of unemployment for some, in order to avoid ruinous inflation for all. Although we are deeply concerned about inflation, we reject such a policy as not grounded in justice. In recent years, our country has experienced very high levels of inflation. During this past year, there has been some reduction in inflation, but there are already signs of its renewal, spurred by large increases in food and fuel prices.

15. Inflation weakens the economic stability of our society and erodes the economic security of our citizens. Its impact is most severe on those who live on fixed incomes and the very poor. The double distress of inflation and recession has led to a painful decline in real income for large numbers of people in recent years. Clearly, steps must be taken to limit inflation and its impact.

16. However, low unemployment and high inflation are not inevitable partners, as history and the experience of other industrialized countries bear out. Policy-makers should seek and use measures to combat inflation which do not rely upon high rates of joblessness. For many of our fellow citizens, the major protection against inflation is a decent job at decent wages.

C. Distribution of income and wealth

17. Within our country, vast disparities of income and wealth remain. The richest 20% of our people receive more income than the bottom 60% combined. In the area of ownership, the disparities are even more apparent. The top one-fifth of all families own more than three-fourths of all the privately held wealth in the United States while over one-half of our families control less than 7% of the wealth.

18. The distribution of income and wealth are important since they influence and even determine our society's distribution of economic power. Catholic social teaching has condemned gross inequality in the distribution of material goods. Our country cannot continue to ignore this important measure of economic justice.

IV. POLICY DIRECTIONS

19. Fundamentally, our nation must provide jobs for those who can and should work and a decent income for those who cannot. An effective national commitment to full employment is needed to protect the basic human right to useful employment for all Americans. It ought to guarantee, through appropriate mechanisms, that no one seeking work would be denied an opportunity to earn a livelihood. Full employment is the foundation of a just economic policy; it should not be sacrificed for other political and economic goals. We would support sound and creative programs of public service employment to relieve joblessness and to meet the vital social needs of our people (housing, transportation, education, health care, recreation, etc.).

20. The burden and hardship of these difficult times must not fall most heavily on the most vulnerable: the poor, the elderly, the unemployed, young people and workers of modest income. We support efforts to improve our unemployment compensation system and to provide adequate assistance to the victims of the recession. Efforts to eliminate or curtail needed services and help must be strongly opposed.

21. We continue to support a decent income policy for those who are unable to work because of sickness, age, disability or other good reason. Our present welfare system should be reformed to serve our country and those in need more effectively.

22. Renewed efforts are required to reform our economic life. We ask the private and public sectors to join together to plan and provide better for our future, to promote fairness in taxation, to halt the destructive impact of inflation and to distribute more evenly the burdens and opportunities of our society. We also ask that consideration be given to a more efficacious use of the land, the nation's primary resource in order to provide gainful employment for more people. We should also explore the impact of technology and endeavor to preserve the small family farm and other approaches to economic life which provide substantial and productive employment for people. It is not enough to point up the issues in our economy and to propose solutions to our national problems while accepting uncritically the presupposition of an economic system based in large part upon unlimited and unrestrained profit.

23. We pledge our best efforts in support of these goals. We call on local parishes, dioceses, Catholic institutions and organizations to undertake education and action programs on issues of economic justice. We renew our commitment to assist the needy and victims of economic turmoil through programs of financial assistance and active participation in the dialogue over the formulation and implementation of just economic policies. We call on our people to pray for our country in this time of need and to participate in the difficult decisions which can still fulfill the promise of our land.

24. Working together with renewed vision and commitment, our country has the productive capacity and human and material resources to provide adequately for the needs of our people. We take this opportunity to renew the challenge of our fellow Bishops of 45 years ago:

"Our country needs, now and permanently, such a change of heart as will, intelligently and with determination, so organize and distribute our work and wealth that no one need lack for any long time the security of being able to earn an adequate living for himself and for those dependent upon him."—The Bishops of the United States, *Unemployment*, 1930.

APPENDIX

In adopting this resolution, the Bishops sought to link this effort to a major statement issued in 1919 on similar matters. Entitled, "The Bishops' Program For Social Reconstruction," the statement called for: minimum wage legislation; unemployment insurance and protection against sickness and old age; minimum age limit for working children; legal enforcement of the right of labor to organize; a national employment service; public housing; and a long term program of increasing wages.

It also urged: prevention of excessive profits and incomes through regulation of public utilities and progressive taxes on inheritance, income, and excess profits; participation of labor in management; a wider distribution of ownership through cooperative enterprises and worker ownership in the stock of corporations; and effective control of monopolies even by the method of government competition if that should prove necessary.

Most of these proposals have been enacted. Partial progress has been made toward others. The 1919 statement provides a historical framework for the current resolution and evidences a long-standing concern for economic justice on the part of the Catholic community in this country.

FOOTNOTES

[1] Vatican II, *The Church In The Modern World*, 64; John XXIII, *Mater et Magistra*, 38–39.

[2] Vatican II, *The Church In The Modern World*, 69.

[3] John XXIII, *Mater et Magistra*, 73.

[4] Pius XI, *On The Reconstruction of The Social Order*, 74; John XXIII, *Pacem In Terris*, 11, 18; Vatican II, *The Church In The Modern World*, 67; Paul VI, *A Call To Action*, 6.

[5] Vatican II, *The Church In The Modern World*, 65.

[6] John XXIII, *Mater et Magistra*, 132.

[7] John XXIII, *Mater et Magistra*, 20; Vatican II, *The Church In The Modern World*, 67, 70.

[8] The Employment Situation: October 1975; U.S. Department of Labor, Bureau of Labor Statistics; November 7, 1975.

[9] Department of Labor figures for October 1975 indicate:

One out of five teenagers were jobless.

Over 11% of all blue collar workers were out of work.

14.2% of all minority persons were unemployed.

Nearly 40% of all minority teenagers were jobless.

134 of our 150 major urban areas were officially listed as areas of substantial subemployment.

JOINT ECONOMIC COMMITTEE'S ATLANTA REGIONAL HEARING ON UNEMPLOYMENT

Mr. HUMPHREY. Mr. President, there is a wealth of valuable information and

ideas to be gathered outside of Washington—away from the traditional information sources we rely upon far too heavily.

This is particularly true of economic issues in general and the issue of unemployment in particular. There is simply no other way to acquire a true feeling for the tragedy of unemployment than to meet and talk with able workers who simply cannot find jobs.

It is a tragedy when one person becomes unemployed, but it is a national disaster when over 8 million are willing and able to work—but cannot find jobs.

The Joint Economic Committee held a field hearing in Atlanta on Monday, December 8. The hearing focused on the issue of unemployment. And I want to share some of the testimony at that hearing with my colleagues.

This hearing was of particular value for several reasons. But its timing was of great coincidence, for the Bureau of Labor Statistics released new unemployment figures the previous Friday.

These numbers were revealing and alarming. They show that many of our workers now see economic recovery only as rhetoric—not supported by fact. They reveal that our economic recovery, in fact, has slowed substantially.

In October, we experienced a large inflow to our labor markets—an inflow of persons previously not looking for work. They heard statements from Washington that the great recession was over; that the economy was recovering.

They came back looking for work—looking for the jobs which an economic recovery creates.

But there were no jobs.

There was no "peoples recovery."

And the unemployment rate rose as these frustrated workers went door-to-door without success.

In November, these workers again had dropped out of the labor force. They stopped looking for work because the recovery has floundered. In fact, the total number of employed workers fell in November as did labor force participation.

The Joint Economic Committee went to Atlanta to hear firsthand about unemployment. And we got more than we bargained for—from Mrs. Annie P. Smith, for example, of Atlanta, an unemployed auto worker.

Her testimony was quite powerful and I ask unanimous consent to have her remarks printed in the RECORD, followed by my own opening remarks at that hearing.

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

EXCERPT OF TESTIMONY BEFORE THE JOINT ECONOMIC COMMITTEE, ATLANTA, GA., DECEMBER 8, 1975

Chairman HUBERT H. HUMPHREY. Mrs. Smith, we want to hear from you.

Thank you very much for coming and feel perfectly relaxed and tell us your story.

Mrs. SMITH. I am a housewife and mother. I'm the mother of seven children. I had an eight room house. At the present I have lost my job. I have been out of a job a year——

Chairman HUMPHREY. A year?

Mrs. SMITH. A year and nine months. I'm unemployed and things are just tough. I draw unemployment, $70 a week.

Chairman HUMPHREY. How much?

Mrs. SMITH. $70.

Chairman HUMPHREY. $70?

Mrs. SMITH. $70. When you try to pay rent, lights, gas and feed the children, you don't have anything. I had to give up something, I had to give up my home. I didn't want to give it up, I couldn't afford to pay the rent—that's a true fact. So then we got food stamps. That's the only thing really that saved us for food because if I had to pay $70 rent a week—and my grocery bill is $90 a week for seven children. I can't afford to not feed them, so I lost my house, I lost my car. My children have been lacking for almost two years. We just barely scrape by. Things that they have to have, we can't afford to get and things they have to have at school they can't get—books, important things, we just can't make it.

I'm not only speaking for myself, I'm speaking for all mothers who have lost their husbands or who haven't lost their husbands, who are out there trying to make a living, and not only with seven children, but with one child, six children, four children. It's awfully hard.

If they don't do something about it, putting us back to work, I don't know what's going to happen to them. We have children dropping out of school, bad children, stealing, on dope and everything right now, actually pushing it. I pray and hope to the Lord my children don't go out there, I pray for them and we talk about it, but I really don't know what's going to happen. I love them, they love me and we're kind of close, but I've been out of a job so long and if they can't get the proper things they need in school and the proper clothes like the other children, something might happen. I hope it don't. I hope the President and you all will get together and try to make something better.

I worked for the General Motors, Lakewood Plant—

Chairman HUMPHREY. General Motors?

Mrs. SMITH. The Lakewood Plant, and I have been out a year and a half, we're supposed to go back to work but we have had letters saying before that, we're going back to work. Yet under this depression we're going further and further back. And I hope there is something you all can do for all the mothers.

Chairman HUMPHREY. How long did you work for General Motors?

Mrs. SMITH. I worked there five years before I got laid off.

Chairman HUMPHREY. Five years, and you were taking care of your family?

Mrs. SMITH. Yes.

Chairman HUMPHREY. Now let me ask you, you get unemployment compensation still?

Mrs. SMITH. Yes, that's all I get.

Chairman HUMPHREY. And you get some food stamps?

Mrs. SMITH. Yes.

Chairman HUMPHREY. But you have to buy some of those food stamps.

Mrs. SMITH. I have to pay for my food stamps.

Chairman HUMPHREY. I think this is important for the record. So many people feel that food stamps are just passed out.

Mrs. SMITH. No, you have to pay for them.

Chairman HUMPHREY. You pay a part payment for them, for example, if you get five dollars worth of food stamps, what do you pay, two or three dollars?

Mrs. SMITH. They don't come in five dollars—

Chairman HUMPHREY. I know. How does it go with you?

Mrs. SMITH. If you get $150 in food stamps, you pay $50 or $48. It's according to your family size and income.

Chairman HUMPHREY. In other words, you pay a share of the cost of the food stamps.

Mrs. SMITH. Yes.

Chairman HUMPHREY. And without those food stamps, I understand you to say you'd just be down and out.

Mrs. SMITH. That's right, I couldn't make it. You couldn't feed the children on $70 a week and pay house bills. And I have moved into my sister's house and we're staying in three bedrooms, it's a five room house with three bedrooms and it's really hard. She has four children so we are really stacked up.

Chairman HUMPHREY. I say you are. Your sister has four children?

Mrs. SMITH. Yes.

Chairman HUMPHREY. And you have six—seven?

Mrs. SMITH. I have seven but I have six at home.

Chairman HUMPHREY. So there are ten children in that home plus your sister and you?

Mrs. SMITH. That's right.

Chairman HUMPHREY. And how many bedrooms you say?

Mrs. SMITH. Three.

Chairman HUMPHREY. You are stacked up.

Mrs. SMITH. Plus I lost a five bedroom house. I had ten rooms but I had five bedrooms and I lost that and my car too.

Chairman HUMPHREY. You go down to the Employment Office looking for work?

Mrs. SMITH. Yes I have gone and looked for jobs, filled out applications, taken physicals, I have walked so much I have holes in the bottom of my shoe almost going back and forth and they say, "Well come over here and be here, I'm going to hire today." But you go over there, and they say, "well I'm sorry we'll call you." They take your application and then you get your hopes built up, go take a physical, go all the way through it, you're all the way built up. Then "we'll call you later." And you sit by the phone and you sit by the phone and read the paper. They say you get 95 percent of your money, that's not so, you get 95 percent of your money if you're working but not employment you don't.

And I'd rather work, I don't want to be unemployed. I don't want that $70 a week. I'd rather be working and taking care of my children. I do not want welfare. Welfare is for someone who really is not able to work. I'm able to work and I want myself and my children to realize they have to work.

Chairman HUMPHREY. How old are your children?

Mrs. SMITH. My oldest one is 19, the youngest one is—17, 16, 15, 14, 12 and 11.

Chairman HUMPHREY. Are any of your children able to help on jobs?

Mrs. SMITH. My oldest son just got a job but he'll be laid off next week. The rest of them are in school, we're trying to keep them in school because I really want them to get an education, hoping maybe things will break open for them when they get an education, they can come out and do something, be able to get a good job.

Congresswoman HECKLER. I'd like to say that I admire your spirit and you're on the right track in bringing up your children well, and I really think you deserve a great deal of credit for the struggle and for the example you're giving to your children.

Mrs. SMITH. Thank you.

Congresswoman HECKLER. I know, I have three teenaged children at home myself and you have six.

Mrs. SMITH. Yes.

Congresswoman HECKLER. And I know what that food bill means and I know what the struggle is like. Tell me why is it that the GM plant laid off. How many people were laid off and what are the prospects of the plant re-hiring you?

Mrs. SMITH. There was two thousand—two thousand, five hundred laid off and they were going to call back next January 19, they will be calling back, they say.

Congresswoman HECKLER. How many will be called back, do you know?

Mrs. SMITH. They say all.

Congresswoman HECKLER. They say everyone will be called back?

Mrs. SMITH. Yes.

Congresswoman HECKLER. You said you have received other notices that you may be called back?

Mrs. SMITH. We got the same letter in July and then it came up that later on we got the second notice that production was pulling up and we weren't needed.

Congresswoman HECKLER. That's why you don't have any confidence in this new notice, is that right?

Mrs. SMITH. That's right.

Congresswoman HECKLER. What was the reason for the layoff, was it the energy crisis?

Mrs. SMITH. Yes.

Congresswoman HECKLER. Are you worried about having your unemployment benefits cut off soon?

Mrs. SMITH. It will be cut off.

Congresswoman HECKLER. When will they be cut off?

Mrs. SMITH. January the second.

Congresswoman HECKLER. Do you read the help wanted ads and look for a job yourself?

Mrs. SMITH. I have gone, I have looked for a job myself, I have—if anyone calls and tells me they know where there is a job, I go; but there's so many people out there, you fill out a lot of applications and come back, when you're out there they take your application and everything, we'll call you. They call some people, some they do hire.

Congresswoman HECKLER. What did you make when you worked at the plant?

Mrs. SMITH. How much was my salary?

Congresswoman HECKLER. How much did you earn?

Mrs. SMITH. I was making $5.42 an hour.

Congresswoman HECKLER. Do you feel the Union has helped you during this period?

Mrs. SMITH. Yes. My Union really has been sticking by me.

Congresswoman HECKLER. They have? What have they done?

Mrs. SMITH. They have sent me to places trying to get a job, tried to help. I got a call from them Friday, my check was messed up at the Employment Office, two or three weeks behind, or even a month behind. I have to go down there, they will call and find out why my check was late.

Congresswoman HECKLER. So they do social counseling?

Mrs. SMITH. Oh, yes.

Congresswoman HECKLER. So you don't go to government to do that?

Mrs. SMITH. No. They got us the food stamps.

Congresswoman HECKLER. The Union helped you do that?

Mrs. SMITH. Yes, they got that.

Congresswoman HECKLER. Is there any special Union program or other program for Christmas benefits for people who are laid off?

Mrs. SMITH. I do not know.

Congresswoman HECKLER. Keep up the struggle. You are really a very fine, very aspiring woman.

Mrs. SMITH. Thank you.

Chairman HUMPHREY. Let me ask you, you talk with your friends and your neighbors, is your story typical of what you know amongst your associates and your friends?

Mrs. SMITH. Yes, it's the same.

Chairman HUMPHREY. Very much the same?

Mrs. SMITH. Yes.

Chairman HUMPHREY. Could you just kind of fill me in on this? You lost your home, you had to give up this home that you had where you had enough space for your children and yourself and obviously it was a little more comfortable.

Mrs. SMITH. That's right.

Chairman HUMPHREY. Is this happening to other friends of yours?

Mrs. SMITH. Oh, yes. I have six that I can call by name that have lost their homes because—

Chairman HUMPHREY. Lost their cars too?

Mrs. SMITH. Yes. I lost my car too—they really have given up. We really don't know which way to go. We had some that went to work off and on, but you have to wait until they call. A lot of them don't have families here, they have to go stay with friends. When you have had a job and been working and been independent all your life, its hard to turn to someone else, they help you, but may be not really wanting to. I feel guilty about putting all my burdens on my sister. It's too much with a large bunch like that, moving into her home, crowding her. That hurts my pride. I want to be able to do something. I don't want this to fall on my children and fall on her children. We feel bad about trying to get food stamps but we really can't do anything about it. If we don't get food stamps we would starve, I'm telling you what I know. If I had to buy groceries—and all you ladies and men, most of you, go to the grocery store. You don't go in the grocery store with $5 to get nothing but a loaf of bread and milk and that would take it.

Chairman HUMPHREY. Mrs. Smith, you mentioned your children. One of the things that concerns me about the recession and the inflation is its impact on family life and what is happening to a number of our young people that can't find jobs. The share of the work force that is between 16 and 25 is about 26 percent of the total work force, but the unemployment rate for that age group is about 45 percent.

Mrs. SMITH. That's right.

Chairman HUMPHREY. The work force of young people is about a quarter of the total work force but in terms of the national unemployment picture, the national picture which of course is very general, it's about 45—almost half of the total unemployment, and the thing that is so distressing to me as a father and a grandfather, as a Congressman, a member of the Congress, is the fact that these young people become—they get turned off so to speak, as we say.

Mrs. SMITH. Yes.

Chairman HUMPHREY. They become very discouraged and they don't acquire a rewarding work experience. You need a work experience to develop the discipline that's necessary and the habits that are necessary for gainful employment. When you're off the payroll for such a long period of time or never even get a chance to get on a payroll, it's just like never learning how to swim.

Mrs. SMITH. That's right.

Chairman HUMPHREY. Or never learning how to do any normal activity.

Mrs. SMITH. That's right.

Chairman HUMPHREY. I'm sure that you visit with mothers and with people in your community. What do you hear, what do they have to say about what's happening to their young people?

Mrs. SMITH. They're worried about their young people because they go out looking for jobs, they can't find jobs, they are turned down. The children have then got to turn to something else to do, the wrong things to do or the wrong way to do it. My children have been very discouraged. My daughter just sits and cries. She says Momma, I've got my social security and I go out looking for a job—she goes to Zayre's and Treasure Island, she goes to Richway, Rich's, everywhere, she can't find one. You have to say to them, "you're old enough to get a job, go try to make a living." What happens? They say "Momma, you have worked so hard and you go out looking for a job, we're going to help you." I have tears in my eyes really. It really hurts. I can't make a living, they go out there and try and they can't make a living either.

But I sit down and we talk about it. Well things ain't going to be like this always.

We was brought up real poor and I say, "I have tried real hard to do by you all the best I can. Right now we can't get it but after awhile, maybe we'll be able to stretch out." But that "maybe" keeps stretching from one year into another year, and it's hard. And the other mothers feel the same way. We sit and talk about it; it's discouraging. Mothers have children going to college and coming out, they can't find jobs. My oldest son is 19, he's going to an area technical school to be an architect, it's disgusting to him. His tuition is up and he can't find a job, it really is hard, either way you go.

I really hope the President and you all will try to come down and do something for all Americans.

Chairman HUMPHREY. What do you think we ought to do? I'm sure your advice is better than some that we've been getting from some of the top economists. I'd like to hear what you think we ought to do.

Mrs. SMITH. I think right now, right now we're in a depression. Even so, we could all get put back to work even if we do not have to work 40 hours, we don't have to work 40 hours, just a little. If we work 12 hours, a lot of jobs I know were for four hours, three days a week, that would help everybody stay on the job. Everyone would get a chance. Everyone would be self-employed. That's what we need and then jobs would be open for all.

Chairman HUMPHREY. Would your children, for example, if a job was offered by the community to work in a park or to go out and work in the forests or work in an office, government job—not paying too much—would they be willing to accept it?

Mrs. SMITH. Yes. A check—it doesn't have to be but five dollars but with their name on it, that's important.

Chairman HUMPHREY. A check with their name on it.

Mrs. SMITH. That's important to a child. I know how I felt when I got my first check. When I got my first check I was so proud and it wasn't but thirteen dollars, but I was proud, that's my name, that's important to children and that's important to make them want more, to work harder and say, "this is mine, I can go spend it if I want to, buy candy, if I want to, buy me a pair of shoes downtown. I can go get it." "If I want a blouse, I can pick up and go get it." It's very important.

Chairman HUMPHREY. Anybody ever ask you, Mrs. Smith, what ought to be done?

Mrs. SMITH. No. No one ever asks.

Chairman HUMPHREY. That's why we're not getting it done, you see, there's more plain common sense out here. You two have talked more sense here than we've heard for a long time.

Mrs. SMITH. That's the truth.

Chairman HUMPHREY. You got anything else?

Congresswoman HECKLER. I'm very interested in what you said, your attitudes on welfare. You obviously are proud of your work. You've worked hard. You're encouraging your children to work and their frustration comes from not being able to find any opportunities and I can sense how deep a frustration that is and how difficult it is for a mother to continue to encourage a child to seek employment when nothing seems to be available. I'm interested in your attitudes on welfare. You feel welfare should be for the disabled. Will you explain that a little bit more? The attitudes of people that you know, the women that you know in your situation. How do they feel about going on welfare? How do they feel about welfare as an alternative?

Mrs. SMITH. Well welfare—I'll tell you how I really feel about welfare, I'm not kicking

welfare. It's necessary. Welfare is for mothers who have little children, who have to stay home with their children or with disabled people. I'm not kicking welfare, I just say I do not want to be on welfare because I'm able to work and I think a lot of mothers—all the women that I know—prefer working.

Anyone in their right mind would rather work than be on welfare, and draw a check every week. Welfare is just a check once a month, that once a month check goes out in one day. When you go to the grocery store and pay your bills that welfare check is gone.

I know a lot of people who were down to two or three dollars, but would rather work, and never went down to apply for welfare. We think we're going back to work and praying and hope we go back to work. The ones who are on welfare today, they are looking for work. I know a lot of them on welfare and they're working too because they have to have both of them. They have to buy groceries and their little check comes in, they have to give the children a little bit of money to have something or to buy some clothes. Because I know how it is with seven children where you have to buy and I have one coming out of high school now this year and things are so hard. Every day you come home, I've got to have such and such, such and such. I don't have the money to come up with this but I want my child to march down the aisle. This is very important to me, it's very important to all mothers, even the mothers on welfare. I say put more jobs for more mothers and fathers, they will not accept welfare, they would rather be working.

Congresswoman HECKLER. So among your friends, most of the women who are heads of household as well as yourself would rather find a job.

Mrs. SMITH. That's right.

Congresswoman HECKLER. You feel welfare should be available for those who are unable to work or are disabled but in general you feel it is not an attractive option.

Mrs. SMITH. That's right.

Congresswoman HECKLER. Most of the women you know would prefer to work.

Mrs. SMITH. Yes.

Congresswoman HECKLER. And for the record, will you give me the name of the Union, because I think this Union has been extremely helpful to you obviously in terms of trying to iron out the snags in your check and delays with the government, etc. If the Union is doing congressional work I think they deserve the credit.

Mrs. SMITH. It's the UAW, Local 34.

Congresswoman HECKLER. Local 34.

Mrs. SMITH. And another thing I didn't say, they were very understanding and helped—they had a government man out there for the ones who had government homes. I didn't have a government home, I had a consumer home, and they helped me as much as they could. When my payments were late after being laid off, they called the man up. I appreciated that, too.

Chairman HUMPHREY. I wish—how I wish that certain people I know in government could have heard what you had to say. It's deperately needed. You have been very impressive. We thank you. This record, as you know, is going to be made available to our colleagues in the Congress and I'm going to do my level best to see this particular portion of this record is brought to the attention of people that ought to hear it and ought to know it. I wish they could have been here and felt the impact of what you had to say as I have. I'm very thankful. I have been very moved and very touched with what you had to say Mr. Sims and you Mrs. Smith. You represent wonderful citizenship in this country.

Mrs. SMITH. Thank you.

Chairman HUMPHREY. You make everybody proud. Thank you very much.

OPENING COMMENT BY HON. HUBERT H. HUMPHREY, CHAIRMAN, JOINT ECONOMIC COMMITTEE, ATLANTA FIELD HEARING, DECEMBER 8, 1975

The Joint Economic Committee is holding hearings throughout our nation to evaluate the fundamental state of our economy—to determine why; year after year:

6 to 9 million of our people look for work, but can't find it;

inflation rages at rates of 7, 8 and even 10 percent;

interest rates remain at levels of 10 or 12 percent for consumers, small business and farmers;

the number of new homes built is less than one-half the number needed;

our mines and factories produce at only 70 percent of their capacity, and;

why the budgets of American families continue to be squeezed by both inflation and unemployment?

We have a troubled economy, with contradictions everywhere. For example, despite a Federal budget deficit of $65 billion, unemployment has remained over 8.3 percent for months.

Industrial output rose 11 percent last quarter, yet our total output next year, in 1976, will be no greater than in 1973.

While 30 percent of our industrial capacity stands idle, inflation continues at a 7-8 percent annual rate and wholesale prices have been rising at a double digit rate.

The price of oil and gas has doubled, yet we are finding fewer new oil and gas wells than at the old price.

These contradictions point up clearly the characteristics of the new economic world we live in—a world where old solutions are no longer effective.

Budget deficits don't always reduce unemployment;

Tight money policies don't always stop inflation; and

Higher prices don't always mean greater output.

Ours is an economy that cannot be managed with the old, traditional policies, or understood with the old simplistic economic theories.

We must find new policies, new tools and use new ideas if we are to achieve a rapid economic recovery to full employment without renewing inflation.

The Employment Act of 1946 is the principal law governing national economic policy. It calls upon Congress and the President to pursue policies to maximize employment, production and purchasing power.

Yet, our experience under the Employment Act of 1946 has been very discouraging. We have failed to maintain high permanent employment levels. Moreover, instead of redoubling our efforts to keep our people at work, successive Administrations and Congress accepted even higher unemployment rates as reasonably full employment. Today many in the Administration would accept a 6 percent rate as full employment. This is completely unacceptable.

This hearing in Atlanta today is one of a series designed to review that Act—to consider why it has failed to bring about full employment and to consider steps that can be taken to make it effective.

I have some ideas on that subject which are reflected in my legislation designed to put the American economy back to work—legislation including the Balanced Growth and Economic Planning Act of 1975, and the Equal Opportunity and Full Employment Act.

This hearing is being conducted, however, for another reason also—to hear suggestions on how fast our economic recovery should occur.

It is no secret that the majority of Democrats in Congress and the President fundamentally disagree on the speed with which our economy can recover.

Most Democrats in Congress want a rapid recovery—a recovery designed to cut unemployment quickly—and a recovery which will make use very quickly of our idle factories and labor rather than allowing them to remain idle through the end of this decade, or longer.

The President would move much more slowly. He has urged that Congress accept a leisurely economic recovery as the best we can do.

The President's policies would still leave 5 million people or more unemployed in 1979—4 years from now. And it is not guaranteed by any means to hold down inflation.

In short, the President would have our society do without $1.5 trillion or more in goods and services by the end of the decade—lost because unemployment will be too high.

I don't want to lose that production. I want a faster recovery and the lower unemployment it brings.

Yet, there is another important reason I reject the President's economic prescriptions.

Unemployment and economic uncertainty create tremendous social pressures.

They cause crime to rise; they place heavy stress on family life; they weaken the fabric holding our society together.

This worries me a great deal.

We can restore employment. We can raise incomes and restore savings accounts. But it is much more difficult to restore the human spirit—and sometimes there is nothing we can do, it becomes a permanent casualty of recession.

We must now act to reduce unemployment and achieve rapid economic recovery. We must do so to achieve our full economic potential. But even more importantly, we need full employment to restore our national spirit—to restore the spirit which can only come with gainful, productive work.

We will be hearing from a variety of witnesses today. Following our host, Mayor Jackson, Governor Busbee will appear.

He will be succeeded by a panel of unemployed workers and then a panel to review the economic and employment outlook.

After lunch, we will hear first from a panel analyzing the social impact of unemployment; they will be followed by a panel reviewing some innovative job creation programs in the Southeast.

Finally, at around 3:30 to 4:00, we will invite anyone from the audience to speak who wishes to, on the subject of employment and economic recovery.

Mr. President, our recession shows every sign of continuing for years. There is little interest in the administration and at the Federal Reserve with an accelerated recovery, that I see unemployment rates of 5 or 6 percent at least through this decade. In this situation, the only alternative to unemployment and its associated welfare burden is productive public sector employment.

But we have a clearly inadequate public employment program built on the creaky legs of the Comprehensive Employment and Training Act of 1973, or CETA. This legislation can deal with far less than 1 million persons annually—at a time when over 8 million are jobless.

It is inadequate.

But, equally distressing, it functions very badly.

Mayor Fulton of Nashville, testified to these and other points, at the Joint Economic Committee's field hearing in Atlanta on Monday, December 8, 1975. I found his comments most interesting, and I want to share them with my colleagues now. I, therefore, ask unanimous

consent to have Mayor Fulton's remarks printed in the RECORD at this point.

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

STATEMENT OF THE HONORABLE RICHARD H. FULTON, ON BEHALF OF THE UNITED STATES CONFERENCE OF MAYORS, BEFORE THE JOINT ECONOMIC COMMITTEE, DECEMBER 8, 1975, ATLANTA, GEORGIA

Mr. Chairman, I appreciate the opportunity to appear here today as Mayor of the great city of Nashville, Tennessee and as a Representative of the United States Conference of Mayors. There is a special pleasure that I derive from these hearings as it seems only yesterday that I sat as a member of the Ways and Means Committee in the House of Representatives. I am delighted to see some of my former colleagues and I extend on behalf of the Nation's mayors, our appreciation to the Joint Economic Committee for hosting this hearing in Atlanta.

It has become apparent to me during my initial weeks as mayor of a growing southern city that no problem or concern at the local level is greater than the need for a national examination or re-examination of the employment and training programs needed to restore the confidence of citizens in our economy. I was a member of the Congress in 1973 when the Comprehensive Employment and Training Act (CETA) became law.

As did many of my former colleagues, I felt very strongly about the need to create a single delivery system for consolidating the categorical programs which have grown to frustrate job seeks throughout the country. Today, some two years later, I remain convinced that the creation of the Comprehensive Employment and Training Act and the designation of local prime sponsors was the most positive step taken in the manpower field during the last two decades. In recent weeks, however, CETA has come under extreme criticism. It has been cast in the shadow of doubt with the very basis of the CETA concept being questioned by the foes of local government control and decision making.

Fortunately, the program has weathered the storm. Many of the questions asked about isolated incidents of patronage, abuse of public service employment and prime sponsor indecision, can be answered briefly. Simply, our economic picture in 1973 was healthy in comparison to today's economy which has been marred by the high levels of unemployment and recession. Moreover, we still bear the scars of double digit inflation and the uncertainty and instability at the national level has had a domino effect on local governments.

In recent months more local governments are beginning to express concern over impending deficits. Some have experienced unprecedented layoffs of permanent civil servants, increased welfare rolls and minority job seekers. Crowding the unemployment labor market are many skilled workers in the automotive and housing industries.

The response of the Administration has been the signing into law the Emergency Employment Act of 1974, creating Title VI of CETA and authorizing 310,000 public service jobs.

Currently, there are 9.1 million Americans unemployed and the authorization for these 310,000 employees expires at the end of this month.

Although, the Department of Labor has granted prime sponsors an extension of the funds through June, our research indicates some twelve prime sponsors deplete their funds in January. With an additional 120 of the 900 prime sponsors running out of funds for public service jobs by March 30, 1976. Our most immediate recommendation then, would be a simple extension or re-authorization of Title VI through fiscal year 1977.

I will offer some specific recommendations for public service employment later, but I simply want to make the point that this small gesture by the Administration and the Congress to address a national unemployment crisis of 8.3 percent is locally inadequate. In recent weeks, there has been applause for the signals of recovery; however, we are simply not seeing a recovery at the local government level.

Currently, my city has a 7.2 percentage unemployment rate as compared with a 4.2 percentage a year ago.

We must caution ourselves as a country against the poisonous complacency afforded by administration economists who take pride in the fact that 7.5 percent is the lowest level of unemployment that we can anticipate between now and 1980.

Unemployment is, and must be viewed as, the most cancerous sickness affecting the American people and we will not have a stable economy until we rid ourselves of this unnecessary ill.

Mr. Chairman, before I go on to offer some specific short and long term recommendations, let me just say that after a few short months, as Mayor of Nashville, I know what I had suspected earlier—that the chronic shortage of jobs for skilled and semi-skilled workers, coupled with concentrations of frustrated minorities, disadvantaged and growing numbers of poor will leave cities, counties and suburbs in chronic depression, if unchecked.

Widespread unemployment today is extracting an enormous toll of human suffering and lost opportunity and it is sparing no segment of our society. Dependency rates among the nation's senior citizens, youth, and the poor continue to grow, increasing the levels of welfare dependency.

The efforts of the present Administration to shift the burden of welfare expenditures to local governments could conceivably result in revenue shortfalls which will surely be borne by the wealthy residents of the State whether they live in the central cities or suburban communities.

As a Mayor, the grim reality which confronts all of us daily is the presence of large numbers of unemployed citizens living in areas in need of development, yet we are helpless in our efforts to provide them with a work experience due to one of the following:

1. The absence of a national manpower policy which would take into account emergencies such as the present;

2. The inadequacy of funding for employment and training programs on the whole;

3. The de-emphasis on a full employment economy.

In conclusion, I would like to offer on behalf of all the Mayors, several recommendations.

First, it is essential that shortfalls eminent in the public service employment area be met with an immediate response by the Congress. It is prudent that Congress seek to grant a simple extension of Title VI under CETA and to amend the Emergency Employment Assistance Act by adopting the following changes to the Federal legislation:

1. A re-authorization for a two-year period.

2. Authorization of an additional five billion dollars for fiscal year 1976 and a similar amount for fiscal year 1977 or as long as unemployment remains at current levels.

3. An increase in current salary ceilings with 25 percent to the new jobs created with ceilings at 12,000 per annum.

4. An increase to 15 percent in the allowable cost underlays of the Administration for equipment and supplies.

In the absence of any long term national policy, public service employment remains an essential element in our arsenal of programs to respond to the job needs of our citizens. My own city can best illustrate these needs.

The demands of these jobs have been so intense that the city of Nashville has expended over half of the public service employment funds in the first few months of this fiscal year. Effective December 15, 1975, one week from today, Nashville will have to lay off 250 public service employees funded under the Comprehensive Employment and Training Act. On January 15, 1976, an additional 269 CETA funded workers will be released. Most will not be able to return to their previous jobs.

Commencement of layoffs of public service workers next week signals alarm for the city of Nashville. The issue of indefinite unemployment will begin to cut deeper yet. The prospects for recovery will seem dimmer than ever now. The responsiveness of government to meet the need of citizens by providing the "Dignity of Work", will seem that much more lacking.

Mr. Chairman, we also need jobs which pay realistic salaries. Local officials need the flexibility to employ public service workers in projects involving construction, for example.

We need at least a million public service jobs and we need a formula which allocates those jobs to areas having the most severe unemployment problems. The current program limits salaries to $10,000, restricts our ability to provide supplies and equipment to CETA workers, and fails to adequately link public service jobs to the needs we see in our community.

Of equal importance to the nation's mayors are the programs authorized under CETA, Titles I and II. Surely, few prime sponsors would quarrel under normal circumstances with the idea of prioritizing programs around the needs of minorities and the disadvantaged.

Unfortunately, an inordinate amount of time and effort during the last year has been devoted to implementing the public service employment portion of the CETA program. Many mayors share the view of Department of Labor Assistant Secretary Colberg, that Title I offers the best opportunity to integrate training with job development and placement and it offers the flexibility needed by local officials to do comprehensive manpower planning.

It is the hope of the mayors that a simple extension of Title VI can be done expediciously thereby enabling prime sponsors to return to their longer range employment and training goals.

Finally, the distinguished Senator from Minnesota has been in the forefront of the movement to turn the attention of the Congress and the American people toward the national manpower policy and the full employment economy, we wish to commend you for your efforts here and the nation's mayors are committed to supporting you in the Congress in this regard.

The only hope for a stable economy is the return to the work ethic around which this country was founded—with every able-bodied American guaranteed the most basic of opportunities: The right of full employment.

I appreciate the opportunity and will be glad to respond to any questions you might have.

DEMOCRATIC MAYORS DEVELOP URBAN POLICY

Mr. HUMPHREY. Mr. President, last week, the National Conference of Democratic Mayors completed and made public an extensive policy statement examining our Nation's current urban dilemma. The statement includes many innovative and positive policy recommendations. Because of the high quality of its recommendations and because it represents the unanimous view of the Democratic mayors, this policy statement is one of the most important documents to

be developed in a long time dealing with urban problems.

The New York City crisis has once again brought our Nation's often neglected urban problems to the forefront of national attention. The problems have once again been identified and solutions suggested. Just this week, the Congress enacted direct loan legislation designed to provide short-term assistance to New York City.

But this legislation is only a bandaid to cover a spreading cancer. We have done absolutely nothing to arrest the decline that is affecting many of our Nation's cities, both large and small. Nothing has been done about the drain of jobs from our central cities; nothing has been done to arrest the flight of middle- and upper-income families; and nothing has been done to assist our central cities to meet the enormous needs of their indigent populations.

As we look back in history we see study after study, commission report after commission report, and policy statement after policy statement condemning our Nation's urban policy. But nothing has been done to arrest the malevolent neglect of our cities. The problems persist and the Nation continues to turn its back and look the other way. But we cannot afford this neglect much longer.

Mr. President, the policy platform developed by the National Conference of Democratic Mayors represents the first comprehensive urban program to be presented to the Nation in some time. It is a concrete result of a great commitment of time and resources by all of the Democratic mayors, but particularly, by the Honorable Henry Maier, chairman of the National Conference of Democratic Mayors and Mayor of Milwaukee, Wis.; the Honorable Lee Alexander, mayor of Syracuse, N.Y.; the Honorable Richard Hatcher, mayor of Gary, Ind., the co-chairpersons of the drafting committee.

Mr. President, I recommend highly to all of my colleagues the recommendations made in this policy statement and ask unanimous consent to print the entire statement in the RECORD.

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

A PREFACE TO COMMITMENT

As the American experiment of 1776 reaches its bicentennial, it begins also its third century in a world as chaotic and hostile to the principles of true democracy as it ever has been.

Yet the stronger threat to the vitality of that experiment comes, not from without, but from within. The socially and economically helpless are confined within arbitrary political boundaries which no longer serve to delineate this Nation's cities so much as to isolate and insulate those without from those within.

America's cities are the centers of National society; yet—denied access to the very wealth they support, America's cities are threatened today—not by problems for which there are no solutions—but by the denial of the commitment and the means by which those solutions must be implemented.

Urban America encompasses three-fourths of the population of this Nation centered largely in metropolitan areas—in a very real sense, the character of life in America's cities is the character of life in America. Yet, over the past seven years, an extraordinary insensitivity in place of leadership has succeeded only in the development of a new kind of refugee—an urban refugee—who is pushed into isolation by forces beyond his control, and often beyond his knowledge.

The Nixon-Ford Administrations have initiated an undeclared war against our cities which threatens the foundations of our National security.

A proper assessment of America's goals and priorities for its third century requires a penetrating effort to perceive, understand, and attend to the problems that have engulfed the cities of America, and so, America itself.

A new National vision of courage and responsibility must transcend the physical and philosophical boundaries which now divide our cities from the Nation which could not have been built without them.

That new vision will identify the problems faced by Americans in their urban centers today—it will explore the methods and policies of the past which have been devised to meet those problems—identifying those which have worked, while rejecting those which have not—and it will ultimately shape a coordinated policy based on leadership, clear and realistic goals, and a rational ordering of priorities.

The National Conference of Democratic Mayors recognizes and assumes a responsibility for achieving this vision and establishing with that responsibility a commitment to the future of the cities.

URBAN RESOURCES: WHO DOES WHAT? WHY? WHO PAYS FOR IT?

The two horns of the fiscal dilemma of America's cities is the deepening trend toward an ever-growing concentration of the poor and the relatively poor in the central cities, and the exodus of industry and business and eventually relatively affluent whites into the suburbs.

Encouraging these trends has been a whole series of national policies—in agriculture, transportation, housing, education, welfare, taxation, defense spending, and energy. These federal policies have served to further isolate central cities and turn them into racial and poverty ghettos.

The cumulative effect of this situation is that the same forces that have affected the ability of many large cities to raise revenues have also expanded the service demands placed on these governments. As many middle and upper income families have fled the cities, they left behind the indigent, the elderly, the young and other groups that are heavily dependent on local government services. The growth of this dependent population has been accelerated by migration into central cities of poor and minority families.

National policy has not taken into sufficient consideration the added expenditures that the cities incur in providing services to this population.

During the 1972–1974 period, the Federal Government cut $4.5 billion in urban programs and cut another $7 billion in programs to aid the poor, the untrained, the unemployed and the medically indigent. At the same time, municipalities lost $3.3 billion in purchasing power. The net impact was $14.8 billion loss in fiscal capacity. This revenue loss has dramatically increased the fiscal burden of the cities.

At the same time that the fiscal plight of the cities has been aggravated by a prolonged period of inflation, deepending national unemployment has cruelly sharpened the crisis of the poor in cities.

The growth of pay levels in public employment has generally exceeded those for private sector employees, but the process has been one of catch up, which has simply resulted in public sector employees receiving today approximately the same pay as that received by employees in all industries.

Wages and salaries are supplemented by so-called fringe benefits. Such supplements as retirement benefits, social security coverage, health and hospital insurance, and life insurance add a substantial cost to wage and salary costs. These costs have been increasing more rapidly for both private and public sectors during the past decades. However, the average costs for fringe benefits for state and local employees still lags behind both private industry and federal employees, according to the Maxwell School of Government.

RECOMMENDED SOLUTIONS

Any effort to improve the quality of life and to restore fiscal soundness to our cities can only be accomplished through a meaningful reordering of priorities at the federal government level.

This re-examination of national priorities is not only necessary, but imperative, because the resources of the federal government are not unlimited.

It is simply not feasible to develop new programs and new policies without making off-setting cuts in some other expenditures or by obtaining new revenue to pay for the programs.

The primary goal of any new priorities must be full employment with reasonable price stability. The country has failed miserably in its efforts to obtain full employment in the last seven years and that failure has cost the cities dearly.

In order to enact these full employment programs and other policies, a re-examination of our priorities must take place and meaningful cuts must be made in certain portions of the budget.

A reordering of national priorities demands recognition of the fact that the social defense of this nation is every bit as vital to the national defense as the military defense.

The imbalance between domestic expenditures and Pentagon and foreign aid expenditures must be readjusted if vital city programs are to receive a proper share of federal revenues.

If we eliminate the items which are fixed by law and contractual obligation, including such items as social security and railroad retirement funds (which are financed by separate payroll taxes, unlike defense expenditures which come out of general revenues), and other items fixed by law such as interest payments, federal pensions, etc., we find that only twenty-six percent of the national budget is subject to appropriations controlled by the Congress.

Of that twenty-six percent, eighteen percent goes to the military (including military foreign aid) and only eight percent for domestic civilian needs. The imbalance in these priorities is blatantly clear.

In addition to realigning national priorities, a careful effort must also be made to gain new revenues through tax reform. There are now almost $100 billion in tax expenditures—taxes which are not collected as a result of one provision or another in the Internal Revenue Code. Many of these are for the wealthy and the powerful and should realistically be eliminated. Billions of dollars in revenue could be gained if loopholes are closed.

Finally, many Federal government tax and expenditure programs have a profound but unintended impact on where jobs and people locate. This impact up to now, has worked to the detriment of our major cities.

The Federal tax code gives better treatment to new investment in plant and equipment in the suburbs, while not rewarding maintenance and reinvestment in the central cities. Finally, tax policies have supported and encouraged the rapid turnover of both residential and commercial properties leading to poorly maintained properties and abandonment.

Similarly, expenditure policies have undermined the relative attractiveness of central city living and working. Highway and other

transportation investments have extended the commuting and trading areas in urban regions, contributing to the decentralization of working and living opportunities. Housing policies have underwritten new construction in the suburbs while ignoring the value of existing housing already in place in the inner city.

In short, while there has been no conscious Federal growth or location policy, the net effect of Federal tax and expenditure programs has been to undermine the strength and vitality of the central cities. These effects will undoubtedly have to be reversed if a Federal program to revitalize the cities is to be successful.

By cutting back certain expenditures and by raising revenues through tax reform, eliminating Federal programs that have an anti-urban bias, sufficient resources will be made available for some new priority social programs. However, these new resources will still not be adequate to reverse the downward spiral of many of our Nation's large central cities. To reverse this spiral and to restore vitality, it is necessary to target Federal programs far more effectively toward the areas of need. This will entail some difficult choices, requiring a redistribution of some Federal resources from some governments to others. But it is absolutely necessary if a revitalization program is to be effective with the limited resources that are available.

The principal Federal government components of the new priorities program to restore the cities to sound condition are:

1. Adoption of a countercyclical fiscal assistance program. Current federal policy, by addressing neither inflation nor unemployment, has concentrated the country's economic ills in its cities. The situation has forced city government to undertake actions which are counterproductive to what national economic policy ought to be accomplishing, i.e., a reduction in both unemployment and inflation. By not providing countercyclical aid to the cities, federal policy is self-defeating.

2. Revision in the Federal revenue sharing formula. The current revenue sharing formula does not give sufficient weight to the special problems of cities. Greater weight should be given to need, but any revised formula must assure all political subdivisions their present level of revenues, so that support by the coalition of cities, states and counties is not weakened.

3. Federal encouragement of the use of regional tax bases. Federal aid programs, as currently designed, support the present local government jurisdictional system. That system fragments the regional economic base, often resulting in the strongest part of the base being located in the jurisdiction with the least public service needs, while those needs are at their greatest in jurisdictions with the weakest part of the base. As a minimum, federally aided activities of a regional kind should provide incentives to suburban areas to help cope with the problems of central cities.

4. Federal financing of total welfare costs. The logic for federal financing of total welfare costs would simply recognize that the causes of dependence are national, not local. The removal of this burden from state and local government would recognize the national character of the problem and make it possible for state and local governments to concentrate their resources on genuinely local needs.

5. Federal incentives for states to undertake property tax reform. Overdependence of city government on the property tax has hastened the flight of middle-income families to the suburbs and imposed severe hardships on many low-income and elderly persons that remain in the city. Federal incentives should be available to induce states to impose and share with local governments progressive income taxes to reduce the burden of the property tax on low and moderate income persons.

6. The creation of a "functional" tax system which recognizes that property taxes were intended to pay for the cost of services related to property, such as police and fire protection, sewers, and garbage collection. The social overhead costs, relating to special services required by the poor, children, the elderly, the untrained, the socially troubled—must be taken off the property tax base. These services must be paid for out of other revenues related to their functions.

EMPLOYMENT AND ECONOMIC DEVELOPMENT

While urban America has continued to expand, many of the Nation's older central cities have entered a period of economic stagnation and decline.

Unemployment rates in central cities have been twice the national average, reaching high double-digit levels during this recession, with much higher rates among minority and poverty groups and the young and old.

The worsening fiscal situation of municipalities has accelerated financial borrowing and weakened the municipal bond market. Budgetary reductions of services make cities increasingly less appealing to tax-paying residents, business, and private investors.

Small business bankruptcies have risen significantly, further weakening the urban economic base.

White middle-class flight, a direct result of these mounting pressures, has made the implementation of Brown v. Board of Education ever more difficult, causing severe strains between blacks and working-class whites. This is occurring at the very time when cohesion between poor and working-class blacks and whites is essential to resist the corporate-oriented government economic policies which are their undoing.

In sum, the United States' cities have experienced massive and crippling "disinvestment." The result: economic and social "apartheid" and enormous waste of human and physical resources.

Now the cancer is spreading. Older industrial and urbanized regions of our nation have also begun to experience declining rates of growth and net outmigration of jobs and population. Recent leaps in the costs of energy and food to energy and food importing regions have increased costs for residents and businesses and further depressed economic activity and investment in these areas.

National economic policy remains oblivious to urban economic problems over the short- and long-term. Infatuation with macroeconomic "magic" has isolated policymakers from the realities of the microeconomic investment calculus and what it takes to stimulate creation of jobs for specific people in specific areas. This one-sided approach has led to the following distortions:

Severe cutbacks in state and local government services are projected to run $7.5 to $8 billion this year, at the same time that Congress and the Administration return billions into the economy via tax cuts and rebates.

Unacceptably high unemployment, disproportionately concentrated in the Nation's cities, will apparently be accepted if not encouraged for the next several years.

The economy is being stimulated in the familiar "trickle-down" fashion by reducing corporate taxes, increasing corporate investment credits, swelling the military budget, and running a large federal deficit. These measures will not "target" the benefits of increased economic activity in the central cities; in fact, they will probably fuel further suburban sprawl by financing new suburban plant and equipment. The price of the recession and federal budgetary controls will be paid by the cities and their badly overburdened citizens while the benefits of renewed national economic activity will be distributed through the marketplace to corporations and the affluent.

Needed short-range measures, such as extended unemployment compensation and expanded public service employment programs, will probably be enacted but targeted assistance to needy communities and their governments which will improve the long-term well-being of local economies, create permanent private sector jobs, and maintain municipal services will apparently be vetoed or resisted. Such programs would include public works and economic development programs, credit allocations and targeted investment credits, small business acceptance, and municipal anti-recession fiscal assistance.

Furthermore, the Administration's proposed FY76 budget requests no significant increase in assistance to state and cities or community and economic development programs. It simply attempts to restrain federal growth by controls on human resources assistance.

The FY76 budget proposal includes no effective increase for the Economic Development Administration, the Federal government's only agency significantly concerned with urban development. EDA has been very poorly funded in the past—less than $3 billion in 10 years, with only a fraction of that amount allocated to urban communities.

The new Community Development Block Grant Program, rather than increasing federal assistance for urban development, is as yet only an approximate substitute for categorical assistance programs.

Recommended solutions

Economic development has become an interestingly important area of municipal policy along with the traditional delivery of services. Programs have moved from business promotion to targeted intervention in the local economy, using more sophisticated tools and techniques. States and cities are establishing new capital-generating institutions to stimulate private investment. Municipalities are adopting a "development focus" for city policy which coordinates various programs and financial assistance towards the improvement of their economies.

But successful urban economic development will also require major, targeted federal assistance to leverage greatly increased private investment in urban economies. Neither the Administration nor Congress is yet offering a federal urban economic redevelopment program which recognizes devastation of our cities and the inordinate urban share of the costs of recession and inflation. Both have ignored concentrated urban centers as we shift to a resource-conservative society involving energy, transportation, economies of scale, land use, and the like.

What is required is a major National Urban Investment Program which coordinates well-funded federal programs into a total development assistance package for the redevelopment of urban economies. These would include:

1. A long-term multi-billion dollar Federal urban economic development program to modernize and expand urban economies; provide needed public works, business development assistance; and create the municipal capacity to administer development programs.

2. Substantial funding increases and the coordination of such programs as community development, manpower (especially the expansion of a comprehensive year-round youth program), anti-poverty, rail and mass transportation, and minority business assistance with economic assistance programs.

3. Changes in the federal tax system to encourage urban investments, including selective tax investment credits for urban redevelopment, and federal tax support for state and local urban investment incentive

programs. The federal tax system should also be altered to remove those provisions which encourage urban "disinvestment," such as some real estate tax shelters.

4. Federal incentives to encourage metropolitan development cooperation, the metropolitan tax base, and metropolitan service delivery systems.

5. A national domestic development bank directing capital investment into urban and other depressed local economies.

6. A credit allocation program to meet the credit needs of urban businesses.

7. Improving federal business credit assistance programs making them more responsive to urban development needs and encouraging greater private financial institutional participation.

8. A permanent, anti-recession public works program to provide public works financing to economically "depressed" cities and other communities.

9. Federal tax incentives for private urban job development programs. This would be particularly beneficial for urban small businesses.

CRIMINAL JUSTICE AND PUBLIC SAFETY

Recent surveys report that nearly one-half of all Americans are afraid to walk in their neighborhoods at night. One in every five Americans feels threatened at night, even in his own home. This anxiety is supported by crime statistics which indicate that one out of every four families in this country will become victims of crime during the year.

But Americans not only fear crime—they fear and resent the system of criminal justice and public safety which seems so inadequate to prevent their victimization. And together, these fears have established a general frustration so deep, it threatens the very foundations of our society.

The National Conference of Democratic Mayors believes that fear in America cannot be eliminated until our system of criminal justice and public safety recognizes and establishes two primary goals—to remove the social and cultural conditions which permit crime to exist as an alternative to enforced poverty and injustice—and to establish a rational context in which the detection, conviction and punishment of lawbreakers is both swift enough and sure enough to dissuade those who need no social motivation to break the law.

The social evolution of a nation can neither be ordered nor enforced by government. Government may lead but the pace of progress is set by the people, themselves.

But a revolution in the system of justice designed to deal with the shortcomings of this process can be ordered and enforced by government, and this goal can be accomplished immediately and dramatically.

Clearly, though these goals are distinct, they are interrelated. For genuine social progress cannot be possible in a context of criminal anarchy, no matter how inaccurate or distorted the reality of that context may be. The prospect of fear is as damaging as the reality of it. Confidence is the only cure—a confidence based on the perspective provided by a system of laws reflecting rational needs, a system of enforcement which reflects a balanced application of those laws, a system of judicial determination which provides the same justice for all, and a system of punishment which actually punishes, or of rehabilitation which actually rehabilitates.

Equal treatment under the law is a constitutional guarantee which requires attention to the following elements of the system:

Laws

Rational limits of necessary criminal sanction should be established. Presently, far too many offenses are included in federal and state criminal codes. Fully 40 percent of all arrests in the nation arise from so-called victimless crimes. Nearly all such laws are either applied discriminately or not at all in a poor but complex and expensive attempt to regulate social moral conduct which should be outside the legitimate interests of government.

A crazy-quilt of unforceable laws, can only encourage a disrespect for the law that reaches beyond the nonsense into the critical areas where enforcement is absolutely necessary.

Police

$3 billion has been spent in the war on crime since 1967 by the Law Enforcement Assistance Administration, with more than half that money distributed to the nation's police forces. That expenditure for police equipment and techniques is necessary, but it is not enough. Crime has accelerated in virtually every category every year the program has been in effect. In the period beginning in 1968, the population of the nation rose by 6.2 percent, yet, during the same period, locally-reported crime rose by 38 percent. Violent crimes—murder, rape, assault and robbery—rose by 64 percent during the period. And crime is no longer just a problem for central cities. The sharpest increases in 1974 were reported in suburban and rural areas and in cities with less than 25,000 population. The increase in such areas was a third higher than for cities with populations of 100,000 or more. All of this took place while police departments everywhere were becoming more professional and better equipped than ever before.

When the statistics for 1974 were released, LEAA Director Donald Santarelli said, "I think that unless we do substantially more as a society than we have done about crime, we will see an intolerable, continuous problem. . ." He said the capability of paid professionals to perform the civic, social and basic duty of establishing an orderly society has been overemphasized. "What we need," he said, "is more citizen participation, rather than more and more paid professionals. . ."

Courts

Ineffective as are our systems of laws and enforcement, the courts of America, particularly those in the nation's larger cities, still have been inundated by a volume of defendants and criminal actions so absurdly high that the courts have become a public mockery.

Even while he was New York City's police commissioner, Patrick Murphy criticized the distribution of fully 80 cents of each criminal justice dollar to the police, while the remaining 20 cents was all that went to the courts, district attorneys' offices, prisons and rehabilitation programs combined.

Across the nation, district attorneys and judges are so pressed by the level of possible prosecutions they face, that plea bargaining has become the major tool of justice in America. Nationally, 90 percent of all serious crimes are cleared by guilty pleas to lesser charges. If plea bargaining were reduced by only 10 percent, the trial load would double. No court in America is equipped to handle such an increase.

But plea bargaining, effective as it is mechanically, is not without serious implications. On the one hand, persons guilty of serious crimes are given sentences which are less than deserved. On the other hand, some persons guilty of no crimes are encouraged to plead guilty to avoid conviction and harsher penalties.

Add to this a wide disparity in sentencing, which frequently seems to favor the rich and the powerful over the poor and the weak, and a totally inadequate system of bail and pre-trial release, and a picture emerges which cannot but produce the threatening distrust which now serves as the public view of the nation's system of courts.

Corrections

The nation's courts and correction facilities have failed either to rehabilitate criminals or to deter them. After studying hundreds of prison programs over a 20-year period, Columbia University criminologist Robert Martinson concludes: "The prison which makes every effort to rehabilitate succeeds no better than the prison which leaves its inmate to rot."

The nation spends more than $1 billion a year to confine more than 200,000 offenders in state and federal prisons, yet authorities estimate that recidivism rates exceed 50 percent. On the other hand, only 10 to 20 percent of those behind bars are violent persons of some immediate danger to society. Prisons serve an obvious and useful function, but all persons convicted of crimes do not present the same risk to society, and they need not be confined in the same way.

Some alternative to prison is necessary. Currently that alternative is confined in large part to the release of convicted persons on some form or other of probation. The gap between relative freedom and complete imprisonment must be bridged, if the American tradition of punishment fitting the crime, and the criminal, is to be achieved with consistency and fairness. Such alternatives are today the except in to the rule, rather than the rule which they must become.

Juvenile crime

On a percentage basis, young people are the single largest contributors to the crime problem. In 1974, nearly half of all serious crime was committed by those under the age of 18. Between 1960 and 1973, total arrests for juveniles rose by 144 percent. Because much crime goes unreported, the program may be significantly more serious. Studies, in fact, indicate that perhaps 90 percent of all young Americans have committed at least one act for which they could have been taken to juvenile court.

Of the known crimes by juveniles, the estimated national cost is about $16 billion annually. That represents an increase of about 300 percent since 1968.

As the problem increases, so does the evidence that the system cannot handle it.

Perhaps one million young people enter the juvenile justice system each year. Perhaps ten percent are incarcerated in various juvenile institutions. Estimates suggest that from 60 to 80 percent of these young people will commit additional crimes once they are released—a recidivism rate which is far higher than that for adults.

Handguns and violence

There are approximately 40 million handguns in the possession of Americans. This arsenal is increased by about 2.5 million weapons annually.

Including the 96 million rifles and shotguns owned by Americans, there are about 65 guns for every 100 men, women and children in the country.

In 1973, the FBI reported that there were 19,150 murders in the United States. More than half were committed wtih handguns. One hundred and thirty-two police officers were killed in 1974, 95 by handguns. Between 1964 and 1973, 71 percent of all law enforcement officers killed were slain by persons using handguns.

In one major American city in 1972, arguments between married couples and among friends accounted for 38 homicides. More than 70 percent of the killing took place in the home. In 53 percent of the cases, the weapon used was a handgun.

In another major American city, 766 persons were murdered, 60 percent of them by persons using handguns.

In 1975, two persons within a matter of days of each other attempted to assassinate the President of the United States. Both used handguns.

Any instrument of violence which is at once so dangerous and so accessible, must be rigidly controlled. The nation can no longer afford the cost in lives which must result from delay on this issue.

America cannot reduce the disillusionment with the criminal justice system until Americans recognize the very real limits of the system. It cannot prevent crime. Prevention can only come with the effective treatment of those economic and social conditions which make criminal activity profitable economically and socially, and which glorify the criminal in the eyes of those who cannot escape their enforced, substandard condition of life.

The American public must be assured that the police will detect crime and apprehend criminals, that district attorneys will prosecute them, that courts will quickly and fairly judge them, and that our prisons will punish those found guilty—if punishment is appropriate—or rehabilitate them—if rehabilitation is possible.

Needed now is a nationwide effort to reestablish a balance in the system—to buttress the emphasis on police, equipment and technology, with a major investment for efficient court administration and correctional system reform. The Federal government must also recognize that, while local governments need financial assistance from Washington, law enforcement and criminal justice decisions must be made locally.

Root causes of crime

The findings of the Katzenbach Report in 1967, the Wickersham Crime Commission in 1931, the Kerner Commission in 1968, and the Milton Eisenhower Commission in 1969, were summed up by the Committee for Economic Development in 1972, which declared:

"The recommendations over a period of forty years display a remarkable degree of consistency and similarity . . . a suitable agenda for action has been available for forty years."

The consistent points made by all of these commissions has been:

1. Crime is connected with other social problems and particularly unemployment;

2. Crime is principally deterred by the certainty of justice, not the severity of justice;

3. There is a definite correlation between America's leadership in the distribution of firearms and America's leadership in crime statistics over those nations which control firearms;

4. If we really want to reduce crime, it will require costly expenditures in social programs, but no single investment of public funds would so improve the quality of American life.

If the Administration and Congress are serious about curbing crime, they must recognize that warring on poverty, inadequate housing and unemployment is warring on crime.

Funding for education is funding the fight against crime.

Medical, psychiatric, and family counseling services are services against crime.

Recommended solutions

1. Resources must be directed toward innovative methods to ease the load of the courts, to improve correction facilities, and to establish a new public awareness of responsibility and participation, without which no police department can function effectively.

2. Certain non-victim offenses should be decriminalized.

3. LEAA must permit cities to set their own planning, funding and program priorities, with unencumbered block grants.

4. Discretionary and indeterminate sentencing should be abolished.

5. Guidelines must be drawn up and adopted to eliminate the abuses which diminish the positive effects of plea bargaining.

6. State and local governments should immediately begin to separate juveniles from adult offenders in all correctional facilities.

7. All procedures concerning juvenile status offenses which would not be offenses if committed by an adult should be eliminated.

8. Group homes and shelters should be established to take the place of prisons for youthful offenders and qualified adult offenders.

9. The Juvenile Justice and Delinquency Prevention Act should be immediately funded in full.

10. National legislation should be passed prohibiting the manufacture, importation, sale and private possession of handguns, except for use by law enforcement personnel, the military, and for sportsmen's clubs within a controlled and regulated facility.

11. States should enact legislation to fund the purchase of all voluntarily surrendered handguns, and which authorizes the registration and modification of handguns to be retained by private citizens as collectors' items.

12. Federal and state legislation should require minimum prison sentences for persons convicted of crimes while possessing real or simulated handguns, rifles and shotguns.

13. A national study should be undertaken to determine what specific programs should be initiated to deal with the root causes of crime.

Until positive and direct action is taken to re-establish confidence in the criminal justice system in America, citizens of this nation will feel neither safe, nor really free. Neither can be guaranteed without national leadership and direction which recognizes that if crime is, indeed, a local problem, it is a problem that does not recognize state and local boundaries. Crime cannot be fought by policies which do recognize such boundaries. Those who fight the lawbreakers must be at least as imaginative and resourceful as they are.

HOUSING AND COMMUNITY DEVELOPMENT

In virtually every American city, housing and community development present inseparable problems. Without a comprehensive program of attack, neither can be solved, and to the extent that neither is solved, the quality of life in virtually every American city deteriorates.

Yet, as clear as the needs of the nation's cities may be, the history of action on housing and urban development has been one of broken promises.

The 1949 Housing Act set a goal of a decent home and a suitable living environment for every American family, as it expanded programs of public housing, initiated federal assistance for urban renewal efforts, instituted a housing program for rural families, and as it strengthened other supportive government programs.

A second landmark commitment came just a decade ago, when President Lyndon Johnson announced that urban renewal would be a major part of his program. The promise produced the Housing and Urban Development Act of 1965, establishing a cabinet-level department and many new programs.

The Housing Act of 1968 qualified the nation's housing policy by calling for the construction or rehabilitation of 26 million housing units over the succeeding 10 years—with six million units aimed specifically at low and moderate income families.

Then the Housing and Community Development Act of 1974 again redefined the commitment, calling for 400,000 new units of subsidized housing in 1975, and redefining the thrust of urban renewal into urban rehabilitation and revitalization through a system of block grants to unify a variety of previous programs.

Except for units already planned, there has been virtually no new housing for low and moderate income families since President Nixon ordered funds for such programs impounded in January, 1973. The production of new housing, generally, reached a peak of 2.5 million in 1972. Three years later, it was below one million and still falling. In an annual report required by the 1968 Housing Act, President Ford included almost 3 million mobile homes in the totals of housing units produced since 1969 in order to bring production figures into line with the goals of the program for 1974. The report, itself, was late by almost eleven months, and the decision to include mobile homes in the report was in contrast to decisions in previous reports to redefine downward the goals of the program in view of the realities of production. Homes and apartments have a life expectancy approaching 50 years. Mobile homes may last perhaps 10 years.

Meanwhile, subsidies provided by the Housing and Community Development Act and the Emergency Mortgage Credit Act were expected to stimulate the production of only 200,000 housing units—about half the goal set for the programs—and the $7.5 million in emergency federal mortgage support was being absorbed quickly without appreciable impact on the downward housing spiral.

A Library of Congress report in 1975 indicated that despite all of the programs and promises, only three out of twenty families can buy a new home. Yet, incredibly, the Ford Administration in 1975 supported efforts to increase the cost of home ownership even more by raising the interest rates on government-sponsored FHA and VA mortgages.

And beyond all of this, over the remainder of this decade, almost 1.7 million families will be formed each year—the highest rate in our history—while the nation will lose as many as 700,000 units of housing a year. With millions of American families living in sub-standard housing of all kinds, the need for expanded production cannot be questioned.

In the broader context of urban renewal and revitalization, the Housing and Community Development Act of 1974 properly put to rest a zigzagging federal policy toward the cities which should have been called "urban destruction," more appropriately.

Intended to eliminate slums and urban blight, and under the direction of President Johnson, aimed at revitalizing downtown business areas, the program alternately attempted too much and too little. Its chief hallmark was the bulldozing of whole neighborhoods into parking lots, thus chasing the poor and the elderly out of their homes, as bad as they may have been, and into other, newly created slums. Redeveloped areas became too expensive for anyone except the affluent. Developers and others schooled in the proper techniques of grantsmanship fed easily at the federal money tree.

And people everywhere continued to desert the cities and the urban decay which had not been stemmed, merely disguised.

Urged on by city leaders through the U.S. Conference of Mayors and the National League of Cities, Presdent Nixon moved toward a return of basic decision making authority to the cities through various revenue sharing proposals. The Community Development Act signed by Preisdent Ford after Nixon's resignation was one of these, designed to attack rigidly structured aid programs which left little control to the cities they were supposed to help.

Perhaps an evaluation of the new direction of urban assistance requires more time under the program, but some problems are already evident.

Money available to cities is in some cases, particularly for the larger urban centers, more than they've ever received under the programs replaced by Community Development grants; but many cities get only as much as they did, and virtually all will get significantly less than they did under the old programs once those programs are completely phased out, even if the need for many of them remains.

For the first time, shares of the development funds will also go to urban counties and other communities which haven't been part of the Housing and Urban Development Department process—but funding has not

been appreciably increased to reflect the expanded range of the process.

And, although a share of the decision making process has been returned to local communities, requirements for local decision making processes are so complex, and grant approval requirements are so cumbersome, that local options still remain extremely limited.

By itself, federal community development cannot encourage private development of property, which in many cases, is considered worthless and is voluntarily ceded to government control, where it also generally remains worthless and undeveloped.

The record on housing and urban revitalization is generally dismal. The goal of a decent home for every American family in an attractive and vital environment has not been met—nor is it likely to be met without a commitment which at least equals the authority of the rhetoric.

The consequences for the nation's cities are exactly the same consequences which in 1949 sparked the first national effort to attack the problem—substandard living conditions in a deteriorating environment.

Recognizing that even in the best of times, many families and individuals will not be able to afford to acquire adequate housing in the marketplace, it is essential that large scale, adequately funded programs be developed to assist these families and individuals to obtain adequate housing. These programs using the best experiences of the past, in combination with such new mechanisms of the future as are necessary, should provide for both ownership and rental opportunities through reliance on private enterprise, non-profit organizations and public bodies.

Recommended solutions

1. National legislation to allocate adequate credit to the private housing sector, including maximum limits on mortgage interest rates;

2. Funding community development block grants at a level adequate to meet local development needs;

3. Emphasized concentration on rehabilitation of existing housing, including the funding of local grants-in-aid to support the private purchase and rehabilitation of single-family homes by qualified participants for their own use, and with provision for the rehabilitation and resale of housing units by local governments, themselves, through contracts with local private and public developers; and where possible, whole neighborhoods should be identified for rehabilitation and resale of housing units by local governments, themselves, through contracts with local private and public developers; and where possible, whole neighborhoods should be identified for rehabilitation purposes, with occupants of such neighborhoods remaining on-site as the work is accomplished;

4. Until the nation's housing stock catches up with its needs, housing should be principally provided through new construction of substantial rehabilitation.

Where necessary, adequate counseling in social services should provide to those receiving assistance and all efforts should be made to avoid this housing becoming a burden upon the community in which it is located.

5. A comprehensive program of urban conservatism, reclamation and preservation which would salvage the investment of a community's past for the benefit of its future. Such a program would include the rehabilitation of existing structures for current uses, the rehabilitation of structures for redefined uses, a policy of historical preservation of buildings and grounds for use by the general public, and other goals;

These actions recognize the dual responsibility of government and private business. Each has a responsibility to meet if the promises of 1949 are to be kept. It is time for those promises to be kept.

ENVIRONMENT AND ENERGY

A basic goal of the nation is to protect the health, welfare and safety of its citizens. Providing this protection necessitates adoption of a dual environmental strategy: protecting man's environment from further degradation, and improving the quality of the total environment.

These needs are most acute in our urban society. The problems of water pollution, air pollution, transportation, land management, solid waste, noise, aesthetics, energy and congestion must be addressed as one in developing policies and programs to improve the urban environment. Particular attention must be given to the extent to which the environment can support the population of an urban area, the nation and the world, now and in the future.

Conservation of limited natural resources must become a primary consideration guiding the actions of all individuals and governments. The effects of social, physical and technological change upon our environment must be recognized so that such change does not further reduce environmental quality. Our environmental resources must be protected against the encroachments of unregulated growth.

Over the past year, many persons, including our Chief Executive, have seen fit to use our rather difficult energy situation as a basis for advocating the relaxation of environmental quality standards and goals. Actions taken and proposals offered by the present Administration place heavy emphasis on developing fuels which at this time are either environmentally unacceptable themselves, or which cause the environment to be degraded during their production. We believe that the urban accouterments of good environmental quality and ample energy supplies are essential to the continual viability of the nation's cities.

There can be few trade-offs between environmental quality and energy demands. The maximum requirements of both must be satisfied.

Because the quality of the environment is so closely linked to our national health, welfare and safety, it is a responsibility of all levels of government to act positively to protect and improve it. Policies and programs must be developed and implemented which will manage the use of natural resources, encourage their reclamation and reuse, and stimulate other government and private actions to further protect and improve the environment. Regulation and enforcement must be supplemented, where appropriate, by economic incentives.

Where federal standards are established, the federal government must assume responsibility to assure local government adequate capacity and time to achieve those standards. Local government must have the flexibility to select among alternative means to achieve federal and state mandates. They must be able to weigh the economic, social, energy and environmental costs and benefits of alternative strategies with locally determined plans and priorities.

Pollution control activity should attempt to control pollution at the source and should impose indirect source controls (such as parking restrictions, "controlled growth" policies and so forth) only when direct control at the source is not feasible. Control policies should encourage reduction of waste and material at the source rather than allowing materials to enter the waste stream. If waste must enter the waste stream, policies should encourage recycling of such waste. The federal government should revise programs and policies, including tax policies and other subsidies, which distort the price system of products in a manner which encourages the exploitation of resources, discourages recycling and provides incentives for greater pollution. Where possible, tax incentives and the imposition of pollution costs should be used to encourage industry to eliminate pollution.

Air Pollution

Air pollution continues as a threat to our health and welfare. All levels of government and private industry must take concerted action to prevent further degradation of existing air quality and attain the goal of achieving clean air. A national clean air strategy must be developed to attain national air quality standards, to protect the public health and welfare, and to be achieved within a reasonable time. We must recognize that there are important factors which also must be considered, such as economic growth, the long-term planning process for cities and their urban area, and the appropriate placing of responsibility for pollution control.

Each city should be able to choose from several alternative strategies to achieve federal and state air quality standards, and where pollution is caused by automobiles, the primary means for abatement of such pollution should be stringent emission controls on all motorized vehicles.

The U.S. Environmental Protection Agency should fully implement and enforce the requirements of the Clean Air Act of 1970. Variances and extensions of deadlines for compliance with air quality standards should be granted only after ample justification presented at open public hearings at which all views are given opportunity for presentation.

Solid Waste

The disposal of wastes and the conservation of resources are two of the most challenging problems to be solved by this nation in the latter third of this century.

With almost half of our cities running out of current disposal capacity in from one to five years, America's urban areas face an immediate disposal crisis.

The crisis of solid waste management must be solved through an aggressive program of source reduction, volume reduction, resource recovery and ultimate disposal, all of which must be compatible with sound environmental considerations.

An expanded national program is needed to stimulate development and application of scientific and technical advances in solid waste management and energy recovery, because solid waste problems frequently exceed the internal capabilities and geographic limitations of any one political jurisdiction.

Current demonstrations of heat and energy recovery from urban waste show that solid wastes can and must be considered as a supplemental fuel source. Technological innovations in both the public and private sectors, plus the increased cost and diminishing supply of traditional fuel sources, have enhanced the relative value of municipal solid waste as a supplemental source of energy. However, the need for further development of resource recovery technology still exists. Congress must, therefore fund continued research, development and demonstration efforts to stimulate energy recovery from solid waste. Congress must also mandate the integration of energy recovery from solid waste with general energy conservation planning and studies.

Programs must be initiated by government and private industry to curtail packaging practices and other activities which add to the volume of solid waste. If volume is not reduced voluntarily, federal standards and deadlines must be established to control activities which contribute significantly to solid waste problems. To help local government support improved solid waste management systems, the Federal government should impose taxes on, control, regulate, and where necessary, prohibit, disposable

packaging and other practices which aggravate solid waste management difficulties.

Federal regulatory source reduction measures, including the phasing in of Federal packaging standards and a ban on the sale of no-deposit, no-return beverage containers should be supported. A ban on the sale of non-returnable containers should be coupled with a mandatory deposit of sufficient value to encourage the return of containers to proper distribution points.

Water pollution

The availability of an ample supply of clean water is vital to our nation. Positive steps must be taken through research, planning and preventive action to avoid the harmful effects of pollution, drought, and consumptive withdrawal upon our water resources. Water resources to meet all domestic uses, including recreation, must rate the highest priority. Current sources must be protected, preserved and recycled where possible. Sources that have deteriorated below levels acceptable for domestic use must be rehabilitated.

The basic principle for dealing with water pollution must be that no one has the right to pollute—that pollution continues because of technological limits, not because of any inherent right to use the nation's waterways for the purpose of disposing of wastes. However, the impracticability of immediately eliminating all pollution must also be recognized. A reasonable relationship of economic and social costs and benefits should be a necessary precondition toward achieving a no-pollution goal.

The ability of municipalities to comply with any clean water program must be recognized as contingent upon adequate funds for building treatment facilities. In addition, any clean water goal must be applied on a uniform national basis to prevent movement of industry in search of loosely enforced standards.

Three years ago, a strong Democratic coalition in Congress twice overrode the veto of a Republican President and enacted the Federal Water Pollution Control Act Amendments of 1972. This new public law represented a significant and overdue new direction in national water pollution control and abatement efforts. However, the success in meeting the goals and requirements of the Act have been severely hampered by both the Nixon and Ford Administrations' illegal withholding of treatment work construction funds. Earlier this year, the Supreme Court ordered the release of $9 billion in water pollution funds impounded over the previous three years. The release of these funds has meant that most states and communities can now begin to plan effectively and in an orderly manner, to meet the national water quality standards. However, even with full release of these funds, we cannot rest assured that our nation's waterways will be cleaned. The FWPCA Amendments of 1972 laid the groundwork and provided the initial installment for national water cleanup efforts. It is essential that the second installment be enacted at the earliest possible date to avoid disruption in the local planning process and to proceed more rapidly to the day when our nation's urban areas will again enjoy the benefits of clean, safe water.

ENERGY

The issue of the national energy policy is complex and touches upon many vital concerns of the cities. Energy shortages and interruptions negatively affect industrial production, the local economy, employment opportunities and essential public services. The Federal Government must establish a national energy policy which would simultaneously guard against further environmental degradation. The direction of energy policy in both the short- and long-term should be the achievement of significant reductions of overall per capita energy consumption and the encouragement of an increased domestic supply.

Recommended solutions

1. Maintain a mandatory allocation system which assures local governments of fuel stocks on amounts adequate to provide essential services and which do not produce rapid short-term price increases in the costs of such services;

2. Adopt a major program of energy conservation with the overall objectives of reducing significantly the rate of growth in energy demand. As part of any energy conservation program, the Federal Government should:

Revise transportation freight rates to achieve energy savings through encouraging greater utilization of recyclable products, reclamation of materials, and reduction of non-productive movements of major carriers;

Revise tax laws to discourage the energy waste inherent in urban sprawl;

In cooperation with local governments, provide incentives for the development of energy-efficient modes of transportation such as mass transit, bicycles, walking and car pools;

Require mandatory "energy-efficient" labeling of all energy consuming products and increase public knowledge of the alternatives available and the costs incurred in various patterns of energy use

Revise government procurement policies to take into account not only initial cost, but also potentials for energy savings so as to encourage manufacturers to develop more efficient equipment

Provide federal assistance to cities to review and revise building codes and maximize energy saving techniques as well as demonstrate applications of potential new approaches to energy conservation and supply

3. Eliminate the pricing policies and tax subsidies which artificially lower the cost of energy rather than making the market cost of energy reflect its full cost. If new taxes must be administered to restrain oil consumption, such taxes should not be placed upon crude oil at dockside, but upon the point of transaction for various end uses.

4. Establish a quasi-governmental corporation to expedite the exploration, production and distribution of fuels as a means of supplementing existing supplies and providing an economic and environmental yardstick for measuring the performance of private firms in the field.

5. Rigorously enforce anti-trust laws to protect the consuming public against anti-competitive activities and prevent monopolistic control of fuels and energy through "energy companies" which acquire holdings in competing fuels or processes. No fuel producer should own or control production of reserves in any other fuel, except in the case of oil and gas which often occur together in nature.

6. Adopt a major federal program to fund greatly expanded research, development and demonstration projects in the fields of energy conservation and resource development.

Federal energy research policies should be directed much more heavily to development of greater energy-efficiency in production processes, building design and construction, urban land use configurations and transport systems. Along with emphasis upon energy-efficiency, there should also be a parallel emphasis upon research energy resources. Renewable energy research should be basically of two kinds. First, there is need for expanded development and engineering research on applications of so-called "intermediate" technology, i.e., such areas as solar, wind and fuel cell development which employ relatively simple and well-understood technical principles, but are lacking in research on specific, cost-effective applications.

The second, and equally important, class of renewable energy research involves the exploration of more advanced and larger-scale technical concepts such as solar farms using high temperature collectors, hydrogen producing "wind-mast" applications, and tidal and wave power. Priorities in advanced technology applications should be assigned according to probable length of time required for practical application.

7. Establish strong incentives to step up the installation of solar water space heating in residential, commercial and industrial buildings. Such incentives are especially urgent in those areas of the South and West, where climatic conditions allow high energy yields from solar systems with relatively small collector areas and heat storage volumes. Similar incentives for "wind-assist" systems (perhaps in conjunction with solar-assist facilities) should be developed immediately for rural areas and small towns where settlement patterns and other circumstances make such systems feasible.

TRANSPORTATION

Urban transportation systems today reflect the neglect of yesterday's unimaginative emphasis on individual, private automobiles. For more than the last twenty years, in excess of $230 billion has been spent at all levels of government on a network of highways which then served to relegate public mass transit systems to the status of secondary—even tertiary—back-up systems. With no substantial allocation of funds to mass transit until an emergency aid package was negotiated in 1974, public transit's reputation for second-class service at first-class prices was all too easy to establish.

From the end of World War II to the mid-1960's, no new major transit construction project was undertaken with public support. The physical resources of transit systems then reflected the result: aged and worn-out buses, outdated and neglected subway and rail cars, ineffective—even non-existent—maintenance programs, and hopelessly incomplete and inadequate schedules. Meanwhile, fares for both public and privately-operated public transit systems inched steadily upward.

The public responded as could have been expected. Public transit ridership declined from almost 19 billion at the end of the war to about 5.5 billion in 1973. Decreasing use of public transit further eroded the system by fostering both increased fares and heightened the use of private automobiles.

This vicious cycle took place as fundamental changes occurred across America—particularly within the nation's urban centers—pollution, sprawl, economic and social decay, a transition of the more affluent to the suburbs along with the tax base necessary to support public transit, leaving the less affluent behind with a growing need for public mass transit but without the means to support its development.

Ultimately, some states sought to step in with publicly supported regional or local transit authorities or other semi-autonomous public and semi-public agencies designed to revitalize and expand urban transit systems. The goals of such programs quickly proved to be unattainable or nearly so, as state resources provided to be inadequate to do the job alone.

By 1973, local governments began facing the collapse of privately-operated public transit systems on the one hand, and the increased demand for local support of state-sponsored mass transit programs on the other. The recession of 1974–75 brought the problem to the point of crisis, aided by the Arab oil embargo which seriously restricted

the flow of fuel, while raising fuel prices to unheard of levels.

Precisely at a time when public transit should have responded to fuel restrictions and high fuel prices by providing an effective and inexpensive alternative to the private automobile, public transit systems found themselves unable to do so, primarily because the national leadership necessary to adopt programs to support mass transit was sorely lacking; and though local and state leadership did exist, local and state funds sufficient to do the job did not exist.

By the end of 1974, operating deficits for existing public transit systems nationally were expected to reach $900 million. Unable to maintain service even at then current levels, many systems limped along with crushing deficits. Others sought to lurch along for a few months by raising fares. Some simply collapsed under the pressure.

President Ford responded by opposing emergency aid to public mass transit though several bills had been proposed, later opting to endorse an aid program only in conjunction with a comprehensive package covering all forms of transportation. It was a logically expedient position, but one which only served to delay any aid at all for critical weeks.

Two years after the plea for help, Congress enacted and the President signed a comprehensive mass transit bill which provided more than $11 billion to public transportation systems nationwide, including for the first time Federal operating subsidies for hard-pressed systems on the verge of collapse. It was enough, perhaps only barely enough, to provide the time needed to solve many remaining and serious problems. Unfortunately, those problems still remain to be solved.

Apart from comfortable, efficient, and low-cost service, chief among the needs is routing and scheduling designed to make public mass transit a genuine alternative to the private automobile. A bus may never stop at every home in America, but it ought to pass within walking distance of every home in America often enough to establish it as an alternative.

During the oil embargo, there was a modest spurt in transit ridership, and imaginative planning and direction, mostly at the local level, has enhanced the chances that more people will continue to use public transit systems; but there can be no increase where there is no service.

Tremendous social and economic benefits must accrue to those cities served by a comprehensive public transit system.

Central cities have notorious traffic and parking problems. Without a mass transit system which reaches beyond the borders of such cities, there can be no effective encouragement of economic traffic into depressed downtown business and office districts. Likewise, the opportunity for jobs outside those cities is denied to thousands of people who can afford no other kind of transportation. Where such transit exists or can be developed, parking garages can give way to parks and open spaces to further enhance the cultural and social comfort that central city residents and workers too often have been denied.

The ultimate goal of action on transportation for the nation's cities must be one emphasizing both comprehensive coverage and integrated design.

Beyond the major goal, transportation planning must be keyed to real needs and rational proposals.

Projects designed to allocate almost $300 million to take streetcars off the streets of one American city—or $450 million to build a personal rapid transit system of several hundred automated 12-passenger cars, as proposed for another city, may indeed prove successful; but it costs nothing to set aside one lane of arterial highways for express buses. Technology should be consulted for answers to transportation problems only with extreme caution.

Action already taken in cities across the nation can provide a catalogue of hard lessons. Those lessons require design based on need, the comprehensive testing of unproved ideas, the use of technology to develop better systems and not to reduce personnel, and the requirements of public accountability and control.

Locally, transportation planning must become an integral part of area-wide planning keyed to growth, future land use, densities, environmental impact, recreation, open space preservation, and more. Planning should encompass the widest possible region consonent with the overall character of the area and its possible transportation needs. Major corridors should be identified. The possible alternative emphasis of highways, busways, light rail, rapid transit, commuter railroads and other systems should be considered. The special needs of the young, the elderly, the handicapped and the poor should be considered. A single strategy of traffic and transit management should be developed, including terminals and transit stops designed to effectively integrate all forms of local transportation into a compatible structure. Pedestrial movement should not be overlooked.

Nationally, only those elements of the interstate highway system considered essential should be completed. Highway funding by the federal government should be thereafter restricted to maintaining the system, not expanding it. Federal highway fund sources should be diverted to the use of local and regional governments for mass transit development. To the extent federal funds are provided for local highway purposes, those funds should be aimed at improving streets and highways only within a comprehensive transportation plan, including the resurfacing of roadways used by buses and the elimination of hazards. Improvements aimed at facilitating the movement of pedestrians and bicycles should be supported.

Recommended solutions

1. The reconstruction and rehabilitation of all existing mass transit systems. The rehabilitation of existing systems and the construction of new or expanded systems should be carried out with both national assistance and local planning under a program of unemcumbered grants, with coordination provided through state master plans, rather than through federal guidelines. Local governments should be relieved of the sole responsibility for operating costs by both federal and state governments.

2. Amtrak improvement programs must continue until all major metropolitan centers are served by a network of rail transit comprehensive enough to provide rail service as directly as possible among the centers. Action must be taken to permit the public ownership of roadbeds, with state and federal support for their maintenance. Efforts to implement the Regional Railroad Reorganization Act must continue and be integrated into a program of comprehensive transit planning.

3. Long-term financial assistance must be made available to improve local airport facilities and operations. Ultimately, each urban area must be assured of adequate air service. A national responsibility must exist and be served by federal regulatory and control agencies empowered to provide every possible facility to insure safe aircraft operation, including the full funding of ground-based systems designed to enhance air traffic control, with the Airport and Airway Trust Fund providing the source of that support. Planning should insure rapid ground access to airports and financial support for the development of airport facilities intended for use by the public. Airport development should be consistent with local land-use planning.

Only through a coordinated and comprehensive system of planning and action at all levels of government can a truly national system of transportation be developed to serve the needs of all Americans. The real goal of such a system would not eliminate the automobile as an important element in the system; rather, it would provide those important alternatives which now largely do not exist, or which exist to an extent below need, or which remain uncoordinated and incompatible to the public interest. The health of America's cities depends on how well this goal is served.

HEALTH

For most Americans, the health care crisis is a crisis first of ever-rising costs.

From 1959 to 1974, the amount spent by Americans for health care rose astonishingly from $12 billion to $104 billion—from a 4.6 percent share of the Gross National Product to 7.7 percent of the GNP. Compared to $142 spent for health care in 1970 for every man, woman and child in the nation, the expenditure in 1974 had reached $500. The Social Security Administration reports that nearly 50 percent of the increase is due to inflation, which during this period, boosted the cost of medical services by 14 percent.

Medical costs have increased for a variety of reasons, including the overutilization of hospital services, unnecessary hospital construction, duplication of expensive and underutilized specialty services, and more—all, in large part, the result of, or related to, health insurance policies which cover care in hospitals but not doctors' offices, an excess of surgeons and a poor distribution of practitioners in general, and a monumental malpractice problem.

Thousands of American communities are without a doctor, and as the trend toward medical specialization continues, there are fewer family physicians to practice in rural and inner-city areas, with more and more specialists gravitating to the suburbs and major medical centers.

A recent Chicago study revealed that the city lost 2,000 doctors between 1950 and 1970—a 35 percent decrease, while the suburbs around the city gained 1,900 doctors—a 130 percent increase.

As fewer and fewer doctors remain to serve the people in the nation's urban centers, inner city hospital emergency rooms and outpatient departments have more and more become the only alternatives for inner city medical care. Hospital budgets have been so strained by the heavy demand that many private hospitals have closed their emergency rooms, leaving municipal and public hospitals as the only sources of medical care in some cities.

Emergency room care is an unnecessarily expensive source for the treatment of routine illnesses. Moreover, many of the patients of municipal emergency rooms have inadequate insurance coverage and cannot pay the costs involved. Municipal hospital budgets are, therefore, doubly burdened—first, by accepting patients private hospitals will not, and then by providing treatment for which payment cannot be made. Finally, an inevitable deterioration takes place across the hospital's entire range of services.

Yet another serious problem is the fragmentation and complexity of health services, and the inability of many patients to cope with the confusing array of specialists, laboratories, and institutions.

Patients are released from hospitals before room for them is found in nursing homes.

They are sent away with prescriptions that can't be filled because pharmacies are closed. They are forced to move from one specialist to another, or to pay for consulting specialists they may never see. They may be required to face a battery of laboratory sessions and tests designed less to assess their condition than to protect doctors against lawsuits.

In fact, the system seems shaped for the convenience of doctors and hospitals, rather than for the patients, many of whom are significantly disabled, or merely old. And if the system of delivery of services has been fragmented, so has the system of control and evaluation of the quality of that system.

The impact of all of these problems and more on the American family has been devastating. Beyond a basic loss of confidence in a system they can no longer understand, the principal effect has been that good health care has become both harder to get and almost prohibitively expensive.

Far from producing efficiency and reduced costs, assembly line medicine has raised the average cost for a day in the hospital from $32 in 1960 to $125 today. Workers lucky enough to have good health insurance find their premiums skyrocketing, until in many cases employer contributions to such insurance plans have become, not an added benefit, but a replacement for cash wage improvements.

But many people still pay for their own health insurance. In 1973, Americans paid more than $24.5 billion in health insurance premiums, and the insurance purchased with those premiums covered only 25 percent of all personal health care costs in the nation. The rest came directly out of consumers' pockets or from government programs. For many Americans—primarily those who are neither very poor nor very rich, health care costs have meant financial disaster. And even those with insurance find gaps in coverage leading to bankruptcy precisely when they need the strongest protection.

For the elderly, there is a special problem. Inflation has so eaten away at the value of their Medicare coverage that the average Medicare patient spent $119 out of his own pocket for care in 1972, compared to $94 in 1966, the year before Medicare began.

Many American families have no insurance protection at all. According to the Social Security Administration, 41 million people under the age of 65 had no coverage in 1973. More than 140 million have no insurance which covers visits to doctors' offices. For them, even a minor illness or injury can spell financial disaster.

Though in many cases they are covered by special government programs which pay the dollar costs of health care, the poor must still pay for those services with their dignity. Hospitals consider the poor as second-class patients. The poor wait for hours for routine treatment at public hospitals which can't cope with the demand for their services, or are turned away from private hospitals which refuse to cope with the demand. They are victimized by doctors specializing in lucrative poverty practices in which care may be incidental to profits.

Lost in the maze of professional apathy and overburdened health care systems, they often choose to avoid treatment, rather than to submit to the insensitivity they have learned to expect. And always it is the children who are the special victims of this system. Often they are denied even the most basic kinds of routine care simply because their families do not trust the system set up to provide that care.

It is a strange system which encourages those it supposedly serves to avoid its services until trauma eliminates the choice.

Most visible, of course, has been the impact of costs and availability of services on public budgets at every level of government.

Federal, state and local expenditures for health care in 1950 amounted to $3 billion—about 25 percent of the total spent for health care that year. With the advent of Medicare and medicaid, and with inflation, this increased to more than $41 billion in 1974—or nearly 40 percent of all health expenditures in the nation. Of this amount, more than $12 billion came from state and local governments, with about $4 billion of that going to public and municipal hospitals.

Rapidly rising costs, largely without visible improvement in health care delivery, are forcing many states to cut back on medicaid programs, which further squeezes hospital budgets tighter. At the Federal level, the current Administration proposed to cut Medicare and Medicaid assistance levels by requiring the elderly and the poor to pay more than $600 million more out of their own pockets for health care. Federal and state cutbacks have led and are leading to ever more pressure on municipal budgets, but those budgets are in virtually every instance, the source of last resort.

A national economic crisis has left more people unemployed and more families requiring public health care; but it has also meant lower tax receipts and higher pressure for government expenditures for health services. Tragically, at all levels of government, the nation has reacted to falling revenues and rising costs by cutting services upon which more and more families must depend.

If ever there were a time for a restructuring of health care in America, that time is now. The outline of that reform exists.

Recommended solutions

1. A subsidy for the education of doctors in return for required service in those urban and rural areas now served inadequately or not at all.

2. The imposition of a moratorium on all new hospital construction, with the enactment of strong certification requirements which tie new construction to real needs.

3. The federalization of Medicaid programs, with benefits standardized and with uniform eligibility levels. Medicaid funding could remain a state responsibility under federal guidelines and direction, but a federal takeover of the costs may be warranted (estimated cost, $6.3 billion).

4. Encourage medical schools and hospitals through grants to establish family practice oriented clinics to serve both urban and rural communities.

5. Expand Medicare to cover all necessary health expenses which are actually incurred by those covered by the program.

But, more than this, a comprehensive system of national health insurance coverage is absolutely essential. Such a system is the answer to the problems which now plague the nation's health care delivery system.

Such a system would provide:

1. Comprehensive health insurance coverage to every American, regardless of income, employment, or any other factors;

2. Controls on the rising costs of health care designed to stem the inflationary pressures which threaten the stability of the entire system;

3. Incentives to health professionals to enter undeserved areas, and which plans a network of health services that reaches into every community;

4. Encouragement for efficiencies suited to the needs of the patients, and which generates assurances of quality in the services delivered.

Most current proposals are comprehensive, but all except the Health Security Act also require patients to pay part of the costs involved. And the proposals differ fundamentally in their capacities to control costs, and assure both access and quality. Most also differ in the extent to which they replace existing programs.

The H.S.A. bill comes closest to the ideal. It would insure every resident of coverage under a single program under the umbrella of the Social Security Administration, with funding from a combination of payroll and income taxes. The program would incorporate all existing Medicaid programs, and county and municipal and health care centers would be totally reimbursed for covered services. Under its provisions, the proposal could save state and local governments between $8 billion and $10 billion a year.

The proponents of the bill maintain costs, access to services and the quality of those services can be more effectively controlled if the federal government is the single insurance source for everyone. Particularly, the budget process would be subject to public review and public accountability at a single level.

Significantly, since funding through Social Security passes all costs of the program through the federal budget, the $76 billion to be spent under the program would be visible. Passing such costs through premium payments to private insurance companies, on the other hand, would tend to obscure such costs.

The essential debate now is whether to provide health care to Americans through a public system of services and guarantees, or through some combination of public and private interests. It should be clear, however, that a major reason the debate has taken place at all is because the private sector has failed to meet the needs first identified in 1946. It should also be clear that the profit motive of the private sector has not so far generated an efficiency which could stem the upward advance of costs.

No matter what system is ultimately achieved, those Americans who can pay for the system will be required to pay for it in one form or another. The obligation of government will be to insure that that payment is achieved equitably and openly, and with certain guarantees that the services so supported represent the value they would imply. If some concern is warranted for doctors, hospitals, and insurance companies, some concern is also warranted by government for the young, the old, the ill, the poor, the individuals and families who now need help, but who have been denied that help until they may now expect none.

EDUCATION

The nation's cities—indeed the nation—must have a restructured system of education which achieves a sensible balance among all levels of government in recognition of the special responsibility each may best serve.

Such a system would assign the direction of specific educational policy to the local level, where it now largely rests; it would assign the responsibility for support to the states, where it now partially rests; and it would assign to the federal government the responsibility for guaranteeing the states will have access to the resources they need to fulfill their roles, and the responsibility for guaranteeing equal educational opportunity to every child, no matter where that child may attend school.

One ultimate consequence of such a system would be to remove from the property tax the burden of the cost of education which it was never designed to support, and which it has never supported very well. If that burden can be removed, the property tax may be so infused with new vigor, that it

can again become the important revenue source it might have become.

Educational funding, as reflected in the current chaos surrounding the property tax, is a significant element in the problem and the existing federal responsibility toward funding has been both insubstantial and misdirected.

Federal outlays for elementary, secondary, and vocational education actually declined from 1.6 percent of the federal budget in 1969–70 to 1.3 percent of the budget in 1974–75. In that year, federal aid to elementary and secondary programs amounted only to $4.7 billion of the $61.1 billion spent from all sources nationally. In contrast, the federal share of the $39.5 billion spent nationally for higher education was $6.2 billion.

A minimal and uncoordinated federal commitment to education, with the lion's share of that commitment reserved for higher education, has serious implications for America's cities.

The Statistical Abstract of the U.S. for 1973 reports that in 1971, more than 51 million children were enrolled in schools of elementary and secondary education, while only 8 million students were enrolled in higher education programs. Of the 46 million children enrolled in public school programs alone, fully 28 million attended schools within city and central city metropolitan districts.

The statistics clearly indicate that federal programs provide more aid to one college or university student than such programs divided up among six elementary or secondary education students, and that the greatest impact of that imbalance is within the school districts of America's urban areas.

The total federal outlay for elementary and secondary education in 1971 amounted to no more than 25 percent of all federal education aid. Even considering vocational and training program assistance—not included in the enrollment totals for lower education programs—the federal support of basic education still does not equal the total spent under federal support for advanced education.

Yet, consistently, less is spent per pupil in cities than is spent per pupil in suburban and rural communities. Reading scores are lower in cities—drop-out rates are higher, as are incidents of unrest and disruption. Fewer students graduate from city schools. Fewer continue their education, when they do graduate.

At the same time, because the average income of city taxpayers is lower than the income of suburban taxpayers, urban taxpayers consistently pay more of their income toward the support of their schools than rural and suburban taxpayers do—yet all too frequently, state and federal aid to education is at a higher effective level for rural and suburban schools than for urban schools. Without a sane federal commitment to basic education, per-pupil expenditures in seven states vary by a ratio of 10 to 1—that is, the richest district in each of the seven states provides $10 per student for every $1 provided per student in the poorest school district. Only in 11 states is the ratio 2 to 1 or lower. It's higher in all of the others.

The costs are not all in dollars.

As of March, 1974, 3.5 percent of whites and 12.2 percent of non-whites over 25 years of age had completed less than five years of elementary school. In the same age group, 38.6 percent of whites and a staggering 55.8 percent of non-whites had failed to complete high school.

More than a half-dozen studies included in the Advisory Commission on Intergovernmental Relations report on school financing released in January 1973, strongly support the relationship between expenditures and educational performance. Yet, without some system of support beyond the inequitable and already overburdened property tax, additional funding is not likely to be made available.

The property tax, generally the major source of local school funding, increased for single family homes nationally by more than 30 percent between 1962 and 1971. For many cities, constitutional or other limits, have already been reached, removing the tax as a source of additional funding, even if local voter approval could be established.

On the other hand, although their revenue sources are less restrictive, and more likely to pace inflation than any local sources, the states have not responded with sufficient additional educational support to stall the crisis in educational funding at the local level which has now begun to eat into resources which should go to other essential local services, but which must, instead, be diverted to cover the gap between educational needs and resources.

When federal countercyclical aid was denied cities by the Congress in 1975, cities in New York State sought and received more than $20 million in emergency aid from the State. A substantial part of that aid was then diverted by those cities to cover local school budget deficits, at the expense of some city programs and services.

That this had to be done was made clear by a study commissioned by the U.S. Office of Education, which in October, 1975, concluded that one out of every five American adults is functionally illiterate and unable to cope with the routine problems of today's society.

The study by the University of Texas at Austin discovered that 23 million Americans cannot read newspaper help-wanted ads, figure the best grocery buys, or make a train reservation. It found that 15 million Americans could not address an envelope properly for mailing, and that more than 68 million Americans could not read a simple paragraph that explained why it would be illegal to be held in jail for two weeks without being charged with a crime.

The study has grave implications for a society as complex as is America's, for ignorance is the ultimate enemy of a Democratic society.

If the states have failed to assume a proper responsibility in education, Federal support for education has actually been no support at all.

Federal programs now provide about eight percent of the financial resources available to public schools. This extremely limited contribution is spread over more than thirty fairly narrow, special purpose programs—none of which contributes to the general education of all pupils.

Designed primarily to serve as remedies to specific ills, they have largely failed that design, while contributing to the continuation of other, larger problems, of which unequal educational opportunity may be the most serious.

A child in America is not offered an education. That child is offered a challenge to succeed at one in an atmosphere of confusion, cultural ambiguity, and economic constraint, which the evidence clearly shows has produced for millions of such children nothing more than functional illiteracy.

Recommended solutions

1. Nationally devised standards of educational expenditure equalization, adjusted to account for specific state educational needs;

2. The abolishment of the property tax as a source of funding for educational purposes—substituting instead, the authority for states to retain a portion of federal income or other taxes for the support of local educational needs, with states required to assume a full responsibility for the funding of those needs in line with equalization standards provided for previously.

3. Enactment of immediate temporary transitional emergency legislation to provide grants-in-aid to local school districts now without the immediate and necessary resources to meet basic educational needs.

Such a system of state-federal cooperation for education would assign the basic responsibility for educational quality to the states, but it would not leave states without the resources necessary to meet that responsibility. It need not require an end to the local control of educational direction—indeed, it should not, and safeguards can guarantee that the control will remain in local hands; but it would recognize that, although control and direction should be local, funding is, and will continue to be, beyond the limits of local resources, even with partial state and federal support.

These proposals, and others which may apply, are clearly intended to establish for America the second half of a most basic responsibility.

It is not enough to make an education available to every child. We must also give that child the opportunity to enjoy an effective and meaningful education.

For thousands of children in cities across America, that opportunity is their only way out of poverty and despair. And today, for those same children, it is an opportunity denied.

IN SUPPORT OF URGENCY

Every American city does not exist on the brink of disaster—yet all move toward it. That the danger is largely undiscernable in the case of all cities provides an insidiousness which tends to obscure the evidence available in those cities which have reached that brink.

Crime, poverty, unemployment, illiteracy, illness, all these are generally described as problems of the cities—that they are to a very real extent the problems of the cities is an indictment of the lack of national leadership which has made them so. And clearly, if the cities cannot receive the help they need to deal with them, they will soon become the problems of those who, in isolation, thought such problems could be ignored.

The true course of courage for America and its national leadership is to establish now and nurture a sense of urgency which can salvage the proud imagination of those who built this nation's cities as they refined this nation's spirit, and so to recapture the image of our cities as the havens of the American dream, which has been their heritage.

We need not erase the established limits which define the towns, villages, and cities of America to achieve such an urgency. We need only destroy the barriers erected to differentiate between the rights and responsibilities of those who live within the others, and which determine the quality of life from the standpoint of mere location, rather than justice.

Many of the problems of urban American society may not be easy to solve, many of the solutions may not be easy to find, and there may be more than one course of action which is appropriate to either the problems or their solutions—indeed, many of the problems cannot be solved at all at any single level of government, and some will require the active participation of people and resources outside of government;

But the effort must be made.

America's cities are America.

As a people, we ignore our responsibility to the cities only at the peril of the nation.

BILLY KILMER

Mr. McGOVERN. Mr. President, today's Washington Post carries a stirring account by Joan Ryan about Billy Kilmer, the great Washington Redskins quarterback.

As a longtime admirer of this courageous athletic leader, I ask unanimous consent that Ms. Ryan's article be printed in the RECORD.

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

EMOTION RESTORED BY KILMER

(By Joan Ryan)

Something wonderful happened in Irving, Texas, Saturday afternoon. George Allen won't agree with me. He will say stodgily that there is nothing wonderful about losing.

While the battle with the Cowboys may have been lost, some war within me was won when Billy Kilmer cried. He shed his tears openly. He showed his pain and disappointment with no shame. And a certain purity that had been missing from football was restored by the depth of his caring.

Other fans have been searching in vain through the morass of pettiness for some small sign of hope. But, in the last few years, it has been somewhat difficult to work up a sentimental lump in the throat over some of the jaded aspects of the game; the politics, the anything-to-win mentality, the greed, the airing of dirty laundry.

Yes, there were other searchers who were uplifted by Kilmer's tears. He shared with his television audience the beauty of a man's emotional commitment beyond himself. Caring and trying have always been Kilmer's trademark.

It was a coincidence that CBS chose to highlight the special qualities of Kilmer in their halftime film produced by NFL Films of Philadelphia. Phil Tuckett, a former pro player of little note, synchronized filmed clips of Kilmer's ups and downs with husky-voiced Peggy Lee's rendition of "Something Wonderful" from "The King and I."

"The thing about Kilmer is that he is so vulnerable," said Tuckett, one of those searchers for purity in football. "And it always shows in his face. He wears a different kind of bar on his helmet so that his expression always shows.

"I'd been thinking of doing a film on Kilmer all season but I could never think of the right song to go with his story. I heard the first few lines of Peggy Lee's song and I knew that was it."

The song begins, "This is a man who stumbles and falls, but this is a man who tries . . ." This is Kilmer.

"The big thing in football now is to acquire a stoical mask," said Tuckett. " A mask that hides your feelings. But Kilmer's so different. If he's happy, you see it; if he's hurt, you see it.

"He just shows on every play that he's so human. That's just not the case in pro football these days. But there he is, this guy with the bad body, no classic style, scratching for everything he gets. Every man on the street identifies with him. With Kilmer, it's all in the heart."

NFL Films has been trying to convey this all-but-forgotten emotion in the CBS halftime films. Tough guys will put them down as too mawkish, but, for me, the return to emotional commitment is welcome.

Vince Lombardi's triumphant march through pro pootball is backed with Frank Sinatra's autumnal rendition of "My Way." George Allen is revealed against a backdrop of "I've Gotta Be Me."

The Pittsburgh Steelers' Super Bowl conquest is labeled "The Impossible Dream," and Cleveland Brown owner Art Modell's anguish over a current 3–10 season is outlined against clips of Jim Brown, Paul Warfield and Gary Collins while Edye Gorme sings pointedly, "What Did I Have Then That I don't Have Now?"

But it was Kilmer's tears, highlighted on film at halftime, replayed for real in the fourth quarter as he left the field for the final time, that put something wonderful back into football.

THE TAX CUT AND THE BUDGET

Mr. PERCY. Mr. President, Congress has voted to extend the current tax reductions into 1976. The Senate has voted to extend the cuts for 6 months; the House has voted to extend the cuts for a year. The differences in the two tax bills will be resolved speedily and we will be sending a bill to the President for his consideration this week.

The President has stated that he will veto any extension of the tax cut if it is not accompanied by equal reduction in the expected increase in the Federal deficit. The President is firmly committed to this stand, and a confrontation looms between the White House and Congress.

At this crucial juncture in the uncertainty of the economic recovery, an extension of some portion of the tax cut seems essential to maintain confidence among both consumers and producers. In my opinion it would be unwise to threaten economic recovery by abruptly increasing Federal withholding taxes.

At the same time, we are all concerned about the alarming increase in the Federal deficit. The size of the deficit is in itself a significant inflationary pressure. Inflation is the most insidious economic force, a thief of equitable buying power and steady economic growth.

I believe we can most effectively deal with this economic challenge by relying upon the new congressional budget procedure that is now in its first use in the House and Senate. Under the direction of Senators MUSKIE and BELLMON, chairman and ranking member of the Senate Budget Committee, and Congressmen ADAMS and LATTA, chairman and ranking member of the House Budget Committee, the process is off to a promising beginning. It will be tested and refined even further in the coming year.

The procedure provides an orderly process for setting spending ceilings and priorities. It makes stiff requirements on Congress to pass joint budget resolutions in April and October. These resolutions are the heart of the budget process and provide a logical vehicle for reduction of the growing Federal deficit.

As we prepare for the April resolution, we should look carefully at the budget and determine how much we can cut from existing and projected programs to reduce the growth in the deficit as much as possible. This reduction process should be done with a scalpel and not a cleaver. As was intended by the drafters of the budget procedure, budget cutting should proceed on an item-by-item basis, not a sweeping reduction across the board to meet an arbitrary figure.

It is impossible now to say exactly how much the Federal deficit can be reduced in the coming year. But the President and the American people should put their faith in this new budget process. This is no pie-in-the-sky blueprint for spending reform. It offers an effective partnership of the Congress and the President in ordering up the Nation's spending priorities.

In conjunction with the Congress effort to reduce the deficit under the new budget procedure, I believe we can and should raise additional Federal revenue to help bring the budget closer into balance. The question is not how to tax without injury. It is how to tax with equity. Congress should consider a number of options that would yield increased revenue and at the same time meet national priorities.

First, we should consider passage of a 10-cent a gallon increase in the Federal gasoline tax with a rebate for essential driving. This would produce $5 billion a year for the Federal Treasury and would encourage gasoline conservation. I can think of no better approach to our continuing energy dependency and our massive Federal deficit than a gasoline tax that would reduce luxury driving and increase revenue.

Second, we should consider increasing the Federal tax on alcohol and tobacco by 50 percent. By so doing I am not expressing criticism in any way of those who use alcohol and tobacco. But, I am saying they are not real necessities. It is not unreasonable to pay a little more, especially in these times of massively unbalanced budget. These taxes, which are imposed on essentially luxury items, have not been raised at the Federal level in over 20 years. A 50-percent increase in these taxes would raise an additional $4 billion a year.

Third, we should abolish the deductability of State and local gasoline taxes on Federal income tax returns. This deduction gives most taxpayers a very small savings, but it is nothing more than a subsidy for driving at a time when energy conservation is supposed to be a top national priority. Ending this deduction would raise $650 million a year in Federal taxes.

The challenge of extending tax cuts to maintain confidence and reducing the rise in the Federal deficit to foster fiscal stability is essentially a matter of procedure. In the new budget process, I believe we have the ideal procedure to reduce the deficit. Beyond that, there is ample opportunity to raise additional revenue, as I have indicated in the three examples cited above that would reduce the deficit by approximately $10 billion thus helping in a major way in the battle against inflation. There are certainly even additional revenue raising options that should be considered.

It would be most unfortunate if we robbed taxpayers in December of the additional buying power we provided them in April. And it would be even more unfortunate if we ignored a promising budget reform process for the sake of politics.

FEDERAL BRANCHING POLICY

Mr. WILLIAMS. Mr. President, in recent weeks, the distinguished chairman of the Subcommittee on Financial Insti-

tutions, Mr. McINTYRE, has made three excellent statements on a subject long worthy of reconsideration by the Congress. I am referring to the subject of Federal branch banking policy, particularly as it relates Federal law to State law.

Federal branching policy was formulated over 40 years ago in a climate considerably different than that which we face today.

Senator McINTYRE has announced that the subcommittee is undertaking a comprehensive review of branching policy with a view toward assessing what Federal policy on this subject should be in the future. I commend the Senator for having initiated this undertaking, and I ask unanimous consent that the three recent statements which he has made on the subject be printed in the RECORD.

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

ADDRESS BY U.S. SENATOR THOMAS J. MCINTYRE, NORTHERN NEW ENGLAND SCHOOL OF BANKING, DURHAM, N.H., SEPTEMBER 11, 1975

FEDERAL BRANCHING POLICY: TIME FOR REAPPRAISAL

Members of the Northern New England School of Banking, guests and friends:

Your letter of invitation suggested that I talk about banking legislation and what's happening on the national legislative scene.

But today I would like to take up a subject long overdue for Congressional reassessment—and that is the subject of Federal branching policy.

The branching issue, in fact, is a loose thread left dangling after our recent efforts on the Banking Committee—unsuccessful, as you know—to enact temporizing EFTS legislation.

Without digressing to explain the circumstances surrounding those efforts, I would like to outline three points which bear emphasis.

One, the Committee action strongly reaffirms my belief that all of us—the public, the financial community, financial regulators, and legislators alike—must go through a substantial educational process on Electronic Fund Transfer Systems in the weeks, months, and years ahead.

Secondly, I am sorry to say that our efforts on the EFTS bill highlight once again the fact that Congress is—regrettably—a body which reacts rather than acts.

Where was the crisis? Where was the urgency? Where were the aggrieved special interest groups which seem to be so essential now to generating any impetus for legislative action?

The answer is that there were none of the above.

So, predictably, I suppose, the Committee washed its hands of the matter to await the turmoil of one sort or another that will inevitably bring the issue to life once again.

The legislation is not dead; it's dormant. What is most regrettable, however, is that Congress is currently in a unique position to forge a rational policy of moderation in the EFTS area, because EFTS is still in an early state of implementation. We still have time to assess the many public policy considerations which attach to EFTS development. For the time being, however, we are likely to remain in punt formation.

The third and key point I wish to focus on today concerns the basic and fundamental question of Federal bank branching policy; that is, the degree to which State law pertaining to State-chartered institutions should govern the permissible activities of Federally-chartered institutions within a particular State.

Emphatically, I repeat that the McFadden Act and Federal branching issue are overripe for reassessment. What's more, I now propose to do something about it, deliberately and directly, at the Congressional level where it belongs.

Therefore, I am today announcing that the Subcommittee on Financial Institutions will shortly launch a comprehensive study of national policy governing all forms of geographic expansion by banking institutions with emphasis on branching.

I, for one, have discovered that few people really took the time to study our EFTS bill, S. 1899, in order to comprehend and appreciate a significant policy directive which was implicit in its provisions. EFTS is a new animal, and it would be a classic error for Congress to wrap this new animal in the old clothes of 40 year old branching laws. The EFTS branching issue is appropriate for Congress, and Congress alone, to decide. And if ever there was an effective stimulus to reassess the McFadden Act, EFTS was that stimulus. But hiding under the robes of the judicial branch was not only an evasion of duty, it runs the further risk of encouraging continued litigation which will only have the unfortunate effect of providing precedent once the issue presents itself inevitably to the Congress for resolution.

My differences with the Comptroller of the Currency are a matter of record, but I sincerely regret that the Courts are now deciding the legality of the Comptroller's EFTS actions on the basis of the McFadden Act.

While it is conceptually possible that the Congress may enact an EFTS McFadden Act, I feel strongly that it will not; that the environment of the 1980's and beyond calls for rules and regulations which are less, rather than more, restrictive and which recognize the national and international markets in which we do business and the increasing mobility and financial sophistication of our population.

While litigation remains inevitable in the short-run, I still remain fully convinced, even in the absence of the legislative framework of S. 1889, that the time has come to tackle the branching issue head on.

Even if some of my colleagues disagree with me over the need for a go-slow policy on EFTS development at the present time, I trust they would agree with me that national branching policy is at the very heart of the issue and is even more deserving now of prompt attention by the Congress. For electronic banking, a subject not even dreamed about forty odd years ago, is inextricably linked to traditional branching policy established then and in effect yet, today.

For all too long a period of time now, Congress has skirted the issue of national branching policy, a policy which has existed virtually without change for more than forty years. Yet—as everyone is aware—the Nation's economy is vastly more sophisticated and complicated today than it was when Federal branching policy was first formulated.

The Congress, which enacted those laws in the first place, has the clear responsibility to now investigate that policy in terms of our present economy and the public's continuing right to the most efficient and responsive financial system possible.

But I guess that assumes a lot about Congress.

As one Washington wit put it, "I think I know what Congress's problem is. Maybe they just don't want to get involved."

As you know, national policy on geographic expansion by branching is embodied in the McFadden Act of 1927, as amended by the Banking Act of 1933. These statutes are intended to establish branching equality between State-chartered and Federally chartered banks. This is done by providing that national banks may branch only over the same geographic areas, as those specified by the States for State banks.

What has resulted is a mishmash pattern of branching laws nationwide. Roughly 40 percent of the States have Statewide branching laws; 30 percent have laws limiting branching to some geographic area smaller than the entire State; and the remaining 30 percent of the States have laws under which branching is, for all intents and purposes, prohibited altogether.

But this is merely the tip of the iceberg. A further probe will unveil a bewildering, even ludicrous, system of branching laws which defies any rational explanation. This is particularly true if one is attempting to relate branching policy to the public interest.

Over the years the various States have developed protective laws and regulations on branching which are most noteworthy for their ingenuity and complexity. A classic example is the "home office" protection device which prohibits branching by another bank into the area of the home office of an existing bank.

In short, a bank may not branch into a given area without buying out the bank already in existence. The device has no reasonable justification other than to protect the existing "home office" bank against competition. And in any instance where branching is permitted only by merger, there are serious questions raised in terms of the Federal antitrust laws.

All in all, it is ludicrous that in 1975, the authority of banks to branch in many jurisdictions is still based upon laws and practices, not designed to promote competition, but based upon the fact that existing institutions, however noncompetitive they may be, will not be adversely affected!

The branching issue is further complicated by the various state laws which either limit branching or prohibit it altogether. In one or two states the branching laws cannot be changed except by constitutional amendment. In several states, while branch banking is prohibited, satellite banking, chain banking or bank holding company banks circumvent the prohibition in many respects.

In some states, banks are permitted to establish offices separate from the main office providing that they are connected by tunnels or pneumatic tubes, that they do no more than accept deposits, that they be located within so many feet of another bank.

Moreover, in attempting to interpret branching laws, the courts have had to decide whether or not an automobile sales agency that processes loan applications is a branch, whether an armored car that picks up deposits and delivers them to a bank is a branch, and whether a deposit machine or a cash dispensing machine is a branch.

The plain fact is that in 1927 and 1933, the Congress inadvertently made it possible for banks to carve up their markets in such a way as to insulate themselves from competition and thus from serving the public to a maximum degree. It is as if a blanket exemption to the most elementary antitrust principle—market division—was awarded the banks of this nation. Moreover, these laws have become so complicated that, at present, no prudent banker in any State with a restrictive law would dream of branching without a battery of lawyers at his side.

For banking organizations, the only exception Congress has made to the basic national policy laid down on geographic expansion more than forty years ago has been in connection with bank holding companies. Under the Bank Holding Company Act Amendments of 1970, bank holding companies were authorized to engage in nonbank activities determined by the Board of Governors of the Federal Reserve System to be closely related to banking and beneficial

to the public interest. In implementing that statute, the Board has from the outset permitted bank holding companies to conduct permissible nonbank activities free of geographic limits—even those limits that generally prohibit bank holding companies from establishing purely banking offices on an interstate basis.

Taking all of this together, if I ever had any doubts about how urgently a Congressional study of the relevancy of Federal laws governing geographic expansion by banking organizations is needed, they have been further dispelled by recent events.

For example, in addition to my earlier comments on EFTS, the U.S. Supreme Court has now joined the growing list of critics of geographic restrictions on banking organizations. It did so in its June 17 decision in *United States vs. Citizens and Southern National Bank* upholding an Atlanta national bank's mergers with five so-called "correspondent associate" banks.

The Supreme Court's decision in favor of the mergers, which the Department of Justice challenged on antitrust grounds, hinged largely on a finding that the acquisition of the five banks constituted a "procompetitive" action designed "to defeat a restraint of trade" imposed by Georgia's restrictive branching law.

The Court's decision contained a number of references highly unfavorable to existing branching policy. For example, the Court said: "The banking business is, of course, riddled with state and federal regulatory barriers to entry. . . . But most of these barriers—e.g., chartering requirements—at least arguably serve the overriding public interest in maintaining customer confidence in the industry as a whole by assuring adequate financial stability and responsible management for all banks. Anti-branching laws, on the other hand, are now widely recognized as a simple device to protect outlying unit banks from the rigors of regional competition."

In my estimation, the Supreme Court decision clearly underscores yet again the need for Congressional review of the geographic restraints on expansion by banking organizations.

Concern over bank branching policy is not new, of course. But it has been the focal point of increasing attention in recent years in terms of the continuing evolution of bank structure and regulation.

In 1971, for example, the Department of Justice specifically urged the Council of State Governments to encourage State legislatures to liberalize State branching laws as a means of encouraging competition in banking. Simply stated, the Department's position, which remains the same today, is that permission to branch creates procompetitive alternatives to banks seeking to protect their markets.

Also in 1971, the Hunt Commission urged, in a series of recommendations designed to revitalize the Nation's financial institutions, that "the power of commercial banks to branch, both de novo and by merger, be extended to a statewide basis, and that all statutory restrictions on branch or home office locations based on geographic or population factors or on proximity to other banks or other branches thereof be eliminated."

Even though the concern over branching restrictions is generally raised in the context of State laws, I believe that the Congress has an overriding responsibility to address and formulate a national policy on the underlying issue, namely, the geographic expansion of banking services in the future.

For example, the Congress is presently engaged in the shaping of a new national policy on the structure of the Nation's financial institutions which will have ramifications for decades to come. The Senate Subcommittee on Financial Institutions, which I chair, has now completed two years of hearings of the comprehensive financial restructuring proposals contained in the Financial Institutions Act. The Senate Banking Committee is now scheduled to mark up that legislation at the end of this month.

Within the context, and coupled with our continuing watch over developments within the EFTS marketplace, isn't branching policy such an integral element of the Nation's financial framework so as to also warrant the same kind of attention? I believe so.

Therefore, as a first step in the branching study I am calling for, the Subcommittee will seek to compile and publish a compendium of papers; one, on the history and background of the Federal branching laws which Congress enacted some forty years ago, and, two, on the issue of whether the policy on geographic expansion by banking institutions contained in those laws is consistent with timely national goals for a sound and competitive financial system serving the best interests of the public today and well into the future. Numerous experts in and out of government will be invited to provide factual and analytical materials to be included in the compendium.

Once the materials are collected and published, I anticipate the need for eventual Subcommittee hearings to determine what new Federal legislative initiatives are necessary.

My basic intention in commissioning this study is to take an important first step—the collection and consideration of thoughtful analysis—to highlight a fundamental element of banking structure and public policy which the Congress can ill-afford to ignore any longer.

This task will likely prove to be an arduous one. There are not only substantive issues involved but emotional issues as well. Nevertheless, I look forward to the job, and I hope and trust I will have the complete support and cooperation of the banking community.

SPEECH BY U.S. SENATOR THOMAS J. MCINTYRE (DEMOCRAT OF NEW HAMPSHIRE), BEFORE THE PAYMENT SYSTEMS RESEARCH PROGRAM AT THE ARIZONA BILTMORE HOTEL, PHOENIX, ARIZ., NOVEMBER 17, 1975

A REVIEW OF FEDERAL BRANCHING POLICY: EFTS AT WORK

Today, I want to follow up on my September announcement that the Senate Subcommittee on Financial Institutions, which I chair, will launch a comprehensive study of national policy governing *all* forms of geographic expansion by banking institutions—with particular emphasis on branching.

I pointed out then—and stress again today—that recent developments—including the emergence of off-premise electronic funds transfers facilities—underscore the need for the Congress to conduct a thorough reexamination of branching policy as set forth in the McFadden Act of 1927 and the Banking Act of 1933. In my opinion, a Congressional study of this kind is long overdue.

In calling for such a study,

I cited the position taken since 1971 by the Department of Justice, that, from the standpoint of the Nation's antitrust laws, liberalized branching would likely encourage competition in banking and benefit the public.

I cited the 1971 Hunt Commission recommendation urging statewide branching for all banks as well as the elimination of any anticompetitive restrictions on geographic expansion, such as so-called home office protection laws.

I cited the U.S. Supreme Court's decision earlier this year flatly branding antibranching laws "as a simple device to protect outlying unit banks from the rigors of regional competition."

I cited the inescapable fact that EFTS expansion, which Congress (unwisely, in my opinion) opted to let the courts decide on the basis of Federal laws enacted long before electronic funds transfer was even dreamed of, is inextricably linked to traditional branching policy.

I also cited Congress' on-going efforts to restructure the powers of the Nation's financial institutions in the Financial Institutions Act of 1975 and said I believed branching policy deserves early attention by Congress. Frankly, the momentum now building for financial restructuring is due in large part to EFTS developments in the marketplace.

In short, I said Congress has an overriding responsibility to study and formulate a national policy on future geographic expansion of banking services.

At this time, it is a fair question to ask what the scope of our study will be and what our intended objective is.

The study will deal with the basic issues of whether State laws any longer should dictate the extent to which financial institutions chartered by the Federal government can expand geographically—and whether State boundaries should continue to be the ultimate barriers to bank expansion.

In other words, we propose to take a hard look at the rationale behind and the contemporary validity of the McFadden Act of 1927, as amended by the Banking Act of 1933.

As you know, these two laws, written over 40 years ago, were aimed at establishing branching equality between State chartered and Federal chartered banks. They provided that national banks may branch only over the same geographic areas as those specified by State law for State banks.

The McFadden Act, as amended in 1933, contains two basic principles which are still in force today. One is that State boundaries are the ultimate limit for geographic expansion by banks. The other is that States, not the Federal government, should have the exclusive authority to determine whether and to what extent, multi-office banking is to exist within their borders.

The result of this policy has been the proliferation of a mishmash of State branching laws that find about 40 percent of States allowing Statewide branching, about 30 percent of States limiting branching to some geographic area smaller than the entire State, and another 30 percent of States, for all intents and purposes, prohibiting branching altogether.

Moreover, some State laws permitting branching contain such provisions as home office protection clauses which appear designed, not to promote the availability of financial services to the maximum public benefit, but to insulate banks from competition.

The situation is complicated by the fact that, in some States which prohibit branching, the restriction can be overcome through other forms of multi-office expansion such as satellite banking, chain banking and multi-bank holding company banking.

Moreover, the fact that the ground rules for multi-office expansion by some thrift institutions, particularly savings and loan associations, are different than those for banks adds to the confusion. There is no McFadden Act for Federal savings and loan associations. There is only the long-standing, traditional policy of the Federal Home Loan Bank Board which generally permits Federal savings and loans to branch up to 100 miles from their main offices in any State which permits geographic expansion by branching, no matter how limited, or by any other means such as by banking holding company.

The ramifications of the Bank Board's branching policy, of course, will become increasingly important as Federal thrift institutions obtain, as proposed in the pending Financial Institutions Act of 1975, many of the operating powers now enjoyed only by commercial banks.

We will be examining the history behind present Federal branching policy as well as the banking structure resulting from State

and Federal regulatory implementation of that policy over the past 40-odd years.

More importantly, however, we also will be seeking answers to a number of serious public policy questions that surround the entire issue of branching in the decades immediately ahead.

I intend to consider the questions of safety and soundness; the relationship, if any, between bank performance and bank structure; bank performance as it relates to competition in the public interest; the availability of credit in smaller communities; and the relationship between bank structure and EFTS.

Now some of this is pretty heavy stuff, and I approach it with all the apprehension of a man who recently heard a speaker conclude *his* remarks by saying:

"Now some of the suggestions I made in this speech may seem a little far out to you. But before you reject them, all I ask is that you sleep on them. And as I look about me, I see that *some* of you have *already* begun."

But I am going to have a go at it anyway. So let's take a look at those key public policy issues our study will examine.

One is the relationship of branching policy (indeed, multi-office banking generally) to the continued safety and soundness of the Nation's financial system.

Branching, as well as other forms of multi-office banking, has often been defended on the ground that it provides sufficient diversification of risk to minimize the possibility of bank failures. On the other hand, it is argued that deposit insurance has eliminated this problem, if indeed it ever existed, and that in any event the record does not indicate that larger institutions, with or without branching systems, are free from the risk of failure.

We want to determine whether unit banks have been more susceptible to failure than banks with branching systems and to what extent the existence of deposit insurance neutralizes the impact banking structure might have on bank failures. If there appear to be differences in the safety or soundness of unit banks and banks with branching systems, we want to know whether these differences are attributable to banking structure, to the size of the institutions involved, or to some other factor.

Another key public policy issue is the relationship, if any, between bank performance and bank structure. By performance, I mean the ability—and willingness—of banking organizations to serve the public needs and convenience in terms of the availability and cost of financial services.

We want to know to what extent branch banking facilitates economies of scale which are difficult, if not impossible, for unit banks, even of the same size, to achieve, and whether this is beneficial to the public interest.

We want to learn the differences between branch banking and unit banking in terms of the availability of credit, the cost of credit, the interest paid on time and savings accounts, and the scope of financial services which are offered the public.

We want to find out whether the convenience of obtaining financial services is substantially different under unit banking than it is under branch banking.

We want to determine whether unit banking or branch banking tends to promote higher loan-to-deposit ratios, a factor which provides a strong indication of how well an institution is serving the public.

We also want to see if there are any differences attributable to banking structure which tend to result in discrimination against certain classes of borrowers such as farmers, small businessmen, the poor, and State and local governments.

A third public policy issue of importance is the relationship of banking structure to maximum competition in the public interest. Banking is not only a regulated industry; it is also a competitive industry. Moreover, the degree to which banking performs in the public interest depends to considerable extent on a high level of competition in providing financial services.

In that connection, we want to know how statewide concentration ratios differ from state to state depending on whether the banking structure involves unit banking, branching banking or some other form of multi-office banking.

We want to find out whether changes in statewide concentration ratios in recent years are attributable to changes in state laws on multi-office banking. By the same token, we want to determine whether such changes are the outgrowth of mergers and acquisitions or of de novo expansion.

We also want to know whether concentration ratios based on statewide data are meaningful. If not, we want to ascertain whether concentration differs according to banking structure in markets less than statewide in scope where actual competition exists. For example, if there have been changes in the degree of concentration in relevant markets over recent years, we want to know the extent to which this is attributable to changes in banking structure such as liberalization of branching laws or the spread of bank holding companies.

We want to learn how entry into competitive markets is different under branch banking than it is under unit banking and the extent to which this is significant in terms of assessing the competitive advantages of the two kinds of systems.

Since geographic limits on bank expansion are presumably intended to prevent one or two institutions from dominating competitive markets, we want to see if geographic limits have been successful in this respect. We want to know whether they are needed at all, given the applicability of the Federal antitrust laws to bank expansion. We also want to find out whether alternative means of guarding against undue concentration of banking resources—for example, a limit on the percentage of assets that may be controlled by a single banking organization—have any merit.

Finally, in this sense, we want to know the extent to which the so-called home office protection laws in some branching states restrict competition and whether there are public interest benefits which offset the disadvantages of the anti-competitive nature of such statutes.

A fourth public policy issue of importance is the impact of multi-office banking, particularly branching, on the availability of credit in smaller communities. This issue has been disputed for years, especially in the rural areas of the Midwest where the controversy over branching tends to be keenest.

In general, opponents of branching argue that funds are diverted from smaller communities to more profitable uses in metropolitan areas. To the extent that this happens, the argument goes, it damages, if not threatens the existence of, small local banks that typically devote their entire resources to the financial needs of their home communities. The counterargument is that branch banking provides a flexible system under which funds can be efficiently channeled to areas of greatest need, including smaller communities, whenever the demand for funds exceeds the supply.

In this connection, we want to determine the facts about the availability of funds in small communities based on whether unit banking or branch banking exists.

We want to learn how local lending compares to total resources under unit banking and under branch banking.

We want to know if there are significant differences between branching systems and holding company systems in their ability to serve local needs, particularly with respect to the transfer of funds from one locality to another.

We want to see if unit banks tend to be more responsive to the financial needs of small communities than banks with branching systems or multi-bank holding companies.

We also want to know what the impact would be on small local banks if laws on multi-office banking were liberalized to allow entry into their markets by larger institutions. By the same token, we want to find out if liberal State branching laws are conducive to newly organized banks being able to grow and thrive.

A fifth public policy issue, and one of particular relevance to this audience, is the relationship of branching laws to off-premise electronic banking facilities.

I have said it before. It was a great disappointment to me that the Congress earlier this year declined the opportunity to forge a new, rational policy of moderation on EFTS expansion until the many other public policy considerations surrounding the advent of electronic banking could be properly assessed. The immediate result of Congress' inaction—and one I sincerely regret—is that the courts will be deciding the legality of off-premise electronic banking facilities on the basis of the McFadden Act.

While that is the short-run outlook, I am convinced that the long-run outlook is for the issue of EFTS expansion to be settled ultimately by Congress. With that in mind, we want to make certain our study of multi-office banking covers the question of whether the definitions of branches in the McFadden Act and the Banking Act of 1933 should have any bearing on the establishment of off-premise electronic banking facilities.

We want to determine the fundamental differences between off-premise EFTS facilities and traditional branches. We want to measure the extent to which retail businesses might be expected to offer financial services by electronic means in direct competition with financial institutions. We want to know the practical limits, in terms of distance, in which off-premise EFTS facilities can be operated profitably away from main offices or established branches. We also want to determine whether the geographic restrictions on EFTS facilities, if any, should be different than those which might prove warranted for traditional branches.

My own feeling is that EFTS expansion should not be bound by the ancient tenets of McFadden, but by a new policy set by Congress—a new policy that looks *ahead* 40 years, not *behind* 40 years.

Such a policy should be responsive to the economy's need for less, rather than more, restrictive regulation of the Nation's financial system. It should recognize the national and international markets in which our financial system functions. And it should take into account the increasing mobility and financial sophistication of the American public.

So these are some suggested headings to date—safety and soundness, the relationship, if any, between bank performance and bank structure, bank performance as it relates to competition in the public interest, the availability of credit in smaller communities, and the relationship between bank structure and EFTS. These headings are by no means exhaustive, and I am sure that as we get under way, they will not be.

I readily concede that the study I have just outlined is, indeed, an ambitious undertaking. But it must be done if we are ever to adapt banking structure to the financial demands that will prevail over the last quarter of the century.

The first step in the study, which will be under way shortly, is to solicit from a number of acknowledged banking structure ex-

perts the necessary facts and analyses on the issues I have cited.

This exercise could provide us with a reasonably balanced assessment which can then be published to serve as the basis for later deliberations by the Subcommittee.

Shortly after such document is published, I intend to schedule Subcommittee hearings to explore the need for legislative initiatives in Congress to correct any proven deficiencies in existing national policy on multi-office banking, particularly as it applies to branching.

In the end, what I hope will be accomplished is a fresh Congressional expression of what national policy toward multi-office banking should be. You asked for a Congressional perspective on EFTS. In response, I have given you a classic response, I have given you a classic example of how EFTS is affecting the legislative process.

Based on recent developments, particularly the Supreme Court's attack on branching restrictions and the uncertainty that has arisen over EFTS expansion, I am firmly convinced that Congress can no longer afford to ignore the issue of geographic restrictions as they relate to financial services.

Moreover, I consider it the responsibility of Congress—and Congress alone—to re-examine national policy on the issue in terms of our present economy and the public's continuing right to the most efficient and responsive financial system possible.

The study which I have discussed today is designed to respond to the urgent need for Congress to live up to that responsibility.

ADDRESS BY U.S. SENATOR THOMAS J. MCINTYRE, DEMOCRAT OF NEW HAMPSHIRE, BEFORE THE NATIONAL CONFERENCE OF CARTER H. GOLEMBE ASSOCIATES, INC., TO CONSIDER THE ABILITY OF BANKS TO SERVE THE PUBLIC, TO BE GIVEN AT THE CONTINENTAL PLAZA HOTEL, CHICAGO, ILL., DECEMBER 9, 1975

BRANCHING AND THE DUAL BANKING SYSTEM

Today I'm going to talk about an issue which has fascinated me for some time.

As you know, the Banking Committees of both Houses of Congress are moving full speed ahead in terms of banking legislation, opening up for consideration almost every item imaginable within our respective jurisdictions.

Within these many issues, reference is often made to this or that item in terms of how it relates to the dual banking system.

So, the question is raised,—*What is the dual banking* system.

Whatever the dual banking system may be, it is treated with the same reverence accorded apple pie and motherhood. *But, really, what is it?*

Of course, I understand the obvious reply—a dual system of chartering and regulating financial institutions. But that says nothing about the significance of the dual system to those of us charged with legislating or regulating in the financial area. Still—if this audience is typical of many banking audiences I've addressed in the past—I've probably *already* offended a few of you just by asking *questions* about the dual banking system.

For surely, this is one of the most emotional issues to be found in the financial area. I get emotional, too. Especially when I read the mail accusing me of high treason for undertaking a reassessment of the McFadden Act. Don't I believe in states' rights? Don't I believe in the Constitution? It's old, too. Maybe we should do away with it as well!

After all, if you're convinced that the states have a vital role to play in our own form of government; if you believe in the inherent virtues of local government as opposed to a massive Federal bureaucracy; if you are certain that the citizens of each state and each community can manage their own destinies better than Washington officials; if you prefer the sturdy, self-reliant small businessman to the giant corporation—then you must believe in dual banking. This, at least, is the claim.

I don't intend to duck this issue. I want to face it squarely. I happen to believe in the virtues I listed above. But I also believe it is important to look at the facts, free from the emotionalism and the mystique attached to a discussion of dual banking.

Coming back then to my question, just what *is* this dual system of banking about which we have heard so much for so many years? Briefly described, it is simply a system under which financial institutions may be chartered by either the Federal or state governments, and are thereafter primarily supervised by their respective chartering authorities. This is a simple, bare bones, description that begs a fleshing out.

In a broader context, duality means that with respect to banking—a highly regulated industry imbued with the public interest—we have left with the states a significant amount of authority. Indeed, we have provided that the states and the Federal government shall, in a sense, be partners with respect to administering in the public interest as it relates to banking.

And what have been the results of this unusual approach?

In general, I believe they have been most impressive. For two centuries, public policy in the United States opposed monopolization of credit institutions. The dual banking system has played a most important role, for it has been instrumental in preventing the evolution of a closed industry, dominated by a handful of giant institutions. Today we have some 14,000 commercial banks, serving virtually every community in the nation—a system unique in the civilized world; indeed, unique among regulated industries in this country.

The dual banking system not only has encouraged competition, it has encouraged innovation. Through dual banking we have, to a large extent, avoided the kind of stultifying, oppressive regulatory bureaucracies which dominate some of the regulated industries in this country, and do so to the detriment of the public interest.

Under the dual banking system, the laws under which banks operate may be more closely attuned to the needs of a particular locale. In a nation of our great diversity, a state system of banking, operating side by side with a Federal system—and with freedom for banks to move from one system to the other—provides the means for each section of the country to enjoy the special kind of banking services which it requires.

Now I think it may be overdoing it to attribute all of these good results to a system of dual chartering and dual supervision, but certainly much of the credit must go to that system.

But now let's take a closer look at the matter of geographic restraints on banks; on their ability to branch and to serve public needs.

It should be obvious that if there are to be two systems of banking in this nation—state and Federal—one of these systems cannot enjoy so great a competitive advantage as to drive the other system out of business. Certainly there are, and should be, many differences between the two systems, for this is one of the distinct advantages of a dual system. To mention but a few, these differences go to the types of loans which may be made, the nature of the collateral which may be accepted, the amounts which can be loaned to individual borrowers. Even more significant, perhaps, are differences in the reserves which state chartered, non-Federal Reserve member banks may hold, as compared with Fed-member banks.

At the same time there are other differences which go to the very survival of one system or the other. For example, in 1933 there were some who thought that Federal deposit insurance should be available only for national banks; indeed, some of the bills considered by the Congress would have made that limitation. But the Congress chose not to discriminate and made sure that all banks, whether national or state chartered, had equal access to the deposit insurance system. Had the Congress not done this the state system would have disappeared. For neither in 1933, nor in 1975 for that matter, could the state system of banks as we know it today maintain itself against the national banking system if only national banks were provided with the strength of Federal deposit insurance.

Another crucial area in which there must be competitive equality if the two systems of banking are to survive relates to branching, and, more precisely, to deposit gathering. If one system of banks is permitted to branch and the other is not, that system denied such facilities would shrivel up and die.

The Congress wrestled with branching all during the 1920's and early 1930's and the result, as we know, was the adoption of the McFadden Act in 1927 and the Banking Act of 1933.

The McFadden Act, as amended by the Banking Act, made it possible for the dual banking system to continue. With respect to branching, it assured competitive equality between national banks and state banks. And it did this by adopting two basic principles which remain in force today. One is that state boundaries serve as the ultimate limit for branch expansion by banks. The other is that the states, not the Federal government, determine whether and to what extent the banks operating within their borders—both national and state—shall be able to expand geographically through branching. Whatever a state's decision, both classes of banks must abide by the same rule.

Let me suggest that this compromise was not written in the heavens. We could just as well have fashioned a purely Federal solution which would have assured competitive equality. As you know, we settled the crucial problem of depositor protection by devising a deposit insurance law at the Federal level rather than one dependent upon 50 state insurance systems. In any event—and despite considerable opposition in the Congress—we gave to the states the authority to administer this compromise.

After the passage of some 40 years, it's legitimate to ask just how this has been handled by the states. And this is precisely what I suggested on September 11 of this year. On that day I announced that the Senate Subcommittee on Financial Institutions, which I chair, will launch a comprehensive study of national policy governing all forms of geographic expansion by banking institutions, with special emphasis on branching.

I pointed out then—and I emphasize again today—that a study of this kind is long overdue. I noted the bewildering variety of state laws which have resulted from this forty-year-old policy. I called attention to the concern of the Department of Justice over some possible anti-competitive implications of several of the state branching laws and I noted as well the Hunt Commission's recommendations in 1971 calling for liberalized branching under state authority, and a recent U.S. Supreme Court decision raising questions about restrictive branching laws. Finally, I said EFTS at the retail level appears to be inextricably linked to branching considerations.

In our study, we will be reviewing the history behind Federal policy on multi-office expansion, as well as the banking structure that policy has fostered. We will be taking a hard look at the various ways in which branching restrictions have resulted in

other forms of multi-office expansion . . . satellite banking, chain banking, and multi-banking holding company banking, for example. And, of course, we will be looking at the branching authority of savings and loan associations, which are not governed by any equivalent of the McFadden Act. Yet if the pending Financial Institutions Act of 1975 is enacted, S & L's *will* be exercising many of the powers now enjoyed only by commercial banks.

Even more importantly, our study will focus on key public policy issues. We will concern ourselves, for instance, with the relationship of branching policy to the continued safety and soundness of the nation's financial system. We will want to know, for example, whether branching brings added strength to banking organizations, as has been argued by some, or whether present provisions for regulation and insurance have eliminated any differences in the safety and soundness of unit banks and banks within branching systems.

Another key public policy issue we will take up is the relationship between bank performance and bank structure. By performance I mean the manner in which banks serve the public. We will want to know whether or to what extent restrictions on branching place impediments on the ability of banks to serve the public. And we will want to know more about differences between branch banking and unit banking in terms of the availability of credit, the cost of credit, the interest paid on time and savings accounts, and the scope of financial services that are offered to the public. Perhaps there is *no* difference. Or perhaps there are *important* differences which the Congress should know about.

Still another—and most important—public policy question is the relationship between banking structure and the maintenance of a fully competitive banking system. In achieving many of the public policy objectives for banking, we depend heavily upon the fact that banking is not only a regulated industry but also a competitive industry. And thus we will want to know whether differences in banking concentration ratios which reflect differences in branching laws from one State to another are of any significance. And, if so, what the implication may be for competition. We will also want to know whether entry into local markets is made easier or more difficult by liberalized branching laws, and just how this might affect competition in such communities. Is the application of fundamental antitrust law to banking furthered—or hampered—by restrictions on branching, or by laws which prohibit banks from entering local markets except through merger?

A most important issue for the Subcommittee to consider will be the relationship between branching and the availability of credit in smaller communities. Do liberalized branching laws draw needed funds *out* of small communities and *into* major cities? Or is the contrary true? Does a flexible branching system make it possible to channel funds into smaller communities, funds which would not otherwise be available under a unit system? In short, we would like to know *which* of the kinds of banking systems is *most* responsive to the needs of small communities.

Another vital public policy issue we'll take up is the relationship of our present system of branching laws to off-premise electronic funds transfer facilities. I was disappointed when the Congress earlier this year declined the opportunity to forge a new—and I believe—rational policy of moderation on EFTS expansion. Until the many other public policy considerations surrounding the advent of electronic funds transfer can be properly assessed, surely such a policy is needed. But now—because of Congress' inaction, the courts will likely be deciding the legality of off-premise EFT facilities on the basis of the McFadden Act—a result which I deplore. But with that possibility in mind, the Subcommittee will want to consider the question of whether branching policy, as laid down in the McFallen Act and implemented by the states, should have any bearing at all on the establishment of off-premise EFT facilities.

I could elaborate further on the items to be considered but time does not permit it. Surely, many of you have thought of matters which should be investigated but which I have not mentioned. Perhaps we have overlooked something. I therefore urge all of you to forward to the Subcommittee suggestions for the study. And I hope that if you are called upon to provide additional input, you'll help us all you can.

But now let me return to the matter of branching and the dual banking system in order to consider whether the study I have described is a *threat* to dual banking.

To claim that it is, and therefore argue that it should not be conducted at all, would be absurd. If by some chance we were to find that in all respects the public was being poorly served as a result of the branching compromises of 1927 and 1933—and if we were to suggest a fundamental change in those laws—it is difficult for me to see that dual banking would be affected at all.

At this point, I must say that one of the frustrations of dealing with the dual banking issue is the lack of balanced and articulate input from those responsible for state bank regulation. Indeed, ranging from EFTS to regulation of foreign banking, many state regulators appear to cling to the McFadden Act as the *sole* expression of the state role in bank regulation.

While trade associations may be *expected* to mouth the vested interests of *their* members, it is regrettable that some public officials at the state level merely echo industry opinion, ignoring in many instances, the reality of change, technological and otherwise, in today's financial environment.

Apart from branching, there are a number of areas where state regulators *could*, and I think, *should* be more aggressive, not only at the Federal level, but at their own state levels.

A good example is in the area of consumer protection.

In a number of consumer credit proposals being considered, or, indeed, already adopted at the Federal level, provision is made for exemption from Federal enforcement where the laws of the states are as tough or tougher than the Federal law. State regulators should be seeking to amend their own state laws, seeking delegation of enforcement powers over consumer matters to state banking departments.

Yet, consider the Truth in Lending Act. So far, only a handful of states have sought exemption from Federal enforcement of the Truth in Lending Act. This lack of aggressiveness at the state level is evident in other areas as well, including bank holding company legislation, disclosure exemptions for bank securities and credit discrimination. If only state regulators were as aggressive in *these* areas as they are in branching.

From the point of view of those who would maintain the present system, let's consider for a moment the worst possible case. Let's assume we conclude that the states have bungled the job of providing a branching system which is in the public interest and, further, that to permit the states to *continue* in their present roles would be even more damaging, given the technological developments which are already pressing upon us.

And let us assume further that we saw no way in which a different kind of compromise with the states could be devised . . . that there was no alternative to scrapping the states' present authority and handing it over to the Federal government.

Now I'm setting forth this possibility for *discussion* purposes only. The fact is that after balancing all of the findings and after weighing the various advantages and disadvantages to the public, we may well conclude that there should be no change at all in the present system. Or we may find that some modification is needed. Or that some more precision should be given to the definitions of branching in Federal statutes in order to carve out certain kinds of activities which can best serve the public. At this point I don't have the slightest idea *what* we may decide. And I have *no* preconceptions.

But in order to place this dual banking issue in proper perspective, let us assume a complete transfer of decision-making authority to the Federal government. What effect would this have on the dual system? Subject to one important qualification, my response would be: no effect whatsoever.

The qualification is that the Federal government, in *whatever* action it takes, *must* assure that the competitive advantage of national banks is *not* enhanced at the expense of state chartered banks. Given this essential pre-condition, I see no relation between the continuation of the dual banking system and a change in our branching laws.

Let us take a simple case. Just for an illustration, suppose that regardless of state law a national bank were authorized by Federal law to branch anywhere within the state in which it is located, subject only to Federal regulation. Obviously, in about one-third of the states such a Federal law would have little or no effect. That is, in states already permitting unrestricted, statewide branch banking, permission for national banks to engage in what they can already engage in would be redundant. National banks in California, for example, would obtain no more authority than they presently possess under California law.

But it is true that in about two-thirds of the states which limit branching to specific areas, or prohibit branching entirely, there would be an immediate reaction. My guess is that many of those states would amend their laws with respect to their own banks in the blink of an eye . . . amend them so as to grant their banks the same authority given by Congress to national banks. And it goes without saying that if Congress were ever to take the kind of step I am hypothesizing here, there'd be ample opportunity for those states to provide competitive equality for their state chartered institutions.

After the dust had settled, what would be left of the dual banking system? The fact of the matter is—all of it.

The only thing that would have changed would be that the Federal government, rather than the states, would have established the ground rules for branching.

There would still be national banks and there would still be state banks. New banks could still opt to be chartered by the Federal government or by state authority. Depending on the source of the charter, banks would still operate according to a national banking code or a state banking code, and all of the differences and all of the similarities which now exist with respect to those operations would be unchanged.

Now in conclusion, let me make this as clear as I can. I do not mean to suggest that it is of little consequence whether the McFadden compromise of some 40 years ago is continued, modified, or abandoned. There may be great consequences—consequences affecting the basic structure of our banking system, affecting the rate at which the new electronic funds transfer systems will be extended, and the manner in which banks may serve the public. Such complex issues as interstate banking, of course, are intimately related to what may be decided. That is why

I took a little time earlier to touch upon the nature of the questions the Subcommittee will be asking, hoping to suggest the breadth and complexity of the issues involved.

Nor do I wish to suggest by my remarks that champions of the dual banking system should relax their vigilance in support of that system. In any movement of fundamental reform it may often happen that worthwhile arrangements are discarded inadvertently, in the haste to achieve what appears to be a desirable objective. There is always that danger, whether we refer to the dual system of banking or to any other principle underlying our financial system.

So far as I am concerned, my objective will be to assure that there is no tilting of the competitive balance which now exists between nationally chartered banks and state chartered banks on fundamental issues like branching. But maintenance of the competitive balance may not depend, necessarily, upon states continuing to call all the shots on branching.

Regardless of the decisions we make on branching policy, I firmly believe that the dual banking system will continue with as much vitality as it now enjoys.

Those who suggest otherwise are resorting to an emotional appeal projected by the special interests of bankers fearing competition. These interests are losing credibility in Washington. And well they should!

However defined, the dual banking system is predicated on competition, my friends. And as long as that premise is maintained, I believe the public interest will continue to benefit.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

PHASEOUT OF GOVERNMENT INDEMNITY

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of S. 2568, which the clerk will state by title.

The legislative clerk read as follows:

A bill (S. 2568) to amend the Atomic Energy Act of 1954, as amended, to provide for the phaseout of governmental indemity as a source of funds for public remuneration in the event of a nuclear incident, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Joint Committee on Atomic Energy with amendments, as follows:

On page 2, in line 11, after "outside" insert "both".

On page 2, in line 12, after "State" strike out "or" and insert "and".

On page 2, in line 17, strike out "and/or" and insert "or which".

On page 3, in line 4, after the comma insert "and".

On page 5, in line 7, strike out "August 1, 1976," and insert "twelve months from the date of enactment of this Act,".

On page 5, in line 18, strike out "maximum amount of any" and insert "standard".

On page 5, at the end of line 22, strike out "protection" and insert "protection: *And provided further*, That the amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and cost arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission."

On page 6, in line 8, after "one" insert "calendar".

On page 6, in line 10, after "standard" strike out "maximum".

On page 6, in line 16, after "or" insert "shall".

On page 7, in line 15, strike out "SEC. 6. Subsection 170 e." and insert "SEC. Subsection 170 d.".

On page 8, in line 6, after "*Provided*," insert "That in the event of a nuclear incident involving damages in excess of that amount of aggregate liability, the Congress will thoroughly review the particular incident and will take whatever action is deemed necessary and appropriate to protect the public from the consequences of a disaster of such magnitude: *And provided further*,"

On page 9, in line 13, strike out "section" and insert "subsection".

On page 10, at the end of line 12, strike out the period and insert a comma and the following:

And by adding a new subparagraph (4) to read as follows:

"(4) the Commission shall, within ninety days after a court shall have made such determination, deliver to the Joint Committee a supplement to the report prepared in accordance with subsection 170 i. of this Act setting forth the estimated requirements for full compensation and relief of all claimants, and recommendations as to the relief to be provided.".

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 11 of the Atomic Energy Act of 1954, as amended, is amended by amending subsections q. and t. to read as follows:

"q. The term 'nuclear incident' means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however*, That as the term is used in subsection 170 1., it shall include any such occurrence outside the United States: *And provided further*, That as the term is used in subsection 170 d., it shall include any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material owned by, and used by or under contract with, the United States: *And provided further*, That as the term is used in subsection 170 c., it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to chapters 6, 7, 8, and 10 of this Act, which is used in connection with the operation of a licensed stationary production or utilization facility or which moves outside the territorial limits of the United States in transit from one person licensed by the Commission to another person licensed by the Commission.

"t. The term 'person indemnified' means (1) with respect to a nuclear incident occurring within the United States or outside the United States as the term is used in subsection 170 c., and with respect to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person who may be liable for public liability or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Commission or any project to which indemnification under the provisions of subsection 170 d. has been extended or under any subcontract, purchase order, or other agreement, of any tier, under any such contract or project.".

SEC. 2. Subsection 170 a. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"a. Each license issued under section 103 or 104 and each construction permit issued under section 185 shall, and each license issued under section 53, 63, or 81 may, for the public purposes cited in subsection 2 i. of the Atomic Energy Act of 1954, as amended, have as a condition of the license a requirement that the licensee have and maintain financial protection of such type and in such amounts as the Commission in the exercise of its licensing and regulatory authority and responsibility shall require in accordance with subsection 170 b. to cover public liability claims. Whenever such financial protection is required, it may be a further condition of the license that the licensee execute and maintain an indemnification agreement in accordance with subsection 170 c. The Commission may require, as a further condition of issuing a license, that an applicant waive any immunity from public liability conferred by Federal or State Law.".

SEC. 3. Subsection 170 b. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"b. The amount of financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: (1) the cost and terms of private insurance, (2) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (3) the nature and purpose of the licensed activity: *Provided*, That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources. Such financial protection may include private insurance, private contractual indemnities, self-insurance, and other proof of financial responsibility, or a combination of such measures and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. In prescribing such terms and conditions for licensees required to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources, the Commission shall, by rule initially prescribed not later than twelve months from the date of enactment of this Act, include, in determining such maximum amount, private liability insurance available under an industry retrospective rating plan providing for premium charges deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident: *Provided*, That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such financial protection: And provided further, That the standard deferred premium which may be charged following any nuclear incident under

such a plan shall not be less than $2,000,000 nor more than $5,000,000 for each facility required to maintain the maximum amount of financial protection: *And provided further*, That the amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and costs arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission. The Commission is authorized to establish a maximum amount which the aggregate deferred premiums charged for each facility within one calendar year may not exceed. The Commission may establish amounts less than the standard premium for individual facilities taking into account such factors as the facility's size, location, and other factors pertaining to the hazard. The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums or shall otherwise guarantee the payment of such premiums in the event it appears that the amount of such premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection including without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee to secure such reimbursement and consent to the automatic revocation of any license.".

SEC. 4. Subsection 170 c. of the Atomic Energy Act of 1954, as amended, is amended by deleting the phrase "and August 1, 1977, for which it requires financial protection," in the first sentence and substituting therefor the phrase "and August 1, 1987, for which it requires financial protection of less than $560,000,000," and by deleting the date "August 1, 1977" in the last sentence wherever it appears and substituting therefor the date "August 1, 1987".

SEC. 5. Subsection 170 d. of the Atomic Energy Act of 1954, as amended, is amended by deleting the phrase "until August 1, 1977," in the first sentence and substituting therefor the phrase "until August 1, 1987,".

SEC. 6. Subsection 170 e. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"e. The aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed (1) the sum of $500,000,000 together with the amount of financial protection required of the licensee or contractor or (2) if the amount of financial protection required of the licensee exceeds $60,000,000, such aggregate liability shall not exceed the sum of $560,000,000 or the amount of financial protection required of the licensee, whichever amount is greater: *Provided*, That in the event of a nuclear incident involving damages in excess of that amount of aggregate liability, the Congress will thoroughly review the particular incident and will take whatever action is deemed necessary and appropriate to protect the public from the consequences of a disaster of such magnitude: *And provided further*, That with respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection 170 d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000 together with the amount of financial protection required of the contractor.".

SEC. 7. Subsection 170 f. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"f. The Commission is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee shall be $30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 103: *Provided*, That the Commission is authorized to reduce the fee for such facilities in reasonable relation to increases in financial protection required above a level of $60,000,000. For facilities licensed under section 104, and for construction permits under section 185, the Commission is authorized to reduce the fee set forth above. The Commission shall establish criteria in writing for determination of the fee for facilities licensed under section 104, taking into consideration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility. For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than $100 per year.".

SEC. 8. Subsection 170 i. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"i. After any nuclear incident which will probably require payments by the United States under this section or which will probably result in public liability claims in excess of $560,000,000, the Commission shall make a survey of the causes and extent of damage which shall forthwith be reported to the Joint Committee, and, except as forbidden by the provisions of chapter 12 of this Act or any other law or Executive order, all final findings shall be made available to the public, to the parties involved and to the courts. The Commission shall report to the Joint Committee by April 1, 1958, and every year thereafter on the operations under this section.".

SEC. 9. Subsection 170 k. of the Atomic Energy Act of 1954, as amended, is amended by deleting the date "August 1, 1977" wherever it appears and substituting therefor the date "August 1, 1987".

SEC. 10. Subsection 170 o. of the Atomic Energy Act of 1954, as amended, is amended by adding at the end of the second sentence in subparagraph (3) the words "and shall include establishment of priorities between claimants and classes of claims, as necessary to insure the most equitable allocation of available funds.", and by adding a new subparagraph (4) to read as follows:

"(4) the Commission shall, within ninety days after a court shall have made such determination, deliver to the Joint Committee a supplement to the report prepared in accordance with subsection 170 i. of this Act setting forth the estimated requirements for full compensation and relief of all claimants, and recommendations as to the relief to be provided.".

SEC. 11. Section 170 of the Atomic Energy Act of 1954, as amended, is amended by adding subsection p., to read as follows:

"p. The Commission shall submit to the Congress by August 1, 1983, a detailed report concerning the need for continuation or modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.".

The ACTING PRESIDENT pro tempore. Debate on the bill is limited to 1 hour.

Who yields time?

Mr. PASTORE. Mr. President, I ask unanimous consent at this time that privileges of the floor be granted to George F. Murphy, Jr., James B. Graham, William Parler, James Asselstine, and Mike Adams.

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

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. PASTORE. Mr. President, I must say at this moment that this is a very important matter, it has to do with the expansion of our nuclear power programs, especially in these times when we are trying to achieve energy independence from foreign governments.

It was agreed with the leadership yesterday that this matter would come up at this time.

Mr. President, I am pleased to support S. 2568 and urge the prompt enactment of this bill so that the period of applicability of the Price-Anderson Act can be extended with a significant revision to enable the phaseout of the existing Government indemnity in the 1980's. The orderly development of nuclear power in this country has required a number of complex systems, including the basic legislative charter, the Atomic Energy Act of 1954, and the Price-Anderson Act which was initially enacted in 1957. The Price-Anderson Act has contributed significantly to the orderly development of nuclear power in this country without costing the Government 1 cent in the commercial nuclear power area. And while it is extremely unlikely that a nuclear accident will happen in the future which will affect the public, we must, in a responsible manner, provide an umbrella of protection for the public while the nuclear power industry continues to develop.

Although the development of nuclear power in this country has not been as rapid as some would like, the progress which has been made to date is still amazing. I have been privileged to watch our vital nuclear power industry develop and move from the Government's national laboratories in the 1950's and into the industrial sector in the 1960's. Government and industry, with the authorization and encouragement of the Congress, have expended several billions of dollars so that nuclear power could reach its present stage where it is making a substantial contribution to our energy supply. This investment is already paying off in terms of helping alleviate our

energy crisis and making us much less dependent, even now, on foreign sources of energy supply and on our finite domestic supplies of oil and gas. A thimbleful of nuclear fuel produces as much fuel as 1,100 gallons of fuel oil or 7 tons of coal. Each large nuclear powerplant saves the equivalent of about 10 to 12 million barrels of oil per year or about 300 million barrels of oil over the lifetime of the plant. Assuming a price of $10 per barrel, each nuclear powerplant represents a potential savings of about $3 billion from a balance-of-payments standpoint over its lifetime.

Even last year with nuclear energy supplying less than 8 percent of all the electricity generated in the United States, it saved electric utilities and their customers over three quarters of a billion dollars in fuel costs. It generated electric power which would have otherwise taken 185 million barrels of oil or 45 million tons of coal.

NUCLEAR POWER GENERATION IN NEW ENGLAND

In 1974, nuclear powerplants accounted for 24 percent of the electricity generated in New England.

In the first 10 months of 1975—through October—nuclear powerplants generated 26.2 percent of the electricity in New England.

In 1974, if the nuclear powerplants were not in existence, New England utilities would have had to burn an additional 29.6 million barrels of oil—at a cost of $340 million.

In the first 10 months of 1975, nuclear power generation saved the equivalent of 27.7 million barrels of oil.

There are six operating nuclear plants in New England: Yankee Rowe, Connecticut Yankee, Pilgrim 1, Millistone 1, Vermont Yankee, and Maine Yankee—Millistone 2 went critical in October 1975, but has not produced substantial quantities of electricity.

NUCLEAR POWER GENERATION IN CHICAGO AREA

In 1974, nuclear powerplants accounted for 30.1 percent of the electricity generated by Commonwealth Edison which services the Chicago metropolitan area.

In the 12-month period, through the end of October 1975, nuclear plants accounted for 33.1 percent of the total.

During the 12-month period, nuclear plants generated 19.35 billion kilowatt-hours of electricity. The equivalent savings of oil was 32.25 million barrels.

In recent months, nuclear powerplants have been producing close to 50 percent of the electricity in this area.

Over the past 3 years, nuclear plants generated 50 billion kilowatt-hours of electricity. If coal had been burned, it would have cost Commonwealth $300 million more for the fuel.

Capacity factor for 33 months ending September 1975 was 55.7 percent for nuclear units; 54.5 percent for their fossil units.

All nuclear units except for one—Dresden 1—now operating; these include Dresden 2–3, Zion 1–2, and Quad Cities 1–2.

I ask unanimous consent to have printed in the RECORD at this point the status of nuclear powerplant development in this country to date.

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

STATUS OF U.S. NUCLEAR POWERPLANTS—NOVEMBER 30, 1975

Number of units		Rated capacity (MWe)
* 55	Licensed to operate	38,000
**63	Construction permit granted	63,000
26	Under operating license review	25,000
37	Operating license not yet applied for	38,000
78	Under construction permit review	87,000
**23	Site work authorized, safety review in process	24,000
55	Other units under CP review	63,000
23	Ordered	30,000
19	Publicly announced	23,000
238	Total	238,000

*In addition, there are two operable ERDA-owned reactors with a combined capacity of 940 MWe.

**Total of units under construction (Construction permit granted plus site work authorized): 86 units, 87,000 MWe.

SUMMARY OF NUCLEAR POWERPLANT DELAY*

	MWe
Total units not delayed: 57	65,544
Total units delayed: 127	136,374
Total units canceled: 21	23,855
Total: 205	225,773

*Date as of Nov. 15, 1975—delays and cancellations since June 30, 1974

Mr. PASTORE. Mr. President, we are now facing an energy crisis in this country which would be much worse if we did not have the nuclear capacity which we now have. Without question our energy future will become more reliant on nuclear energy as the finite supplies of oil and natural gas diminish. Even now, we are rapidly approaching the end of major energy production from oil and natural gas, while the energy needs of our Nation and the entire world continue to expand. The time has long since passed when multiple use fossil fuels, such as oil, should be burned in boilers to produce electricity. Dr. Seamans, the Administrator of Energy Research and Development, has stated:

If we don't increase our capacity to generate electricity, other than with oil and gas, we are going to be in deep trouble. The two alternatives are coal and nuclear.

We need all of the energy resources which are available to us if we are to maintain and allow for reasonable expansion and improvement in our society and strong international relations.

When the nuclear powerplants now licensed for construction and in advanced planning stages come on the line in the 1980's, there will be even greater savings in fuel costs. By the year 1980, it is presently projected that about 80 million kilowatts of nuclear power will be in operation. This capacity will produce the energy equivalent to about 3 million barrels of oil per day. This represents about one-half of the amount of oil currently being imported into the United States. Over the lifetime of these nuclear plants, they will save the United States about 25 billion barrels of oil. To put this further into perspective, the current U.S. domestic reserves of oil are estimated to be only some 40 billion barrels. As nuclear power approaches the 50-percent mark for the production of electricity in this country, that energy source will be doing the work of almost 3 billion barrels of oil per year worth many billions of dollars, even at current prices. There simply is no alternative to the fact that nuclear power is and must be one of the major keystones of our energy supply strategy in the years to come.

Further impediments in the path of the continued development of nuclear power in this country could have disastrous consequences with regard to our ability to meet our energy needs in the 1980's. Energy is the very mover of our industrial-based society. It is needed for the economic well-being of our people. It is an essential ingredient in helping to forge strong and beneficial international relationships instead of international dependency. The electric utility industry is the lifeblood of our entire economic fabric. Our economy could not survive without electric power. The long-term interest of all types of consumers in our society is to have a reliable and adequate source of electric power at reasonable prices. Nuclear power is essential to the future destiny of our country and our people for many reasons:

It saves substantial amounts of oil and natural gas. One 1,000 megawatts plant equals 10 to 12 million barrels of oil per year.

Nuclear power is one of the only two reasonable energy resource alternatives which are now available to reduce our demand for foreign oil and subsequently enhance our national security and economic well-being. We are consuming about as much imported oil today as we were at the time of the 1973 Arab embargo.

Nuclear energy is good for competition. Without the competitive pressures that nuclear fuel can exert on the prices of other fuels, there would be no moderation in the increase of electric rates.

Nuclear energy can be safely produced. It is environmentally sound. The regulatory review process employed in the atomic energy program is such that no reactor would be licensed if there were a reasonable likelihood that it could not be safely operated.

From the beginning of the atomic energy program, scientists and engineers who worked on the development of nuclear power for commercial use concentrated on public safety as a prime goal, because of the recognized unusual nature of this new technology. Public health and safety and environmental problems have been and are being focused on long before the fact and not after an adverse situation has developed. This places the Government-industry developmental efforts in the commercial nuclear energy area in a position which I believe is unique in the exercise of foresight in the avoidance of problems which may not be in the best interest of our people. This well-publicized concentration on public health and safety and environmental protection has resulted

in very safe nuclear plants as well as a great deal of public awareness and concern with the substantial impact possibility of very low-probability nuclear accidents which cannot be categorically ruled out as being impossible.

The enactment of S. 2568 is needed to avoid impairment in the continued development of nuclear power which this country needs to meet its energy goals.

SUMMARY

The Price-Anderson Act was enacted in 1957, and extended and amended in 1965 and 1966. The act was designed to protect the public and the emerging nuclear industry by assuming the availability of funds for the payment of claims and by protecting the nuclear industry against unlimited liability in the unlikely event of a catastrophic nuclear accident. Funds would be made available to compensate the public for losses caused by a nuclear accident through a combination of private insurance and Government indemnity. Beginning in 1957, the joint committee has found on the basis of expert testimony, and it again finds now, that the likelihood that a serious nuclear accident will ever occur is extremely remote. Nevertheless, no one can correctly conclude that such an accident could never occur. For this reason, the need for the protection afforded by the Price-Anderson Act persists.

The bill meets this need by extending the Price-Anderson Act for an additional 10 years. Funds will be available to compensate the public under the Price-Anderson system for its losses in the unlikely event of a nuclear accident. Moreover the nuclear industry will be required to gradually assume greater financial risk through a system of private insurance. Although the limit on the nuclear industry's liability is continued under the bill, that limit will eventually rise as the number of nuclear plants in operation increases and once the Government's responsibility as indemnitor is placed by the system of private insurance.

MAJOR OBJECTIVES OF S. 2568

First. It would phaseout and, at least by 1985, completely replace the Federal Government's role as an indemnitor for liability to the public for losses caused by a major nuclear accident. In place of Government indemnity, the bill requires the electric utility industry to compensate the public for losses caused by a major nuclear accident, and establishes a system to guarantee that the money will be available if needed.

Second. Once the Government's indemnity obligation has been eliminated, the bill would provide for a gradually increasing sum of money to be provided by private industry to compensate the public. The amount of money available will gradually rise to over a billion dollars.

Third. The indemnity authority would also be continued for the major Government contractors which operate the major nuclear installations of the United States.

Fourth. It would continue all of the protections provided by the existing system—such as the waiver of defenses or no-fault provisions and the private insurance requirements—which guarantee the public an assured source of funds for the payment of losses with a minimum of administrative redtape.

Fifth. The bill would extend the Price-Anderson system for 10 years—until August 1, 1987.

SECTION-BY-SECTION ANALYSIS OF S. 5268

Section 1 of the bill would amend subsection 11 q. of the Atomic Energy Act of 1954, as amended, to alter the definition of "nuclear incident" as that term is used in subsection 170 d., by substituting the words "source, special nuclear, or byproduct material" for "a facility or device." Its purpose is to gain specificity and consistency. Section 1 of the bill would also amend subsection 11 q. to specially define "nuclear incident" as that term is used in subsection 170 c. The purpose of this amendment is to extend the full aggregate indemnity to offshore nuclear powerplants and to shipments between licensees in the United States which are routed beyond territorial waters.

Section 1 of the bill would also amend subsection 11 t. of the Atomic Energy Act of 1954, as amended, by broadening the definition of "person indemnified," as that term is used in subsection 170 c., to include nuclear incidents outside the United States. This change preserves consistency within the Act. Section 1 would further amend subsection 11 t. by an alternative description of a "person indemnified" as a person "who is required to maintain financial protection." This provides for the situation in which the $560 million limit on liability is provided wholly by private insurance protection, in which case the execution of an indemnity agreement would not be an absolute requirement.

Section 2 of the bill would amend subsection 170 a. of the Atomic Energy Act of 1954, as amended by substituting the word "may" for "shall" in the second sentence. The purpose of this change is to provide consistency with subsection 170 c., as amended. Additional language has been added in the first sentence of subsection 170 a. to emphasize the public purpose of the Price-Anderson provisions, as stated in subsection 2 i. of the act.

Section 3 of the bill would amend subsection 170 b. of the Atomic Energy Act of 1954, as amended, to provide authority for the Nuclear Regulatory Commission to regulate the terms and conditions of nuclear liability insurance. This section requires the Commission within 12 months of the date of enactment of this act, to include in determining the maximum amount of private liability insurance available any deferred premium plan which meets certain requirements. Any such plan must have a standard retrospective premium within the range of $2 to $5 million for each licensed facility required to maintain the maximum financial protection available from private sources. Any State premium taxes which may be due on assessed premiums are to be the responsibility of the licensee and are not to be included in the premium set by the Commission. In addition, participation in the secondary layer must not be conditioned on provision of the basic financial protection through insurance means. This assures that an individual licensee may fulfill some or all of its base liability by means other than insurance and yet be eligible for the retrospective coverage.

Section 3 further requires the Commission to develop a plan to assure payment of such deferred premiums when due in the event of a nuclear incident, and requires the Commission to provide reinsurance or guaranty to assure the availability of funds despite any defaults in retrospective assessments. This provides, in effect, that the full amount to pay any liability will be available promptly with the Government undertaking the burden of later recovery from the defaulter. In connection with the recovery of such funds, section 3 authorizes the Commission to specify the terms of any guaranty agreement as appropriate to permit reimbursement, including liens on property and revenues of a defaulting licensee, and automatic revocation of any license.

Section 4 of the bill would amend subsection 170 c. of the Atomic Energy Act of 1954, as amended, by changing the date "August 1, 1977" wherever it appears to "August 1, 1987". The purpose of this amendment is to extend for 10 years the indemnification authority of the Price-Anderson legislation as it pertains to NRC licensees other than licensees subject to the provisions of subsections 170 k. or 107 l. of the act.

Section 5 amends subsection 170 d. of the Atomic Energy Act of 1954, as amended, by extending until 1987 the authority of the Energy Research and Development Administration to enter into indemnity agreements with its contractors.

Section 6 amends subsection 170 e. of the Atomic Energy Act of 1954, as amended, by providing that except as to incidents occurring outside the United States to which agreements of indemnification entered into under the provisions of subsection 170 d. are applicable, the limit on aggregate liability arising from a nuclear incident shall be either, first, $500 million plus the amount of financial protection required of the licensee, if the financial protection required is less than $60 million or second, $560 million or the amount of financial protection required of the licensee, whichever is greater, in cases where the financial protection required is $60 million or more.

Section 7 amends subsection 170 f. of the Atomic Energy Act of 1954, as amended, to authorize the Commission to reduce the indemnity fee for persons with whom agreements of indemnification have been executed in reasonable relation to increases in financial protection above a level of $60 million.

Section 8 amends subsection 170 i. of the Atomic Energy Act of 1954, as amended, to require a report by the Commission or the Administrator to the Congress on any nuclear incident which will probably result in public liability claims in excess of $560 million. The act presently provides for such a report for any nuclear incident which will probably result in payments by the United States. As amended by the House, H.R. 8631, a bill which is otherwise identical to S.

2568, would explicitly provide that the report on nuclear accidents to the Congress will be made available to the public in its entirety, except for information which would cause serious damage to the national defense or foreign relations of the United States.

Section 9 amends subsection 170 k. of the Atomic Energy Act to extend until 1987 the authority for the Commission to indemnify licensees found by the Commission to be nonprofit educational institutions for public liability in excess of $250,000 arising from a nuclear incident.

Section 10 amends subsection 170 o. of the Atomic Energy Act of 1954, as amended, by authorizing and directing the establishment, in any plan for disposition of claims, of priorities between classes of claims and claimants, to the extent necessary to insure the most equitable allocation of available funds. Section 10 also requires the Commission or the Administrator to provide the Congress with the information it will need to determine what additional action is necessary in the event of an accident causing losses beyond the limit on liability.

Section 11 adds a new subsection 170 p. which provides that the Commission shall submit to the Congress by August 1, 1983, a report and recommendations concerning the need for continuation or modification of section 170 based upon relevant conditions at that time, including the conditions of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other factors.

Mr. President, in 1974, nuclear powerplants accounted for 24 percent of the electricity generated in New England. If nuclear power were abolished tomorrow, a substantial percentage of New England would be put in darkness, and a substantial percentage of our people would be put out of work, because the very source of energy is electricity.

In Illinois, in the Chicago area, one-third of all the electricity is generated by nuclear power.

I hear many people say, "Let us phase it out. Let us declare a moratorium. Let us do without it." These people do not stop to think about what the repercussion would be, and that is what we are talking about.

We talk about alternatives. Many people say, "Cut out nuclear power and get into solar." That is fine. We are spending a great deal of money to develop solar, but it is a long way off, before people are going to heat their homes with solar energy. Maybe my children or my children's children will, but it certainly will not be me. The evidence is that it is going to take 25 or 30 years.

Then they say, "How about wind?" Wind is all right, provided it blows. But I do not know how much wind there is in Florida. We get some in New England every once in a while.

But these are all supplemental sources. The important thing is that nuclear power is here. Twenty-four percent of electricity in New England comes from nuclear power.

What are we trying to do? We are not trying to stud this country with nuclear plants all over creation, but we are saying that this source of energy must be made safe, can be made safe, will be safe, is regulated for safety by the Nuclear Regulatory Commission and should be developed as an alternative. It is not the whole answer to our problem, naturally.

Regrettably, I am making this speech for the benefit of only the Senator from Tennessee, who agrees with everything I am saying. Then, all those who are opposing it or all those who have been lobbied by this group or that group will come on the floor of the Senate at 11 o'clock and make an emotional speech about everybody being killed, irradiated, and what have you, which is a lot of nonsense. But where are they now?

They will come here with their troops in due time and try to stir up a little emotion, and we will take care of that when the time comes.

For the purpose of this presentation, I have said everything I intend to say in an empty Chamber, and when the proper time comes, I will finish it.

Now I yield to my good friend the Senator from Tennessee.

Mr. BAKER. Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. BAKER. Do I correctly understand that under the previous order, there is an hour on the bill, 2 hours on the Gravel amendment, and 30 minutes on each amendment?

The ACTING PRESIDENT pro tempore. The Senator is correct, except for amendments in the second degree, which have 15 minutes.

Mr. BAKER. I will not take much of that hour.

Mr. President, Congress, in 1957, enacted the Price-Anderson legislation to provide for a well-defined system of financial protection which would apply in the unlikely event of a catastrophic nuclear accident. From the beginning, the need for such a system has been predicated on the potential magnitude of a catastrophic accident and not on the probability of such an accident ever occurring.

Since its inception, the Price-Anderson Act has served its purpose well. Fortunately, in the commercial nuclear power area there has never been an accident which has called for the system to be placed in operation. With the continuing growth of the nuclear industry, the joint committee, last year and this year, decided that the system should be amended to impose an increasing share of the financial risk on the utilities which operate nuclear powerplants. This feature of the bill encountered no opposition last year and I am not aware of any this year. The one feature of the bill which I believe will be the subject of an amendment later on today is the provision in the act which establishes a limitation of liability on the private sector in the event of a catastrophic nuclear accident. Of course, an argument that the public should have the right to seek additional recovery from the private sector has great appeal, at least on the surface. But, the effect of the adoption of such an amendment should be clearly understood.

Much more is involved than simply the broad question of whether any industry, including the nuclear energy industry, should be protected by a limitation of liability which would have the effect of preventing citizens from seeking legal remedies in the courts. An analysis of whether or not the limitation of liability should be removed, should, I suggest, take into account the following considerations:

Note, first of all, the principle of limitation of liability is not unique in our legal system. Elements of limitation of liability go to the heart of the State and Federal workmen's compensation laws and no fault insurance laws, and also govern the extent of recoveries in the maritime and international air transport fields. So this is a legal principle which is not unique to the nuclear energy area. Indeed, I have seen several bills recently which would establish a limitation of liability on the part of those who may pollute our oceans and coastlines, as a result of offshore oil exploration and transport.

Second, one should recognize that the Price-Anderson system, including the provision for limited liability, is designed to permit public interest goals to be accomplished through the development of nuclear energy in this country. These public interest goals were fortunately foreseen as early as 1957, 17 years before the OPEC nations demonstrated to us the critical importance of forms of energy other than oil. The view of these developments, the public purpose goals of the Price-Anderson system are needed now more than ever.

Third. The Price-Anderson system recognizes, of course, that there must be adequate financial protection to the public, as well as some protection for the various participants in the nuclear energy industry against the potentially severe consequences of an unlikely catastrophic nuclear accident. Although one may wish to separate the public protection and industry protection purposes of the Price-Anderson Act, they are, in fact, inseparable. Electric utilities in this country have a responsibility to provide adequate and reliable sources of power to their customers, and to provide that power as cheaply as possible. But beyond that responsibility, there is the importance of electricity to the public health and safety and to the economic well-being of our society. In view of the very important public purposes which are served by an electric utility, it is difficult, if not impossible, to divorce actions which have an impact on the utility from those affecting the public interest.

Fourth. The firms which build and operate nuclear power plants in this country do not exist in a vacuum. Rather, in order to construct additional needed plants they must compete with other sectors of the economy for scarce resources including money to finance construction and essential materials and services. Disruptions in the supply of those resources or increases in their costs, such as would result from the removal of Price-Anderson's limit on liability, would have an adverse impact on both the utility and the electricity-consuming public.

Fifth. But there would be an even greater adverse impact on the public in-

terest from the removal of the liability limit. Let us assume that an amendment to the Price-Anderson system is adopted which would subject a public utility to unlimited liability. If this is done, we should clearly understand who will bear the ultimate burden of such unlimited liability. Will it just be the stockholders who invest their money in the utilities? The answer is clearly "no." There is no escape from the fact that those who will ultimately bear the burden will be the consumers of electricity in the region served by the utility. In view of the importance of the services which the utility provides, public liability judgments which would otherwise place the utility in bankruptcy would not be allowed to interfere with the viability of the utility or its obligation to furnish reliable and adequate power. But, for the purpose of argument, let us assume that this did happen. Those who would suffer would clearly be the consumers of electricity in the region served by the utility. On the other hand, let us assume, as is far more likely, that the viability of the utility would not be disrupted. In order to accomplish that, the utility would have to satisfy a large public liability judgment, and at the same time repair necessary damages to its own property and continue to provide reliable and adequate power to its customers. The money to do all of these things, including the satisfaction of public liability judgments, must come from some place. The utilities do not have unlimited resources; and indeed, quite the reverse is true. In fact, the only source of sizable sums of money available to the utility would probably be in the form of higher rates for electricity. The ones who would suffer, I repeat, would be the consumers of electricity in the region served by the utility operating the reactor which caused the accident. Such a result would impose a most unjust and unreasonable burden on a very small segment of our society. The Price-Anderson Act was enacted in 1957 to avoid this very kind of problem, and this is why its extension with the limitation of liability is needed at this time.

Sixth. How does the Price-Anderson Act avoid this problem? It establishes a legal regime which assures that there would be prompt and efficient payment of all legitimate claims. Enactment of the bill before you today would result in the vast bulk of those claims being satisfied from funds paid by the utilities which operate nuclear facilities. In other words, the risk would be spread throughout the industry so that particular members of our society would not end up paying the ultimate burden. Also, the bill before us today would raise the limitation of liability, and therefore the amount of money available to pay just claims, to over a billion dollars by the 1980's.

This assured source of funds would be sufficient in all probability to cover any nuclear accident which might ever happen. But there is still more involved in the system to assure that the public purpose goals of the Price-Anderson Act are met. In the unlikely event that the limitation of liability is exceeded by the losses from a nuclear accident, there is still another avenue available for the prompt settlement of outstanding legitimate public liability claims. The bill provides for a prompt report to the Congress with regard to the situation, which would include the amount of additional funds needed to pay all such claims. On the basis of this report, the Congress would be in a position to decide what specific action should be taken. This is exactly as it should be in the event of a major catastrophe, whether caused by a nuclear accident—the only catastrophe that the Price-Anderson system covers—or whether caused by some other event.

No limited segment of our society should be expected to bear the brunt of the sacrifices and suffering which would prevail in the event of such a disaster. Thus, the limitation of liability features of the Price-Anderson Act do not simply protect the electric utilities and other participants in the nuclear energy industry. Instead, they serve a much broader purpose. They insure that no single segment of our society will be forced to carry the burden of such a catastrophe alone and that instead, the burden will be spread as broadly as possible. In this way, all segments of our society share the risk just as all segments share the full benefit of the development of nuclear power in this country.

I share with the distinguished chairman of the Joint Committee on Atomic Energy, Senator PASTORE, his dedication to the general concept that our future national welfare and energy well-being depend on the development of nuclear power, along with the development of every other reasonable power source that we can contrive or that we can think of in the next decade or so.

I truly wish it were a situation in which we could pick and choose among the several alternative sources available to us. I suspect that, for my part, even if we could do that, I still would go forward with an energetic and rapid development of the fission power cycle, because I think it is a good one. It provides us with an abundance of power, safely generated, that can be rivalled by no other system I know of, and certainly with less environmental detriment.

I have been on the Joint Committee on Atomic Energy for a relatively short period of time, but I know first hand of the dedication of that committee to the concept of total safety so far as the human situation will permit the development of any system which is totally safe. I believe that the recent studies and analyses of the potential for accident in the power industry and peaceful use reactors clearly demonstrate that the risk of a cataclysmic accident is so remote that it ranks with the more bizarre of the cataclysmic accidents that the human mind has ever conceived of, such as the destruction of tens of thousands of people by the striking of a meteor from outer space or the destruction of a stadium full of people by the crashing of an airplane.

They are theoretically possible, I suppose, but they are so bizarre and remote that I find it distinctly reassuring that the safety potential and prospects for nuclear power are so great that the chances of a cataclysmic accident from that source are even more remote than that.

The State of Tennessee, in many ways, is and has been for many years in the vanguard of the development of nuclear power. I recall, as a young man, the development of Oak Ridge as a Federal facility. None of us in the valley knew then what that giant facility was being developed for, when suddenly, overnight, on the slopes of Oak Ridge, there grew up a Federal compound of 60,000 people, where before there had been less than a hundred people.

The enormous hustle and bustle and wartime constraints soon produced an enormous industrial complex that, as we who lived in the area used to say, had lots going in but nothing coming out. It was with mixed pride, awe, surprise, and concern that I first learned of the purpose of that facility when the first atom bomb was exploded over Japan.

Mr. President, we have come a long way since then. Nuclear power then was the promise of abundant energy for mankind, and it still is. It involves enormously complex questions. It is difficult of attainment. However, unlike the other exotic energy sources, nothing has to be discovered or invented with nuclear power. The remaining problems are engineering problems.

How do you make an efficient plant? How do you make a plant that is attractive to private industry, to the utility industry? How do you make a plant that is safe? How do you provide for the fuel recycling facilities, the so-called back end system? How do you provide the assurance of the abundance of fuel? How do you avoid the reliance on foreign fuel sources so that you avoid the same pitfalls with uranium that we now have with oil?

How do we go about demonstrating the feasibility of the breeder reactor concept? How do we go about further research and development with fusion power, which is highly promising, but one of those where the inventive process is still before us? It is not just a question of putting enough money into the program to solve the problems.

These things, Mr. President, are a vignette of the nuclear power picture as we know it. One of the things that must be attended to is the housekeeping detail—the design, the construction, the operation, the integration of these plants into the utility grid, the financing of construction, both short and long term, the development of the expertise by the contractors and suppliers, and the insuring of the plant. That is where Price-Anderson plays such a vital role, because Price-Anderson assures that the public and the country are protected in the case of that remote and unlikely event of personal injury or damage from nuclear power.

The Price-Anderson Act was passed in the mid-50's, I believe in 1956. It is a matter of some reassurance, I am sure, to our colleagues and the country that, since 1957, there has never been a cent paid from the Price-Anderson program to a claimant as a result of nuclear accident.

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

Mr. PASTORE. Mr. President, I suggest the absence of a quorum without its being taken out of the time of either side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. PASTORE. Mr. President, I ask unaimous consent that the order for the quorum call be rescinded.

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

Mr. PASTORE. Mr. President, I move that the committee amendments be considered and agreed to en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the committee amendments are considered and agreed to en bloc.

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. GRAVEL. Mr. President, I ask unanimous consent that Bill Hoffman be granted the privileges of the floor during the deliberations on this legislation.

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

AMENDMENT NO. 1249

Mr. HATHAWAY. Mr. President, I call up my amendment No. 1249.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk proceeded to read the amendment.

Mr. HATHAWAY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with and that the amendment be printed in the RECORD.

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

The amendment is as follows:

On page 10, insert between lines 6 and 7 the following:

"SEC. 10. Section 170n. (1) (iii) of the Atomic Energy Act of 1954 is amended by striking 'ten years' and inserting in lieu thereof 'thirty years'.".

On page 10, line 7, strike "SEC. 10." and insert in lieu thereof "SEC. 11.".

On page 10, line 21, strike "SEC. 11." and insert in lieu thereof "SEC. 12.".

Mr. HATHAWAY. Mr. President, I would like to modify my amendment; on line 4 change "thirty years" to "twenty years".

The PRESIDING OFFICER. The amendment will be so modified.

The amendment, as modified, is as follows:

On page 10, insert between lines 6 and 7 the following:

"SEC. 10. Section 170n. (1) (iii) of the Atomic Energy Act of 1954 is amended by striking 'ten years' and inserting in lieu thereof 'twenty years'.".

One page 10, line 7, strike "SEC. 10." and insert in lieu thereof "SEC. 11.".

On page 10, line 21, strike "SEC. 11." and insert in lieu thereof "SEC. 12.".

Mr. HATHAWAY. Mr. President, this amendment is to section (n) of the existing Price-Anderson Act, the subsection which deals with the waiver of defenses in the event of an "extraordinary nuclear occurrence." Included in these provisions is a waiver of the defense of the expiration of the statute of limitations, for up to 10 years. My amendment quite simply extends this to a 20-year statute of limitations, as I feel it should be extended, given the nature of the potential injuries which may result from radiation exposure as a result of such an occurrence.

Studies of the Atomic Bomb Casualty Commission, which was established following the end of World War II as well as other studies of the effects of radiation exposure on man and on animals since 1948, show the need for such an extension of the statute of limitations. For example, the ABCC found a higher-than-normal acute leukemia rate among the exposed surviving population through 1966, some 21 years after exposure. (Robert W. Miller, "Delayed Radiation Effects in Atomic-Bomb Survivors," 1969. p. 3).

Additionally a correlation has been found between exposure, levels of exposure, and the occurrence of solid tumor cancers—such as lung and breast cancer—a correlation which showed up for 25 years after exposure. Although our research into the long-term effects of radiation exposure is necessarily continuing, the conclusion that there are such longterm effects, at least up to 20 years after exposure, does not seem to be actively in dispute. In discusssing the health effects that could ensue from a core melt-down accident of a nuclear reactor, the Rasmussen report also acknowledges the possibility of such long-term health effects. Although the risk of such an accident may indeed be very low, and the ability to detect the causal relationship between such exposure and later incidence of cancer still in a primitive state, the Price-Anderson Act is intended to address those remote possibilities.

The section of the Price-Anderson Act which my amendment relates to is often characterized as the "consumer protection" aspect of the act; this is the section which imposes strict liability on the industry for any offsite discharges of dispersals of radioactive materials which might result in substantial damage or injury to offsite property or the public. I am in complete agreement with imposing strict liability; it might well be imposed on the industry regardless of these provisions. Given the nature of the source of the harm in this case—exposures to unsafe levels of radioactivity—and the lack of public ability to be aware of the potential harm or to control it, permitting defenses such as contributory negligence or assumption of the risk would go against any notion of justice or equity in determinations of liability for such damages and injury. The public must, in fact, rely on the industry and on Government to inform them when such dangerous exposures may have occurred.

Included in this general waiver of defenses clause is a requirement that insurance contracts and indemnity agreements waive—

(iii) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof, but in no event more than ten years after the date of the nuclear incident.

My amendment simply extends this time period to 20 years, without changing the requirement to institute suit within 3 years of when the harm and its cause are discovered.

The statutory language in existing law appears to be quite clear on its face; that suit for damages or injuries must be brought within 10 years of the date of the incident. A 10-year statute of limitations for ordinary liability situations would appear to be reasonable; however, we are not dealing with an ordinary situation in this statute. The very existence of the Price-Anderson Act acknowledged that the nuclear industry poses hazards and potential liabilities which cannot in any sense be deemed to be "ordinary." The insurance industry recognized this when they declined to insure the nuclear industry for its full potential liability after the passage of the Atomic Energy Act in 1954; and it was recognized again when the act was extended in 1965.

Now in 1975 we must again recognize that fact; though the direct governmental subsidy is eventually being phased out by the bill before us, the Joint Committee's report itself makes it clear that they intend to treat the nuclear industry in a different manner from other industries in respect to liability for well beyond the duration of the pending 10-year extension.

At page 9 of the committee report, they state that—

The Joint Committee wishes to stress that there are a number of features of the Price-Anderson Act which should be viewed as permanent. These include the mandatory insurance coverage, the no-fault provisions, the provisions for consolidation of claims in a single federal court and for advance payment of claims, the contractor indemnity provisions, and the mandatory retrospective premium system. These elements make up a pattern of public protection which must be continued. The provisions for termination in 1987 should be viewed as a device to insure that Congress will reassess the situation prior to that time and make revisions as required, rather than as congressional intent to provide for an eventual termination of the Federal regulation of nuclear liability insurance.

Without necessarily agreeing with this particular interpretation of "congressional intent"—in fact, I do not think I agree with it at all—it does clearly point up the special treatment which the nuclear industry is presently being accorded by the Government, and the fact that it may well continue indefinitely into the future.

What is the basis for this special treatment? The answers perhaps were more obvious in 1955 when the nuclear industry did not exist, but a political and scientific judgment was made that it should be promoted with the hope of it being a clean and secure source of energy for future generations. But the reasons for this particular form of protection

were the same then as they are now. Unwilling to assume the risk of potential liability which could result in bankruptcy, and with no operating experience, insurance companies, manufacturers and utilities were unwilling to commit their resources to nuclear development. That same risk of potential liability exists today, 20 years after passage of the first 10-year Price-Anderson Act. Though the Rasmussen report may assure us that the risk factor itself is very small, perhaps even minimal, and surely a risk factor which is lower than other risks which are part of our daily lives, there still exists a potential risk of damages and injuries which could result in billions of dollars worth of damage, and affect thousands of lives. And that risk, as we know, comes from the very nature of the material which we are dealing with, the risk of radioactive contamination of our land, our water, and our air.

The present 10-year statute of limitations in the Price-Anderson Act recognizes that the effects of radioactive exposure which might be incurred after an "extraordinary nuclear occurrence" may well not be obvious immediately. But current studies show that 10 years is not long enough; latent cancer effects may show up 20 and 25 years later.

It may be difficult right now, as the Rasmussen report again indicates, to establish the precise causal relationship between the exposure and the development of cancer several years later, but this only points up the necessity of stringent monitoring and development of sound statistical bases for expected normal occurrences of cancer so that persons who have been exposed to radiation may be carefully followed and their medical histories thoroughly traced. What we do know right now is that a 10-year statute of limitation may very well result in cutting off legitimate claims of persons whose injuries in the long run may be even more serious than those of persons whose exposures were highest and the injuries showed up shortly thereafter.

Those affected in the short term will be more easily identifiable for treatment, while others, unaware that they have suffered injury, may fall victim to perhaps even greater affliction—cancer—several years after the incident. Yet they, and their families, under the present Act, will apparently have no recourse—or at minimum no recourse under the Price Anderson Act. And knowing that no more claims for liability can be pursued after those 10 years, Government and industry may well not institute the monitoring and health research mechanisms which should be employed should there be any major nuclear occurrence.

My amendment then, straightforward and relatively simple as it may seem, effects a very necessary change in the present statutory scheme. It recognizes the long-term potential effects of radiation exposure and permits claims to be brought up to 20 years after the incident. Nowhere in the Price-Anderson Act—or the Atomic Energy Act—which I am aware of is it said that in addition to limiting aggregate liability, we shall also compensate only those persons who suffer immediate damage and injury from any nuclear occurrence. The 10-year statute of limitation in fact seems to point in the contrary direction—that the act recognizes there may well be long-term effects which will have to be compensated. But the present act does not go far enough; it does not cover the period during which those long-term and frequently more injurious effects may appear; instead it adopts a time period of 10 years, perhaps for administrative simplicity, or perhaps, to downplay the potential long-term effects which may result from radition exposure.

I have been told that under the wording of this statute, the individual States can enact longer statutes of limitation than 10 years. Perhaps there is some legislative history which indicates that this statute of limitation was not intended to preclude the States from passing a longer statute of limitation. I still do not see, however, how the language of this statute would easily permit it. But even if such an interpretation can be supported, on what basis would the person be bringing his claim under a longer statute of limitation? Would the strict liability provisions of Price-Anderson still apply? What recourse would the person have if the liability limitation had already been reached? Would the individual have to show negligence in order to pursue his claim? And if Price-Anderson provisions, with the limitation on liability and the waiver of defenses do not apply, and the person could in fact pursue his claim in a State with a longer statute of limitation and under ordinary tort laws, then what justification is there for the limitation on liability provisions?

But if Price-Anderson provisions would in fact apply, as I suspect would be the necessary result, then the argument that the 10-year statute of limitation is needed in order to expedite disposition of the moneys and ease in administration of the act does not carry much weight if the States can in fact enact longer statutes of limitation.

If the argument can be made that it was the intent of this provision to interfere as little as possible with the State's right to pass a longer statute of limitation, then this is a State's right which seems to be without substance, for their residents, whom they presumably intend to protect by passing such a statute, are not in fact being accorded any protection.

Further questions also arise under this interpretation of the language. What law is a court going to apply if the claimant lives across the State line in a State with a short statute of limitations, but his claim arose from an incident originating in a State with a longer statute of limitation? The simple answer might be that the law of the State where the incident occurred should be applied; but as we all know, conflict of law problems do not have simple answers.

More likely, I think, would be that answer that despite the gravity of the injury, despite the inability of the claimant to know of his injury until several years after the incident and, therefore, to pursue it before either the statute of limitations or the liability limits were reached, Congress has spoken and no claims may be brought later than 10 years after the incident. If this is what is intended in this provision then it should be made clear so that the effectiveness of these waiver provisions as "consumer protections" may be honestly evaluated. On the other hand, if it were intended to leave the States the latitude of enacting a longer statute of limitation, then we should look carefully to see if that latitude has any substance—to see if the States are able, in fact, to declare a policy which will be able, in any way, to protect their own residents. I think I have outlined for you the reasons that I feel there is no substance to the State's ability to enact such a law; that any protection offered by the State to its own residents will be illusory at best.

For these reasons, I feel it is necessary to extend the statute of limitation in the Federal law to cover the period when in fact such latent injuries may be expected to occur and be verified as arising from the accident. A demand for administrative ease should not be allowed to outweigh a claimant's ability to receive compensation for serious injuries; Britain has recognized this, and in a very similar liability scheme for nuclear incidents, they have incorporated a 30-year statute of limitation. Germany also has a 30-year statute of limitation.

The argument is frequently heard that should there ever be an extraordinary nuclear occurrence, Congress will have to step into the situation in any case. I do not like to rely on that. Nor do I like to rely on the kind of tradeoffs that Congress might choose to make at that time. Perhaps economically it may appear then that it is necessary to cut off claims after 10 years.

Nor do I find any comfort in the idea that is sometimes put forth that one bad accident is all that will ever happen—that should that remote possibility actually occur, the nuclear industry would have to shut down and therefore we would necessarily not be faced with such a situation again. This is certainly turning the Price-Anderson Act on its head—its purpose after all is to promote the industry. To assume that at some future date, when nuclear reactors may indeed be supplying a large proportion of our energy, that a nuclear accident is going to result in closing down the industry is simply not realistic. The more likely result, I fear, may be a suppression of the seriousness of the incident, a downplaying of the gravity of the accident which has happened and of the risk involved in permitting the continued operation of other facilities. I hope of course that this will not be the result—and I would not contend that it would happen deliberately—but many pressures will be brought to bear to prevent any extensive and nationwide disruptions after a nuclear accident.

So we well may have to deal with the statutory scheme which has been devised in this act, and its provisions may well be tested more than once. So if we are going to offer any public protection in this act, then we should not be sidetracked by some of the more facile arguments which are sometimes made.

As the Joint Committee itself seems to intend, these provisions for strict liability may become permanent, and as such,

they should be drafted in such a form as will in fact protect the public as they were intended. The statute of limitations of 10 years is clearly an unreasonably short, and inequitable, statute of limitations for the types of injuries which might be sustained. An extension to 20 years may not even be adequate and at some future date might need revision. But now it appears to cover the possibility of verifiable injuries, and I do not think that this act should be extended for an additional 10 years without a change in the statute of limitations being made.

I have discussed this amendment with the manager of the bill, the Senator from Rhode Island, and I understand he is in agreement with it and will accept the amendment, as modified.

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

Mr. HATHAWAY. Yes.

Mr. PASTORE. The Senator is absolutely correct. As a matter of fact, Mr. President, we have a 10-year provision in the bill as reported by the committee which, of course, extends the statute of limitations which might be of a shorter period in any particular State to the 10 years as provided for in the bill.

The argument has been made by my distinguished colleague that it is not sufficient, it ought to be greater. He had originally had 30 years, and I told him if he reduced it to 20 years I would be very happy to accept the amendment.

I have discussed it with the Senator from Tennessee, who is my counterpart on the other side of the aisle, and we have both agreed we will try very hard in conference to maintain that position of 20 years.

Mr. HATHAWAY. Mr. President, I thank the Senator from Rhode Island for accepting the amendment.

I ask that Senator Gravel be added as a cosponsor.

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

Mr. BAKER. Mr. President, I would only say I agree with the remarks by the Senator from Rhode Island. I really reluctantly agree to this amendment but, on these representations, to move this bill along I, as my chairman has, am willing to accept it and to stand by that commitment in conference.

The PRESIDING OFFICER. Do the Senators yield back their time?

Mr. PASTORE. I yield back my time.

Mr. HATHAWAY. I yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from Maine.

The amendment, as modified, was agreed to.

Mr. HATHAWAY. Mr. President, I call up my unprinted amendment.

The PRESIDING OFFICER (Mr. DURKIN). Will the Senator send the amendment to the desk, please?

Mr. HATHAWAY. It is my understanding that my amendment was sent to the desk last night, but I will send this copy.

The PRESIDING OFFICER. We have another printed one, but not the unprinted one.

The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. HATHAWAY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 7, line 7, insert "(a)" after "Sec. 4.".

On page 7, insert between lines 14 and 15 the following:

(b) Such subsection is further amended by striking "including the reasonable" and inserting in lieu thereof "excluding".

On page 7, line 15, insert "(a)" after "Sec. 5.".

On page 7, insert between lines 19 and 20, the following:

(b) Such subsection is further amended by striking "including the reasonable" and inserting in lieu thereof "excluding".

On page 9, insert between lines 13 and 14 the following:

Sec. 8. The last sentence of subsection h. is amended by striking "may include reasonable" and inserting in lieu thereof "shall not include".

On page 9, line 14, strike "Sec. 8." and insert in lieu thereof "Sec. 9.".

On page 10, line 3, strike "Sec. 9." and insert in lieu thereof "Sec. 10. (a)".

On page 10, insert between lines 6 and 7 the following:

(b) Paragraph (1) of such subsection is amended by striking "including the reasonable" and inserting in lieu thereof "excluding".

SEC. 11. Subsection 170. l. of the Atomic Energy Act of 1954, as amended, is amended by striking "including the reasonable" and inserting in lieu thereof "excluding".

On page 10, line 7, strike "SEC. 10." and insert in lieu thereof "SEC. 12."

On page 10, line 21, strike "SEC. 11." and insert in lieu thereof "SEC. 13.".

Mr. HATHAWAY. Mr. President, this amendment would strike from the bill the sections which include the costs of investigation, settlement, and defense of claims from the overall liability limit, so that these costs would not be deducted from the $560 million maximum that is made available under the bill for compensating injured claimants.

Quite simply, what this amendment does is to require that the entire resources of the $560 million fund—or whatever limit is established through the retrospective premium system—be used only for the purpose of compensating people who are injured or sustain damages as a result of a nuclear accident. It amends several provisions of the Price-Anderson Act which at present, permit the payment of investigative costs, settlement fees, and defense costs out of the overall liability limit. My amendment specifically excludes these costs from any determination as to when the overall liability limitation has been reached.

This amendment, I believe, more properly fulfills what is the avowed purpose of the act, which is to ensure that funds are quickly available to provide compensation to victims of a nuclear accident. The aggregate liability limitation has already been provided to protect the nuclear industry from liability costs which some contend could bankrupt sections of the industry; however, there appears to be no equitable reason as to why the persons injured should, in effect, also be required to bear the burden of these investigative, settlement, and defense costs.

The adequacy of the fund itself, the $560 million limitation presently in effect, which even under the bill being considered is not expected to rise appreciably for approximately 10 years, has been questioned by many. Debate as to the relative risk of whether or not this liability limit will ever be reached as a result of a major nuclear accident is not, however, really relevant to my amendment. Even the Rasmussen report concedes that property damages alone, from the worst possible accident, could run into billions of dollars.

So the real question is, given the liability limitation, who is to be paid out of these funds? Under existing law, the investigative, settlement, and defense costs are to be paid out of the money included in the overall liability limitation.

Since we have never actually had any major nuclear accident resulting in offsite damages or injuries, it seems difficult to estimate just what these costs might be. However, it seems to me that in any major accident, which might well result in a complex situation requiring extensive investigation, as well as controversy as to damages or injuries, particularly latent injury, these costs could well rise to millions of dollars. And these amounts under present law would be deducted from the pro rata share of each individual claimant's share of the amount of funds available. In a situation where total liability has been limited, it does not seem appropriate to make the injured parties bear the cost of these expenditures, even if the strict liability provisions of the Act are to be applied in the given situation.

I understand that the Joint Committee, in the amendments to the act which are now pending, intended that the provision for the establishment of the priority of claims under subsection (o) of the act would apply only to the claims of those who have suffered damages or injuries as a result of a nuclear accident where the damages may exceed the overall liability limits. Although I do not see that spelled out in the section which adds the priority provision, if that is in fact their intent, then my amendment simply implements the committee's intent in that regard, by prohibiting the payment of these costs out of the funds available to compensate victims of the accident.

The intent of my amendment, then, is to provide the full amount of the funds up to the overall liability limit solely for the payment of claims of injured parties. I think the arguments in favor of this amendment are quite straightforward, and that it is a change in the act which I feel conforms with the overall intent of the act and is long overdue.

Mr. President, I have discussed this amendment with the distinguished Senator from Rhode Island. I understand that he agrees with the amendment.

I yield to the Senator from Rhode Island.

Mr. PASTORE. That statement is absolutely correct. As a matter of fact, that provision is a codification of the provision contained in the original act of 1957. The reason stated at that time was that it was according to the common law, or the accepted law. But under the present bill, getting into no fault, in other words, all that has to be done under the present bill is to establish the fact that an injury did take place, and that as a result of catastrophic accident—which, of course, in my humble opinion is very unlikely.

For that reason, we are willing to take it to conference and see if we can work out some language that suits the purpose of the Senator from Maine and also keep it in the proper context of the judicial procedure.

Mr. BAKER. Will the Senator yield?

Mr. PASTORE. I yield to the Senator from Tennessee.

Mr. BAKER. Mr. President, I, too, am willing to accept the amendment on behalf of the minority and go to conference to see what we can do.

But in terms of greater clarification is it clear from the amendment and in the requirement of its sponsors that we are dealing here with a no-fault situation, but the primary responsibility is commercial insurance carriers, indemnification over and above that belongs to the Government. The cost of the investigation ordinarily is charged against that insurance before it ever gets to the indemnity side.

Is there anything in this amendment that changes that relationship?

Mr. HATHAWAY. No.

Mr. BAKER. I thank the Senator.

Mr. HATHAWAY. I want to thank both the Senator from Rhode Island and the Senator from Tennessee for their agreement on both of these amendments.

Mr. President, I ask that the Senator from Alaska (Mr. GRAVEL) be added as a cosponsor of this amendment, also.

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

Mr. HATHAWAY. I yield back my time.

Mr. PASTORE. I yield back all time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maine.

The amendment was agreed to.

AMENDMENT NO. 1154

Mr. GRAVEL. Mr. President, I call up my amendment No. 1154. I would be happy to have a quorum call if the managers will accept the amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. GRAVEL) for himself and Mr. PHILIP A. HART proposes an amendment numbered 1154.

The amendment is as follows:

On page 7, line 22, insert "of the insurer" after "liability".

On page 8, line 4, insert "of the insurer" after "liability".

On page 8, line 18, strike "tractor.". and insert in lieu thereof: "tractor: *Provided further*, That injured parties may bring suit to recover damages incurred as the result of a nuclear incident to the extent that such damage and injuries could not be reimbursed under the limits of liability otherwise provided for by this subsection; and liability for damage or injury in excess of the specified limits shall be determined by the ordinary rules of tort law.".

Mr. GRAVEL. Mr. President, this amendment would allow the victims of a nuclear power accident, acting under normal tort law, to recover damages from the nuclear industry if the money otherwise provided by Price-Anderson should prove inadequate to pay claims fully. Under present law, recovery from nuclear utilities is limited to $560 million, and recovery from the nuclear manufacturing industry is altogether prohibited—even if it is tortuous conduct by the industry which has caused the accident.

By adding the words "of the insurer" at the beginning of subsection E, we maintain a limit only on that amount of money which is to be made available on a no-fault or absolute liability basis in the event of a nuclear accident. By adding the other language of the amendment at the end of subsection E, we make it clear that, if the no-fault amount proves insufficient to justly compensate victims, then victims may recover from any party who is found to be liable under the rules of tort law.

The ACTING PRESIDENT pro tempore (Mr. STONE). Is the Senator utilizing the 2 hours a side for this particular amendment?

Mr. GRAVEL. Yes.

The ACTING PRESIDENT pro tempore. The Chair thanks the Senator.

Mr. GRAVEL. I thank the Chair.

Mr. President, there is nothing in this amendment which would hamper the ability of victims to collect the no-fault amount which is already guaranteed. A precedent here is the Alaska Pipeline Act, which authorizes limited no-fault awards while expressly guaranteeing the right of victims to recover further under tort law.

Neither is there anything in this amendment which prevents the Congress from acting, at any time, to aid victims who have been less than adequately compensated by the no-fault awards.

The purpose of this amendment is simply to expose the nuclear industry, now that it is large enough to accept such exposure, to the same liability that is accepted by other industries in this country.

I think there are four reasons why it is desirable to restore such liability responsibility to the nuclear power industry.

First, it has been established that nuclear power accidents might cause damages totaling more than the current liability ceiling of $560 million. If the industry which is profiting from nuclear power is found to have acted tortiously in such an accident, then it should be required to pay, as far as it is able, the claims which exceed the no-fault ceiling.

The charge is often made, Mr. President, if this were to happen the accident would be so expensive that all these companies would go bankrupt.

I think the proviso was stated earlier, which everybody accepts, that at some point if an accident were that large, Congress would step in. Certainly, the record of Congress in New York, Lockheed, and Penn Central is all there. We would not see them all wiped out because of this liability.

I think what is important to recognize, and I have just stated, is that there is no reason why a company which engages in a profitmaking enterprise such as making valves, should not be held liable under tort law just because it makes valves for the nuclear industry.

Just as if the same company made, let us say, cylinders for the landing gear of 747 aircraft, it has tort liability for those cylinders. But if it were to make valves for a nuclear reactor, because of an act of Congress, it would not have similar tort liability.

I think it is obvious that distinction should not be made, and it is proper to extend that liability so we would have the benefit when they are making valves for the reactor—they would be just as careful as when they are making cylinders for a 747 on a subcontract to Boeing Aircraft Co.

Second, the amendment would encourage even greater safety in the nuclear power industry—a point I just made—especially among nuclear manufacturers who are now entirely isolated from liability. Third party liability is meant to act as an automatic regulator on hazardous activities. Nuclear fission, which is an inherently hazardous process, is the last place such liability protection should be removed. Former Atomic Energy Commissioner William Kriegsman has said:

Do away with (the Price-Anderson liability ceiling) and you'd probably see nuclear valves coming off the assembly line in better shape.

It is that simple.

Third, the amendment would also return the risk/benefit assessment to industry scientists and executives—that is, to those who know best whether the risk of catastrophe is really as remote as proponents have claimed. The nuclear industry says its product is safe—then asks for a continued liability ceiling.

This is inconsistent. What do the atomic experts in the industry really believe about nuclear safety? If in fact they have doubts, we will never know it as long as Congress maintains Price-Anderson's liability ceiling. Because as long as industry is isolated from liability and thus from the consequences of risk, these experts will never have to confront the key question which liability imposes: that is, "Is this enterprise as safe for their shareholders as they claim it is for the public?"

Finally, the fairness and constitutionality of the liability ceiling are questionable. Other industries are not protected from their tortious acts—including those which might face similar very high claims, and which have been described as being more risky than nuclear power. Limits which do exist, like workman's compensation and the international airline convention, have been allowed by the courts only with the understanding that the limit is a reasonable approximation of what is lost. But $560 million is less than one-tenth of the potential losses in a nuclear power catastrophe.

Assuming that the Nuclear Regulatory Commission is correct, that would be somewhere around $15 billion plus for the outside, most severe accident. That would mean that a person who suffered under that situation could probably get a return of 3 cents on the dollar for what he has lost. That, of course, is totally inadequate.

Mr. President, the liability ceiling was enacted as a temporary—and I underscore "temporary"—measure at a time when the nuclear industry was small and there was a universal desire to stimulate peaceful nuclear energy. Now, 20 years later, the nuclear industry is large enough to give up the liability ceiling. It is easy to understand why the industry opposes this amendment. As long as nuclear businessmen can persuade the Congress to give them this unique protection, they will hold on to it. People do not look a gift horse in the mouth. But the time for weaning has come.

Either this industry can stand on its two feet, or it cannot; either it is viable in the marketplace, or it is not. There is only one way to test that, and that is in the marketplace.

An industry which claims to be so safe, an industry which promises it can supply so large a share of this country's energy, need not be built upon a constitutional breach. That breach has continued for 20 years and need go no further.

I would like to point out that this amendment is supported by the American Trial Lawyers Association, representing 25,000 attorneys, and the California State Bar Association, representing 50,000 attorneys. It is also supported by each of the major environmental groups, including the League of Conservation Voters, which will count the vote on this amendment in calculating their environmental rating. The United Auto Workers, the United Mine Workers, the National Taxpayers Union, and Common Cause also support the amendment for the very simple reason that this amendment is a very acceptable amendment that asks no more than to permit every citizen in this country to sue under normal tort law to realize the full potential of his privileges under the Constitution of the United States.

I find it difficult to understand why the managers of the bill, why the proponents in industry, insist on opposing this kind of a reasonable amendment.

Mr. President, I reserve the remainder of my time.

Mr. PASTORE addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island.

Mr. PASTORE. I can tell the Senator from Alaska why I am interested. It is because this amendment is intended to gut the expansion of the nuclear power program. It is very simple.

If I were sure that the Senator from Alaska was amenable to the expansion of this nuclear program, I might not have said what I have just said. This amendment is being sponsored by a lot of people who have no part in the development of the nuclear power program. That is pure and simple.

We went out of our way to create what is known as the Energy Research and Development Administration. We called into public service a great scientist, Dr. Seamans. This is what he had to say in a letter to me:

DEAR SENATOR PASTORE: We appreciate the opportunity to comment on Senator Gravel's proposed amendment to the extension of the Price-Anderson Act which would leave the $560 million liability limit unchanged, but restore to the public the right to sue nuclear industry companies for damages beyond the limit.

The Price-Anderson Act was enacted in 1957 and amended in 1965 and 1966. It was designed to protect the public by assuring the availability of funds for the payment of claims and the emerging nuclear industry by offering protection against unlimited liability in the unlikely event of a catastrophic nuclear accident. Beginning in 1957, the Joint Committee found, on the basic of expert testimony, that the likelihood that a serious nuclear accident will ever occur is extremely remote. Nevertheless, no one will correctly conclude that such an accident could never occur. For this reason, the need for the protection afforded by the Price-Anderson Act persists.

In assessing the need for the proposed amendment to the extension of the Price-Anderson Act, two questions should be considered:

1. Would it increase the level of protection afforded to the public?

2. What would be the practical effect of enactment of the proposed amendment?

Our responses to these questions are as follows:

1. Enactment of the proposed amendment would not increase the protection afforded to the public if an extremely unlikely major nuclear incident were to occur. The Joint Committee reiterated its belief that any increase in, or elimination of, the limit of liability is unnecessary when on November 10, 1975 it issued its "Report Together with Separate Views by the JCAE to Accompany H.R. 8631."

2. Enactment of the proposed amendment would increase public concern about the safety of nuclear reactors despite the industry's unprecedented safety record.

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

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

U.S. ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION,
Washington, D.C.

Hon. JOHN O. PASTORE,
U.S. Senate.

DEAR SENATOR PASTORE: We appreciate the opportunity to comment on Senator Gravel's proposed amendment to the extension of the Price-Anderson Act which would leave the $560 million liability limit unchanged, but restore to the public the right to sue nuclear industry companies for damages beyond the limit.

The Price-Anderson Act was enacted in 1957 and amended in 1965 and 1966. It was designed to protect the public by assuring the availability of funds for the payment of claims and the emerging nuclear industry by offering protection against unlimited liability in the unlikely event of a catastrophic nuclear accident. Beginning in 1957, the Joint Committee found, on the basis of expert testimony, that the likelihood that a serious nuclear accident will ever occur is extremely remote. Nevertheless, no one will correctly conclude that such an accident could never occur. For this reason, the need for the protection afforded by the Price-Anderson Act persists.

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Our responses to these questions are as follows:

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On page 12 it states:

"At the time of the extension of the Act in 1965, the Joint Committee . . . said:

" 'In the event of a national disaster of this magnitude, it is obvious that Congress would have to review the problem and take appropriate action. . . . The limitation of liability serves primarily as a device for facilitating further congressional review of such a situation, rather than an ultimate bar to further relief of the public.' "

This assurance on the part of the Congress that it will take whatever action is needed to protect the public in the event of a nuclear accident causing losses greater than the limit of liability is included as a provision in the bill. . . .

The recently released final report of the Reactor Safety Study under the direction of Professor Norman Rasmussen of the Massachusetts Institute of Technology has indicated that the probabilities of a nuclear incident are much lower and the likely consequences much less severe than has been thought previously."

Since the inception of the Price-Anderson Program in 1954, the only claim paid out under an insurance policy used to provide financial protection for licensees involved the shipment of a spent fuel cask. It was necessary to decontaminate two trucks and a claim of $3500 was paid by insurance companies.

2. Enactment of the proposed amendment would increase public concern about the safety of nuclear reactors despite the industry's unprecedented safety record. It would affect the public views of the fiscal soundness of organizations installing nuclear facilities. This would further disrupt utility plans to construct nuclear reactors and deprive the public of the advantages of nuclear power—a low cost, reliable, domestic source of electricity. It would induce many component suppliers to withdraw from the nuclear industry and thereby tend to concentrate the industry in a few large firms.

For these reasons we believe enactment of the proposed amendment is unnecessary and contrary to the public interest.

Sincerely,

ROBERT C. SEAMANS, Jr.,
Administrator.

Mr. PASTORE. Mr. President, I also have a letter signed by Frank Zarb, the Federal Energy Administrator, who more or less takes the same position. I ask unanimous consent that that letter be printed in the RECORD also.

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

FEDERAL ENERGY ADMINISTRATION,
Washington, D.C., December 3, 1975.

Hon. JOHN O. PASTORE,
Chairman, Joint Atomic Energy Committee, Washington, D.C.

DEAR MR. CHAIRMAN: I have reviewed the proposed amendments to the Price-Anderson renewal bill now before the Congress and have concluded that some eliminate, if

adopted, vital and necessary features of this important legislation. Additionally, failure to enact this legislation could result in a serious disruption to needed expansion of nuclear generating capacity.

The major thrust of the proposed amendments is to eliminate the limitation of liability provision in Subsection 170e. This would seriously undermine the strict liability concept in the legislation which provides for public protection through an efficient no fault disposition of claims in the event of a major accident. The no fault, or waiver of defenses, provision set out in Sections 170a and 170n of the existing and proposed legislation, is an optional rather than a mandatory requirement. If the limitation of liability is removed, licensees would be extremely reluctant to waive viable legal defenses to claims falling within the $560 million indemnity coverage, because of the impact such waiver could have on tort suits for amounts in excess of the indemnity coverage, where the corporate assets would be exposed to satisfy such claims. Therefore, the legislative intent of providing an expeditious no fault disposition of claims would be seriously impaired.

Also, elimination of the limit of liability and provision could well cause extensive needless litigation and difficulty in the processing of claims, even if the no fault provision is accepted by the licensees. The purpose of the no fault provisions is to establish a Federal court plan for the disposition of the available funds up to the current $560 million limit of liability. If claimants file tort actions for amounts over that limit, the state courts would normally have jurisdiction and there would be the possibility of duplicative litigation, resulting in substantal confusion and delay for claimants.

A further problem with removing the liability limitation is a possible disruption in the supply of vital components needed for nuclear facilities. Nuclear plants use great quantities of such components, which include electronic and electrical equipment, motors, pumps, pipes, and valves, all designed and manufactured to special standards and with rigid quality requirements demanded for nuclear plants. Without a limitation on liability, suppliers may concentrate on non-nuclear customers and discontinue their sales of nuclear components, rather than subject themselves to a claim exposure that could in the remote event of a major accident, far exceed their assets. In fact, several suppliers of such equipment—but not reactor suppliers—have indicated that without Price-Anderson they would cease supplying components for nuclear facilities.

In addition, by 1985, and probably sooner, the proposed act would serve to completely phase-out Federal indemnity. This would be accomplished through a second tier of private insurance which would be assessed retroactively in the case of a major accident. As more plants are licensed, this second tier of insurance coverage would automatically rise, and by 1985, it is anticipated that the current $560 million limit of liability would be exceeded by private insurance coverage. Thus, the current Price-Anderson extension will facilitate both the phase-out of government indemnity and the increase in private insurance coverage, which is expected to exceed the current liability limit by at least 1985.

Finally, another serious objection to eliminating the limitation of liability provision would be the deleterious effect on the utilities ability to finance nuclear plants. The impact of the removal of the liability limit is, therefore, far greater than its impact on the disposition of damage claims.

One other amendment that has been proposed would limit the Price-Anderson extension to five years, rather than the proposed ten-year period. A utility embarking now on a program to add nuclear capacity would need two years to select a site and file application documents for a construction permit. That permit might be issued roughly two years later. Thus, a five-year extension of Price-Anderson until 1982 would possibly not cover projects begun after 1978. This would, then, amount to an unreasonably short extension of time.

In view of the foregoing, we strongly oppose the suggested amendments to the Price-Anderson renewal legislation and ask your support in this regard, since this legislation is vital to maintaining a domestically-based, viable nuclear power capacity as we pursue our energy independence goals.

Sincerely,

FRANK G. ZARB,
Administrator.

Mr. PASTORE. We have to look back a little bit to the history of Price-Anderson. Industry never came to the Government and said, "We want to get into the nuclear business." As a matter of fact, in 1954 I was the manager of the bill that took atomic energy out of the classified area and brought it into the peaceful area. It was known as Atoms for Peace.

I want to say at this juncture unless we can use this phenomenon for the betterment of society, and if the only purpose that it will have for mankind is to make a bigger and better bomb, I am going to resign from that committee tomorrow. If that is my responsibility, to invent something that will only kill more and kill them better, I will have no part of it.

Unless this atomic energy has any promise for the betterment of mankind we might as well forget the whole thing.

As I have already pointed out, 24 percent of the electricity generated in New England is generated by atomic energy. We have never had to pay a dime, we never had to pay a nickel, we never had to pay a penny in damages to third parties. We had a Rasmussen report and they say, "A catastrophic accident? Maybe one in a million."

What are they saying with this amendment? In this amendment they are saying the sky is the limit. The minute we do that, no insurance company will underwrite it. There is not an insurance company that came before our committee which said, "We are prepared to underwrite the sky is the limit." So if one cannot buy insurance, we do not build a reactor. If we do not build the reactor, we do not achieve energy independence. We begin to put sections of the country in the dark. Where have we ended up?

I know it sounds glamorous to say the public should be protected. The public is being protected. The very people who want "sky is the limit" want Price-Anderson removed completely. They want it repealed completely. Why? Because they know that the minute that we cannot get Price-Anderson, it is the end of the nuclear industry in this country. It is the end.

All we are asking here is a delivery extension. And how are we doing it? We are saying here that we have to get the Government out of the indemnification. We have already built up a fund of $560 million; $435 million is the indemnification by the Government, and $125 million is insurance that they are already buying, paying premiums for, and we have made money on it. We have made money on this deal so far.

What are we doing here? There are 64 nuclear reactors under construction. When those 64 nuclear reactors come up and apply for their licenses to operate, the Nuclear Regulatory Commission will determine, between the limitations of 2 million and 5 million, how much they are to be responsible for as a deferred premium. It means that step by step, as more nuclear reactors come on the line, the Government responsibility will diminish. The fund will grow larger, maybe to the extent that we even will eventually achieve 50 percent of our electrical power from nuclear reactors in the country; certainly to the extent of at least a billion and a quarter dollars in the 1980's.

Now, Senators say to me, "But what if you have an accident where the damages are over $560 million?"

I say, "God forbid. Do you know what would happen? We would close down the whole caboodle."

We would close down the whole caboodle. If PASTORE, thought for 1 minute we were gambling with an accident here that goes over $560 million, I would be the first one to say, "Let's call it quits."

I have lived with this since 1952. I have been a member of that Joint Committee. Do not let anyone tell me on the floor of the Senate that they love their children and grandchildren more than I do, that they are out to protect them more than I am, whether it is Ralph Nader or anyone else. Do not let them say that to me. I do not know how many children they have, but what I have is the most precious thing in my life. If anyone thinks for 1 minute I would stand on this floor and jeopardize the lives and safety of my grandchildren, he has another think coming.

What are we trying to do? We are trying to put the lights on. If we shut down the reactors we have now, where are we going to get the oil and where are we going to get the gas? We are already being told we have to conserve it.

So we put the lights out. And what happens then? If we put the lights out, we will put a lot of people out of work. That is what it will do. Maybe not in Alaska; maybe they just have to find some more oil up there. But until they found that oil, they had a lot of trouble in Alaska, too.

All this business about the lawyers; I have had it up to here with lawyers about no-fault. The lawyers did not even like the no-fault provisions in here. Do you know why? Because they could not get rich on those claims. But let us think about the general public.

Now the same people who want to protect the people are the people who do not want Price-Anderson. Why should we have Price-Anderson? To protect the people. That is why we started this.

From 1957 to 1975, almost 20 years, we have not paid one nickel—one nickel—for any damage done by a reactor. They say to me, "How do you know what is going to happen?" Is not the best proof experience? Does that not amount to something?

What are we talking about here? They

say, "What if you have an accident where the damages are $15 billion?"

Well, if we do, we are going to kiss this whole program goodbye. We are getting into something here we should not be getting into at all. But we have to be reasonable. We have to consider the likelihood in order to carry out our responsibility. That is the reason why we have this. We want the Government to get out of it, and that is what this bill is all about.

If we agree to this amendment today—and I wish the rest of the Members of the Senate were here—if we agree to this amendment today, we kiss the program goodbye; and that is the purpose behind it. The people who want a moratorium are the same people who are backing this proposal.

Mr. President, I reserve the remainder of my time, and yield to the Senator from Tennessee.

Mr. BAKER. Mr. President, this is obviously an important bill, and just as clearly this is a determinative amendment. It is important not only to the nuclear program, but in my judgment to the independence of movement in foreign policy and domestic issues of the United States. Unless we can develop indigenous sources of energy, this country will never be the same, a free agent in its relationships with the other nations of the world.

Whether you like it or not, there is no reasonable likelihood we are going to develop anything else except coal, nuclear power, and an extended development of our liquid hydrocarbon resources through further drilling for oil and natural gas.

It is not either-or; we have to do them all. Mr. President, if we hobble this program now, we really have substantially diminished our chances of attaining an independent posture in the next decade and those that follow thereafter. That is precisely what is about to happen and would happen if we adopt the Gravel amendment.

I really am troubled by the expressions of concern about the tort liability coverage under this amendment. You know, I was a lawyer for a long time. My colleague from Alaska may not know. I practiced law in the courtroom for almost 18 years before I came to the Senate. I have tried my share of cases for the plaintiff and my share for defendant, and I have won some and lost some, prospered in some cases and failed in others. But I challenge anyone in the Senate to have greater sympathy with the point of view of the trial lawyer than I have, because I have been through it.

I have also been through the fight over no-fault. As my colleague from Rhode Island will recall, I was one of those who opposed no-fault. I felt we ought to leave it up to the States to decide. I have not been wholly successful in that respect; certainly not in the committee. I must say that a part of my opposition to no-fault stems from that same experience as a trial lawyer.

But in the Gravel amendment, Mr. President, we are faced with a situation where it is not either no-fault or tort; we are faced with a situation where it is both. They want it both ways. They want no-fault on the front end of the thing, and tort liability thereafter, and the inevitable effect of that, in my judgment, would be that they would not be able to finally liquidate and settle all the claims made under Price-Anderson. First they would have to settle both the tort claims and the no-fault aspects of the matter, which might take years. This would certainly make it a more lengthy procedure to pay the people who might be injured in the unlikely event of a nuclear accident.

We agreed to accept the Hathaway amendment a few minutes ago, which provided that the cost of investigation, as I recall the colloquy, would be added to the $560 million limitation. And I am not certain of this point, but it is my interpretation of the Hathaway amendment that attorneys' fees would go on top of that $560 million also. So in the past hour or so, we have been pretty good to our colleagues, the lawyers of the land, because we have added their fees and the cost of investigation as well, and now it is proposed that we give them tort claims above the $560 million and slow down the procedure until both the no-fault and the tort claims are settled. The administrative costs themselves would be substantially greater than they are now.

I said during the Commerce Committee deliberations with respect to automobile no-fault that I agree with and support the principle, just as I approve of and agree with the principle of workmen's compensation benefits or the Federal Employers Liability Act.

But in every one of those cases, there is some sort of tradeoff. In the case of workmen's compensation, which is a form of no-fault, we say to the employee: "Look, you can recover these benefits notwithstanding that this may have been patently your fault that you got injured, but notwithstanding the employer has to pay." That is a tradeoff there for the limitation of liability.

In the case of the Federal Employers Liability Act, the tradeoff is: "We are going to deprive you of the defense of contributory negligence or assumption of risk, and a number of other common law and generally statutory remedies, in exchange for your having to pay except under extraordinary circumstances."

While it is true that there is no limitation of liability under FELA, there is certainly limitation of the right to recover. There is the tradeoff, the quid pro quo, the this for that.

But that does not exist in the Gravel proposal. It is not this for that. It is not the tradeoff of likelihood of recovery or limitation of liability. It is all for that and none for this.

Mr. President, that is not good for the future of this country, because we cannot afford the luxury of doing without the development of nuclear power, oil, solar, geothermal, fusion, or coal. We have to do them all, and even then we are going to be strapped for our reasonable requirements to maintain our present standard of living, let alone have any expectation of meeting our aspirations for the better life in the future for ourselves and others around the globe.

So, let none of us be beguiled by this situation, by any appeal of this amendment. This is a crucial and crossroads decision as to whether we go forward with the development of nuclear power in an orderly way.

Mr. PASTORE. Mr. President, will the Senator yield for a question?

Mr. BAKER. Yes.

Mr. PASTORE. As a practical proposition, where we have a situation of a claimant who is entitled to no-fault and a claim under tort law, does the Senator see any settlement being made in one section as against the other until it is all resolved in one package? I mean, what this is doing is creating a confusion and a delaying tactic that in the long run is going to hurt more people than help for the simple reason, if a person has a no-fault claim at the same time there is a tort claim with reference to the same acident, he is going to wait until he resolves both of them.

Mr. BAKER. I believe that is exactly right.

Mr. President, I think the chairman stated it correctly.

Mr. PASTORE. That is as a practical proposition.

Mr. BAKER. I believe as a result of the Gravel proposal, if it were adopted, the additional funds would be beyond the limitation of liability. Under this provision the no-fault principles of Price-Anderson continue to apply until the claims under both no-fault and tort are fully satisfied administratively before there would be a final liquidation of the claims.

Mr. President, on behalf of the distinguished manager of the bill we reserve the remainder of our time.

Mr. GRAVEL. Mr. President, how much time remains on each side?

The ACTING PRESIDENT pro tempore. The Senator from Alaska has 48 minutes, and the manager of the bill has 42 minutes.

Mr. GRAVEL. Mr. President, the last statement made by our distinguished colleague from Tennessee, confirming the statement made by the Senator from Rhode Island, I shall dispute. The effect of my amendment would not be to confuse and tie up the possible recipient of any funds in the event of a nuclear accident. That is not at all the case.

My amendment is very simple. Let me state it again. It says that if the $560 million is not enough to pay for the nuclear accident that might occur, and if a person suffers more as a result of the accident, then he would, after getting his fair share of the $560 million—because that is no-fault—be able to sue under tort law. In many States one has to prove delinquency, he has to prove that something was wrong, and then he could sue and recover additional damages. That is all my amendment does. We can try to make more of it, but it does no more than that.

I wish to make one thing abundantly clear. I would never stand here in this body and question the affection that the Senator from Rhode Island has for his grandchildren. I know he loves them deeply. I know he is concerned about them just as I am concerned about my children, and in the future would hope

to be concerned about my grandchildren. But I think that we all stand here as equals in trying to assess the actions that we do. So I think it serves little purpose to detail our individual motivations—in my case a motivation alluded to that I wish to see the end of the nuclear industry, or that we are here to gut the nuclear industry. That is not the case at all.

I have legislation in to have a moratorium. If I could have the attention of the Senator from Rhode Island and the Senator from Tennessee, I would be happy to say that I shall withdraw right now my moratorium legislation if they will accept this amendment.

This is the test. The only reason we go for a moratorium is because obviously we cannot get the normal checks and balances in the society to work. They have been abrogated. That is why we try to do legislatively what they have been doing legislatively for 20 years. We are making a decision for the American people on behalf of the American people.

What I am talking about here is a position I have held very consistently in this Chamber. I wish to deregulate. I want to let the American people make a decision.

I do not think we are so smart. I think we may have some holes. I can make mistakes. The Senator from Rhode Island can make mistakes, and the Senator from Tennessee can make mistakes. We are not infallible and recognize that.

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

Mr. GRAVEL. Let me finish the point I am making.

Mr. PASTORE. All right, finish.

Mr. GRAVEL. All I am saying is since we recognize our fallibility, let us let the marketplace do it. If there is nothing wrong with it, and if it is so safe, then obviously the marketplace will make that judgment.

They say that the passage of my amendment will gut the whole nuclear power program, will wipe it out. That is not what is going to happen. If the nuclear power program is gutted or wiped out, because of the passage of this amendment, which says that every American citizen is entitled to the full privilege of the Constitution and is entitled to sue under existing tort law like in any other industry; if after my amendment passes reestablishing these rights, if the nuclear power industry gets gutted, do Senators know who will do it? It will not be me. It will be the insurance companies. Do Senators know what the insurance companies' job is in the United States? They are the specialists who assess gamble and risk in our society. That is who will gut it.

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

Mr. GRAVEL. I shall yield in a moment.

Do Senators know who will gut it? It will be the scientists in the nuclear power industry, because they are the ones knowledgeable about nuclear power, so they will be the ones who will gut it.

Do Senators know who will gut it? It will be the utility companies that do not want to risk the net worth of the utility.

Do Senators know who will gut the nuclear power movement? It will be General Electric, it will be American Atomic, it will be Westinghouse, because no longer will those public companies be able to hide under the umbrella of legislative protection. They will have to stand up in the light of day and say, "If we want to make a valve, if we want to make a section of pipe, and we are not sure that is a good valve or section of pipe, we may be held liable," just like Ely Lilly Co. when they make a drug.

Now they say that the sky is the limit. The sky is already the limit.

All one can get for airline insurance is $225 million. Now a nuclear reactor can get $125 million for people, and it can get $175 million for property. So they can get more insurance now for nuclear reactors than one can for the airline industry. In the airline industry the sky is the limit.

So what is the big deal? We fly. We are going to have a Christmas rush this year that is going to be unparalleled, and we are going to get on airplanes, and the sky is the limit.

Does that destroy the aviation industry in this country? Of course not. It did not destroy the aviation industry any more than this amendment will destroy the nuclear power industry.

All this amendment is going to do, and I underscore this, it is going to make the nuclear power industry safer. That is exactly what it is going to do. When you pass a law saying that you do not have to be safe, where is the percentage?

It is interesting that we have this dichotomy. Utilities are regulated, and the amount of profit they make is regulated. They have some degree of liability, and they will have even more under this bill. They will have a $2 to $5 million assessment. But the companies in the United States that are nonregulated—General Electric, Westinghouse, and the others—can make as much profit as they want, and they get more liability coverage, more protection, under existing legislation than do the utilities that have their profits limited. There is something wrong in this legislation. That is all we are trying to clear up. So we come back to the very fundamentals.

My colleague was quick to say that in 17 years, not a nickel has been paid out, and that is obviously the reason why the nuclear industry can get more insurance than the aviation industry. Tort protection to American citizens and fifth amendment full privileges to the American citizen have not ruined the aviation industry, have not ruined the drug industry, and they will not ruin the atomic industry. This will create the necessary checks and balances in our private enterprise system which are so vital.

Leaders of the atomic energy industry come forward and say that the reason why atomic energy is in difficulty today is that it has been hanging onto the udders of Government. It is time to get off. Push the mammaries away. It is time to get off and stand up and be a man. If they cannot stand on their own two feet after 20 years, I submit that they never will.

But let us have no misunderstanding. It will not be MIKE GRAVEL who will gut the nuclear industry. It will be the authorities of the nuclear energy industry. It will be the managers of the nuclear industry who will gut the industry, if this amendment is adopted. That is what is at issue.

Mr. President, I reserve the remainder of my time.

Mr. PASTORE. Mr. President, if the Senator from Alaska pretends for one moment that he is more interested in the people of this country than I am, I think he had better take another look at himself. We can demagog this until the cows come home, and we can raise this specter and that specter.

The Senator from Alaska (Mr. GRAVEL) is willing for the Government to be in a position to indemnify up to $435 million. He does not want to do away with that. But he gets into this gimmick of one particular accident, and this goes to one particular accident. He wants to have it both ways.

All I am saying is that you cannot buy that insurance, and he knows that you cannot buy that insurance. The reason why I say you cannot buy that insurance is that it is not available. If that insurance is not available, no utility is going to get into a nuclear reactor. That is exactly what he wants. The day that happens, he will be satisfied, because he is against the nuclear power program. He is for a moratorium. He does not want another nuclear reactor built. He has his own reasons, and I respect them. But when he gets up and says, "I am for the people and PASTORE is not for the people," I say he should take a good look at himself.

I have been in public life continuously for 41 years, and everybody can look at my record. He tries to tell me that we are ignoring the people with this extension. The happiest day of his life would be if he could kill this bill. There is no question about that, if he will only admit it.

I am not going to demagog this. I know there is a limitation. I know why there has to be a limitation. I have explained it. We have gone through this in the committee. Insurance company after insurance company will not undertake this. That is the reason why the Government got into it in the first place. That is the reason why we established the fund of $500 million, and at that time it was $60 million of private insurance. Now it is $125 million. It is going to grow, so that ultimately we can get out of the whole picture. But it is not going to be done overnight.

The question here is this: Do you want the nuclear power program to come to a halt? If that is what the country wants, then let us do it in a clear-cut way. Let somebody come here with a resolution providing that from now on it is against public policy to build a nuclear reactor, and we would have it all done with.

[At this point a disturbance occurred in the gallery.]

The ACTING PRESIDENT pro tempore. The guests in the gallery are cautioned that they are guests, and order will have to be maintained or the galleries will be cleared.

The Senator will suspend until the Sergeant at Arms obtains order in the gallery.

Mr. PASTORE. Under the circumstances, if we want this program to continue, we have to be reasonable about it. I can understand that people can be very emotionally upset. That is the name of the game.

Mr. President, I reserve the remainder of my time.

Mr. GRAVEL. Mr. President, I will not stand here and say that I will be happy if the bill is killed. My intention is not to kill the bill. The committee has done well to bring in a no-fault liability aspect. I am for the no-fault liability aspect. We are not trying to kill the bill. We are trying to do something like what exists already with respect to the Alaska pipeline. We have no-fault in the Alaska pipeline, and we also have the liability of the citizen, if he is not compensated properly by that no-fault, to secure his rights in court, under tort law. That is all we are asking for. I do not think it is unreasonable.

The managers of the bill have skirted the issue. They have not faced up to the problem that this amendment really addresses itself to, and that is that what we ask for is to give the American citizen the ability to sue under tort law.

It makes no sense in reasonableness to argue the point that this will destroy the nuclear industry; because if that is so, why do we not pass a Price-Anderson bill for the drug industry? Why do we not pass a Price-Anderson bill for the aviation industry? I stated earlier, and I will say it again, that the aviation industry has less overall insurance than does the nuclear industry. They were able to grow and to become more efficient and to become an integral part of our society without Price-Anderson.

Today, nuclear power is in trouble. The reason why it is in trouble is that we have had these types of band-aid proposals. It is in trouble because it never has been subjected, from its very beginning, to the true test. It never has had adequate checks and balances in the marketplace.

As long as the proponents, as long as the managers of this legislation, who have been party to the nuclear leadership in this country since its inception, insist that nuclear energy be treated in some special manner, be treated differently from the way in which any other human activity is treated, we are always going to see this industry under great suspicion.

If you really like this industry, the first thing you should want is to make it like any other industry; and in that way, as it grew, you would be guaranteed that it would be healthy and not grow as some anomaly, some cancer, that constantly would be under threat of being ripped out.

I quote Richard A. McCormack, the president of the General Atomic Co., which is a joint venture of Gulf Oil Co. and Royal Dutch Shell. This is a statement he made in Seattle:

> The fundamental cause of our malaise is the nature of the nuclear business itself. It was born in the Government and consciously weaned by statutory and administrative policies to go through an adolescence of Government support. But the business was never firmly founded and the magnitude of the problems of getting it established in the private sector was never fully appreciated.

No, Mr. President, until the nuclear industry is weaned, until it is asked to do what any other industry is asked to do, it will never have a secure place in meeting its roles and satisfying the energy needs of this country. It may well play a role, but we do not know what that role is going to be unless we take it out of the cocoon of Government protection.

Let me reiterate a point I made earlier. That was with respect to private companies who make a profit, who enjoy this umbrella of safety. I have, in Dun's Review of December 1975, a two-page advertisement from a company that I admire, whose leadership I admire. I think the person who built up this conglomerate is a veritable genius in the financial area. He is a friend of mine. I want to use this as an example.

In this advertisement, it talks about how the company has grown and the profits they have made and the good job they have done in America. It talks about how they built a bridge. It talks about how they build trucks. It talks about how they build steel plants. In those three areas of this company's activities the public is protected by liability, because if the company does a bad job and the wrong kind of steel is put into a bridge and people fall through that bridge, they can sue under tort law. If this truck runs over somebody because of a defective brake cylinder, they can sue under tort law. If this steel mill is ineffective, that company is liable.

But that fourth picture, that is the Commonwealth Edison Co., which plans to build one of the world's largest nuclear power stations, using piping and components produced by Taylor Forge, a major operating plant of the energy group of Gulf & Western. When they build pipes, beware, American people, because you do not exercise the same judgment upon them; you do not exercise the same safety upon these fine industrialists as you do when they build bridges, when they build trucks, and when they build steel mills.

Why the exception? Will the managers of the bill tell me why we have to make an exception when that company, which is in business for profit, has no liability for one and has liability for the others? It makes no sense at all.

Mr. President, how much time do I have?

The ACTING PRESIDENT pro tempore. The Senator has 30 minutes remaining.

Mr. GRAVEL. One of the points made by my distinguished colleague was the fact that if atomic energy were just to be used for bombs, he would be no party to it and that he was in at the beginning, when we initiated a program for peace. I compliment him and laud him for something that I have identified with. I hope that any human discovery, any advancement in technology, all that our imagination and human talent can provide, I hope that whatever it is can be used for the benefit of the human race. But if, perchance, we spot some activities that are suspect, that are inherently hazardous in their very nature, I hope that in our zeal we would not wear our emotions on our cuffs and that we would not race forward to do away with the checks and balances that society, that the western world, has developed through many, many years, hundreds of years of common law practice; through all the experience that the human race has attained in the industrial revolution. I hope that we will not put aside the simple check and balance of liability, so that if we do something wrong, we pay the consequences. This is so vital in our system.

I say to my colleague that I share with him his desire to make the atom peaceful. But it is not his wish or my wish or our collective emotions that will make it peaceful and make it valuable. What will make it peaceful and valuable will be if it truly fits the needs of the human race.

I do not want to turn out the lights. I want to have energy supplied to this country, to New England or to any other place, as safely and effectively as possible. But, pray tell me, why we have to let a person who manufactures pipe, a person who manufactures valves, why we let him not have the discipline, not have the accountability of making the best pipe and making the best valves that he can. I pose that as a question to the managers of the bill. I submit, if they cannot answer that question, then their position is bankrupt.

Let me ask that question again: Why is it that Gulf & Western, why is it that General Electric, why is it that Westinghouse, why is it that Union Carbide, if they make a piece of pipe, should not be forced to make that pipe as safe, or if they make a valve, to make that valve as safe as is humanly possible? The way to make them do that is to make them responsible for their actions.

Why do we have to take away that responsibility? If they can answer that question, I should like to hear it. If they cannot, then their posture is bankrupt.

Mr. President, I reserve the remainder of my time.

Mr. PASTORE. Mr. President, the fact remains that they are responsible. I do not know how anyone can make the statement that they are not responsible. Of course they are. They have to buy insurance. There is $125 million of private public liability insurance for any one incident, plus the indemnification by the Government.

I am not going to debate this any further. If the Senate wants nuclear power, they can have nuclear power. If they do not want it, they can vote for this amendment. If that is the will of Congress, that is the will of Congress.

I repeat again, I am just trying to do my job. I have been with this thing since 1952. I have seen this thing grow.

The only argument I can make to the Senate is, we are getting all fussed up here about a cataclysmic or catastrophic accident. The fact still remains that the best testimony is that it is very unlikely, one in a billion. The proof of it is in the eating. Since 1957, we have not had to pay one single penny in damages. Be-

sides this coverage for third party injury, we have in-house property insurance that they carry.

Certainly, I am not standing up for Westinghouse or General Electric or Union Carbide. I could not care less. But I want to keep the lights burning. I want to keep our people working. When we realize that 8 percent of the energy in this country today is nuclear power, where would we be without it? Where would we be without it in achieving independence if we did not have that 8 percent?

One might say to me, it is only 8 percent. But it gets into thousands of megawatts; because, after all, we are the most industrial Nation in the world. There is no question at all about it. Energy is our lifeblood. If we cannot use oil because we cannot buy it or we cannot find any more, if we cannot use gas because we cannot buy it or find any more, and it is hard to get into the coal because we have to scrub it and we get ourselves into an environmental problem, here we are: we have nuclear energy.

We have thousands upon thousands of people working in these plants every day. They are not complaining. They are not complaining one-billionth as much as the Senator from Alaska.

You tell these people:

Look, you have been all wrong for these 17 or 18 years. Now we are going to close down that plant and you just go home; go home because we do not like the idea on the floor of the Senate.

I mean, it does not make sense to me. If we have got to be careful, as we have been in nuclear programs, let us be careful. But this idea that unless we pass this amendment they are not going to be careful down there at General Electric—why, they had a small, a little bit of a crack in one little piece of pipe in a boiling water reactor, and Bill Anders closed down 23 of those plants until they discovered what the trouble was. That is how careful we are.

Let me say this to the Senator from Alaska: There is no committee in this whole Congress that watches more carefully over the safety of any of its responsibilities than the Joint Committee on Atomic Energy. I dare anyone to dispute that record. That has been going on since 1954, since the act was adopted.

I understand the Senator from Illinois would like to put a question or two to me.

Mr. PERCY. I appreciate very much the distinguished Senator's yielding for the purpose of putting a couple of questions.

I am deeply concerned about not making any change in the present legislation because inflation alone has made those figures somewhat obsolete, and we ought to take that into account.

Second, I am concerned that a dollar limitation of $5 million per company is inequitable. There are some small, marginal companies in this field where $5 million would be a tremendous amount. To General Electric, which has assets, if I recall correctly, in excess of $9 billion, this would probably amount to less than 30 percent of their present cash on hand. Thus it could be paid out of petty cash and would not really be missed, and therefore would not have the salutary effect of potential liability that would cause them to take every conceivable step to insure quality control.

I find the concept of unlimited liability difficult to support simply because I would not know what consequences that would have. As the Senator from Rhode Island has stated, it may cause a slowdown in expansion at the same time that we should become more, not less, dependent on nuclear energy. We want to get less dependent on imported oil, and this is one of the avenues that is certainly in the national interest.

But I think the industry is ready to accept more of the burden. We have now had many years of experience without a single accident of the kind that we are contemplating. With this experience they should be able to assume more of the responsibility for liability in the future than they have in the past with Government indemnity.

So, in principle, we are weaning ourselves away from the concept that liability must be very limited in order to allow expansion.

My question to the distinguished Senator from Rhode Island, whose knowledge and devotion to this field has made him, to a great extent, the father of nuclear energy from the standpoint of legislation and oversight, is it not possible for us now to arrive at some liability figure based on the size and assets of a utility or a corporation rather than keeping the $560 million limit which, in concept, now seems to be somewhat out of date?

In considering the possibility of offering an amendment along this line, the Senator from Illinois has taken a figure of 25 percent of the assets of a corporation, whether it be General Electric or Commonwealth Edison or Detroit Edison, 25 percent of the assets which would not force a company to liquidate if it had a very, very large liability or catastrophe, but would be sufficiently large to cause that concern to take every conceivable measure and not shave or cut any corners?

Whether the figure of 25 percent is right or whether it should be 50 percent or 10 percent I am not sure, although 25 percent of assets seems to be a reasonable figure. But I would very much like a response from the Senator from Rhode Island as to whether in principle we should not work toward having some degree of liability. It would be limited but substantially larger than is now provided, because the $560 million today really seems to be out of keeping with the ability of the industry now to determine with greater accuracy than many years ago what the potential liability may be.

Mr. PASTORE. If I may answer the Senator, that is precisely what we are trying to do in this bill. The only thing the Senator is suggesting is a different formula than the formula we have adopted. But the principle and the philosophy of which he speaks are identical to what we are doing in this particular bill.

When the Senator speaks about the $5 million, that only applies to a utility company and, at the time we were discussing that, we realized there are some small utility companies, public utility companies, for instance—a city that might own its own utility and wants to build a reactor, nuclear reactor—we knew they cannot afford to pay $5 million, so that is the reason why we have the leverage of $5 million down to $2 million. In that particular case the assessment would probably be closer to $2 million than $5 million.

This is the way this works: At the present time the total liability is $560 million. One hundred and twenty-five million dollars of that is insurance they have to buy. Four hundred and thirty-five million dollars is the amount the Government guarantees as an indemnity.

As new reactors come on the line—for instance, you have 55 reactors now, and let us assume we add 145 more reactors. That will bring it up to 200 reactors. Let us assume the medium the Nuclear Regulatory Commission strikes is $3 million per reactor. You see, the fund will increase by 200 times 3—do I make my point clear—which is $600 million which is added on to the insurance they already have. So you add that on and you can see you are going up to almost $1 billion and, in the meantime, as the total amount of financial protection goes up, the Government indemnity responsibility diminishes because the utilities are picking it up, they are picking it up from $125 million. The minute you consume the $435 million, you add the difference between the $435 million and the $600 million that I mentioned to the Senator, so you add the difference between the $435 million and the $600 million, which is $165 million, which will raise it from $560 million plus $165 million more, and that is how the financial protection goes up, and would continue to go up during the extended life of the Price-Anderson Act.

The Senator is right. Frankly, the Senator has made a meritorious suggestion and, I think, possibly the committee ought to delve into it, hold hearings, find out whether or not the utilities can afford to pay this. As a matter of fact, as far as I know, most of the utilities today are in difficult financial straits. Some of them are not even paying dividends to their stockholders—you know that, Mr. President. That happened in New York. A lot of them have ventured into the nuclear business, and then because of certain lawsuits and what have you that have been brought, they either have to remain stalemated or still in the courts fighting it out, and that has been the story.

Now, in order to overcome all this, the administration made the suggestion that we extend this for 10 years. This bill is being backed by the administration. That does not make it good only because the administration backs it, but this law that is existing today will expire in 2 years, and all of the 55 reactors now operating are already covered. The question here is what are you going to do about the new ones which will receive construction permits after August 1, 1977? That is the argument that I made to the Senator from Alaska. If you make it impossible for them to buy the insurance, you have

to look at this in a practical way, and the insurance is not available—you cannot buy that kind of insurance. There is not an insurance company that can take their assets and allocate it to this particular risk and put it in their reserves waiting for that one-in-a-billion accident to happen. I mean, that just does not happen in business.

So I am saying apart from all the emotion in this case, we have got to be a little practical, we have got to pragmatize a little bit and understand what we are up against. We have gone all through this. So far as I am concerned, I am, very frankly, going to tell you I do not carry any brief for the utility companies. I do not carry any brief for Union Carbide or General Electric. I am worrying about that fellow who needs the energy in order to create and maintain jobs. I am worried about the lights that have to go on when you turn on the switch, and that is what this is all about.

They tell us the oil is running out, they tell us the gas is running out, they are telling us we have to gasify our coal, and all of these things are in the future, and here it is, we have got atomic energy—8 percent of our electricity is atomic energy today in the country.

In my section of the country, it is 24 percent. In the State that the Senator comes from, Illinois, 33 percent of the electricity is nuclear.

Mr. PERCY. Will the Senator yield for a comment on that?

Mr. PASTORE. Yes.

Mr. PERCY. The Senator from Illinois recognizes the great dependence of the State of Illinois on nuclear energy. We have been in the forefront and we are certainly ahead of every other State in the Union.

Mr. PASTORE. That is right.

Mr. PERCY. We have an extraordinary management at Commonwealth Edison that has been aggressive and yet safety conscious. We have been blessed with that.

On the other hand, the Senator from Illinois feels that the industry now has matured, that it is doing well and that the industry itself has a duty to recognize that.

We have a duty to recognize that because of the considerable growth of the industry, it is now in a position to assume certain costs that it was possibly not in a position to assume before.

As for assets of certain companies, Arizona Public Service has over $1 billion, Arkansas Power & Light over $1 billion, Duke Power $3.4 billion. We could go on through the list.

These are considerable companies with great assets and great resources available. The question now is whether they should not, in order to give us a truer cost of nuclear power, be building into their cost structure what we consider to be the public interest in taking on the insurance cost to insure against potential accident and to see that the basic rights of individuals are protected.

The principle of our legal system is that persons injured by negligence should be able to sue for full and just compensation. This is a principle we ought not to subvert and we ought not to exempt one particular industry from forever.

Certainly, the Senator from Rhode Island, I believe, recognizes this: Price-Anderson does severely limit the public's opportunity to recover such compensation in the event of a nuclear accident on the grounds the weak, new nuclear industry could not survive in the face of potentially unlimited liability.

No longer is it weak or new. It is a mature, full-blooded industry now that has taken its proud role as one of the major power suppliers, as exemplified by 33 percent of electricity being generated in the State of Illinois.

They are ready now to assume that cost and they have to, as a regulated industry, pass that cost on to their customers.

We are talking about higher rates, but everyone using oil is certainly paying more, in coal they are paying a great deal more, and we should not be in a position by law of subsidizing this industry to reduce its costs unreasonably and having artificial cost structures by not taking into account a potential liability that could be upon them if we did have some catastrophic accident.

I think we have a deep evaluation to make yet, to set up a cost structure to insure policing inside the industry sufficiently to prevent that kind of accident. Accidents have occurred which usually can be traced back to some hazard, some fault of an industry, a supplier, when there was not sufficient incentive to guard against that.

What we want to build into the industry now is a sufficient factor that does not give them full and total responsibility, but gives them a great financial responsiblity to adhere to safety standards.

So I simply again put the question, what would be a reasonable ceiling, taking into account that at this stage I do not think we are ready to move to an unlimited liability, but what is a reasonable liability for a company to have?

I suggest again, respectfully, the figure of 25 percent of assets, which taking into account the condition of most of the companies I have mentioned, a long list which I have here, does not seem to be an onerous amount.

It would be $262 million for Arizona Public Service. This is a large amount, but it certainly is not going to destroy a company that has assets of over a billion dollars. It would be a figure that I think they could handle, but certainly a figure that would cause them to take a look at everything they are doing to make absolutely certain the safety standards that they establish will be beyond any reasonable reproach.

Mr. PASTORE. I keep emphasizing, and I would like to say it again, that is precisely what we are trying to do under this bill.

I do not know whether or not there is any insurance company that is ready to underwrite $260 million insurance for that particular company. I mean, these are matters we have to go into very carefully. It is something that we cannot resolve on the floor of the Senate.

Maybe at some future date we ought to get into this, as to how much faster we can accelerate this removal of the Government from this field. But at the present time, that is precisely what we are trying to do. That is why we are levying this deferred premium against all utility companies which operate nuclear power reactors.

I repeat again, there may be another system. But I frankly must say that we have labored long and hard over this. This has been studied by the old AEC, studied by our experts, studied by our staff. We have had prolonged hearings on it and this is the best solution we can find as of this time.

Later on in the distant future, as we get more experienced, maybe some other formula will be more appropriate. But I am not prepared, and I do not think the Senator from Illinois is prepared, to say this afternoon whether we should strike the 15 percent, 25 percent, or 50 percent of their assets.

I do not know the answer to it. We are certainly not going to do it this afternoon. Maybe the ceiling on this is right now, as near as the $560 million.

But here again, I am afraid if we start putting amendments in this, that what we are doing is impeding the progress of nuclear energy and, frankly, I am a little worried about what the consequences of all this might be.

Maybe we can get along without nuclear power. Maybe we can again go back to the bow and arrow. I do not know. Maybe we can live in the dark a little bit longer than we are accustomed to do.

Maybe we do use too much electricity, but the point is that we need this electricity in order to keep people working.

I do not want to do anything today that will in any way impede the orderly progress of the development of nuclear power if it is safe, and the experts tell us that it is.

If it is unsafe, then let us chuck it out. But if it is safe, let us not stand up and say, "Let us do without," when we know what the problems are.

I yield to the Senator.

Mr. BAKER. Mr. President, I thank the Senator for yielding.

I think our colleague from Illinois has raised three good questions that are not answerable here on the floor of the Senate, but I think they are worthy of his concern and of ours.

I assure him, for my part, the Joint Committee on Atomic Energy will give them careful attention.

The three issues as I perceive his concern, as he expressed them here, are, one, is $560 million enough?

Should we not consider a higher limit, I suppose, in favor of the ravages of inflation? The answer is clear, I think, we should consider it. If we do not stop inflation, we will have to consider that and everything else. I think that is a realistic concern.

Fortunately, as the chairman of the committee pointed out, the amount does go up. It does go up rather dramatically, as a matter of fact, and within the 10-year time frame of this estimate it would go to well over a billion dollars, even at less than the maximum premium paid by the utilities.

As an incidental benefit, it would take the Federal Government out of the indemnity business altogether. It would get that down to zero pretty fast.

So the first answer, as far as I am concerned, is that we should. I think we have, but maybe we ought to look more fully before that 10 years expires, well before it expires, and I am willing to do that.

The other is: Should we not consider some sort of liability limitation on the vulnerable assets or the assets at risk of a particular corporation? Should we say, for instance, that only 25 percent of the resources of a particular utility would be at risk in a case of this sort?

Frankly, that is one we have not considered. I suppose, under some circumstances, that might be taken into account, but that would be a new approach. That would be a limitation of liability coupled with a new obligation, such as a tort liability response, which is not embraced here. That is a fundamental concern.

I cannot give a direct, straightforward answer on point two as I could on point one. I am willing to think about it, and if it seems indicated or necessary, I am willing to do it.

The third point that he expressed not as a reservation but as a commitment to the public development of nuclear power I fully and wholeheartedly agree with. I join with the Senator from Illinois in expressing pride in the leadership of his State and the electric utilities which serve as being in the vanguard in the development of these techniques. Illinois is indeed fortunate to have the quality of leadership in their industry as they do in their government. I commend them for it.

Mr. President, I believe the Senator from Illinois has raised good questions. They are worthy of our concern. I am glad he raised them and I assure him we will take account of them as we continue to monitor the performance of this program.

Mr. GRAVEL addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

Mr. GRAVEL. Mr. President, the Senator has raised a good point, though I raised it earlier. He feels that corporations not presently covered should have some degree of liability. I posed this question to the managers of this bill and they still do not focus on that. We are told that we should wait.

This is a renewal for 10 years. Let me say, if we are talking about waiting, one should not hold his breath because we will not see a chance for this for 10 years.

Again I read from Dunn's Review of December where General Electric is one of the 200 leading performers at 16.8 percent, 5-year average return on common equity. Of course, that is not the case with the utility companies in the State of Illinois, nor in the State of Alabama, nor in the State of Arkansas. But those utilities have some degree of liability. They have $125 million in liability. General Electric, doing this work, operating within the State of Illinois, has no liability in this regard. They can manufacture a good valve or a bad valve, or a good piece of pipe or a bad piece of pipe, or a good breaker or a bad breaker, and it makes no difference. All they have to do is worry about selling it.

Where does the protection to the American people come from in this regard?

We can listen to pontifications and they will not protect the American people. There is only one way to protect the American people. That is to let these people who manufacture suffer the liability of their actions. There is no reason why we should delay. Most of the Members involved in this colloquy are attorneys. I am not an attorney. But the attorneys readily understand what we are talking about. It is not a complex issue.

When my colleague tells me that what we are interested in is jobs and keeping the lights on, I think it has already been stated by my colleague from Rhode Island that, if there was an accident in this country which exceeded $560 million, the likely result would be that we would close down every nuclear reactor in the country. That means that all those people who are dependent upon 8 percent of that electrical energy now, all those people who are employed would be immediately thrown out of work. Why? Because something has gone wrong.

Would it not make more sense to try to avoid something going wrong before it goes wrong? That is all that we are asking in this amendment. It is simply to say that, if nuclear energy cannot stand up to the competition by other industries, then it should not be in existence.

The question is not, "Do you want power?" The American people want safe power. We do not know whether this is safe or not, and we are not permitted the normal checks in our society to make that determination.

I would like to pose a question to my colleague from Illinois, the senior Senator from Illinois, if I can get his attenion. The question I would like to pose to him is one with which I am sure he is familiar. I do not have the experience he has in this regard. I have some concern about saying to a company to limit the percentage of liability to their assets. Let us take Westinghouse right now. They have signed contracts with a lot of utilities to provide fuel. If they do not go through with those contracts, it will cost $1 billion or more. I do not know the details of it, but I am sure that they have a separate company and they will let that company go bankrupt. So in point of fact the assets of Westinghouse will not be in jeopardy.

I would suspect that every company in this country involved in nuclear activity must have used to the greatest ability it can the shield of the corporate entity. If I want to go out and take on a commercial project I will try and do it as a corporation. I do not want to put MIKE GRAVEL'S name on it. If it goes wrong, I cut it off and let it go down the chute. That is the end of my risk, the amount of money I actually put up.

In point of fact, I do not know the degree of protection that would be, but I would query the managers of the bill: Do the utilities presently use the shield of the corporate unit as a device to shield themselves from liability?

Let me repeat the question. Do utility companies use the——

Mr. PASTORE. Was the Senator addressing me?

Mr. GRAVEL. Yes.

Mr. PASTORE. I thought the Senator was talking to Senator PERCY.

Mr. GRAVEL. I will ask it of anybody who believes he can respond to it.

Mr. PASTORE. Ask the question. I will respond to it.

Mr. GRAVEL. The practice in commercial enterprise, as I know it, is to limit liability by setting up a corporate unit. If things do not go well, the unit will go bankrupt. It is cut off. A person would try not to sign his personal name to it because that would give him liability. In the nuclear industry, why can they not set up a corporation and say that is John Jones' corporation or the ABC corporation which owns the reactor but the rest of the utility company is not tied into that other than buying power from the reactor?

Mr. PERCY. If that is a common or a general business practice, can the Senator cite any business corporation in America in the last 20 years or 10 years where that has happened?

Mr. GRAVEL. I think all corporations do that.

Mr. PERCY. Name one.

Mr. GRAVEL. Exxon is one. General Electric is two.

Mr. PERCY. What is the subsidiary that they would let go into bankruptcy?

Mr. GRAVEL. Exxon owns a piece of the Alaskan pipeline. If the Alaskan pipeline went broke, the rest of Exxon would not go gurgling down the drain with it. That is one. I am sure it is a common practice.

I have sold property to companies and they have these shell companies in front of them. A person has to go through three or four companies.

It is not uncommon to see in Business Week and other magazines the whole table of what the empire is where one has to go through a labyrinth to find out what company is being dealt with. This is not anything new.

I am saying a little square in that labyrinth is the only unit that has liability. The rest of it is safe, free.

Mr. PERCY. Will the Senator yield for a question?

Mr. GRAVEL. Yes.

Mr. PERCY. First, I do not accept the fact that this is common practice. Second, I have not heard the Senator from Alaska name a company that has actually done this.

Mr. GRAVEL. I named Exxon.

Mr. PERCY. The Senator said they could. The Senator from Illinois asked him to name a specific company which has done this.

The third point, and perhaps more important, is the fact that we are talking about negligence suits in court. The court can pierce the veil of real ownership and see where the liability is. All the Senator from Illinois has done is to say that there should be some limit, and a large enough limit, so that it is a real deterrent.

But the situation might not be any different under the amendment introduced by the Senator from Alaska as concerns corporate liability.

All the Senator from Alaska is saying is that corporations can be 100 percent liable and go into liquidation. The Senator from Illinois is saying we are not trying to force them into a position where they pay a very substantial portion, but not to liquidate them and put them out of business. They can be stopped and shut down by regulatory agencies or anything else, but we are not trying to force them to do this.

I do not see any difference in this respect, again, between the amendment of the Senator from Alaska and the position of the Senator from Illinois.

Mr. GRAVEL. Let me pose the question again to the Senator from Rhode Island——

Mr. PASTORE. I heard the argument. The Senator does not have to pose it again. Let me give you the facts. You cannot cut up a utility organization and have it get a license to operate a nuclear reactor. If there is any doubt about efforts to escape responsibility, the license would not be granted.

Lest Senators suspect that all these fine people in Government who have the responsibility are stupid—and they ought to be fired if they are—first of all, you have to get the construction license and then the operating license, and that means you have to go through a very rigid licensing process and inspection. They have the best people in this field who are charged with that responsibility. We have good people doing it. That is a reason why we have not had, up to this time, the third-party liability the Senator is talking about.

We do inspect this equipment. You say they can make a vow that they have no responsibility. No. 1, the vendors have a contractual responsibility with the purchasing utility which probably subjects them to substantial financial risks. Second, using the example of a defective valve, that valve has to undergo rigid inspection and meet rigid specifications. They cannot do it any way they want to.

To answer the Senator's question about the small, little corporate organizational box that he created with the palms of his hands, before you do all this you have to justify it on your application for a license. That has not happened and will not happen, and if anyone makes it happen they ought to be fired.

Mr. GRAVEL. Using the example my colleague mentioned, supposing the department head within that valve company wants to make money, make his department look good, and save some time on inspection. Suppose, in order to increase the profit, they cut down on the degree of inspection, and let through a faulty valve. Are you telling me that now that company is liable?

Mr. PASTORE. Of course, it is liable. It is liable to the contracting person who buys it.

Mr. GRAVEL. Oh. Well, what about the citizen who owns a $50,000 house, worked all his life for it, and all he is going to get——

Mr. PASTORE. Why not put a baby in a crib in that house?

Mr. GRAVEL. All right, put a baby in the crib in the house, and he loses it, whom does he sue? Does he sue, or are you only protecting the utilities?

Mr. PASTORE. First of all, that valve will not pass inspection. Now, you are giving a hypothetical question, if, if, if, if, dressing it up with a $50,000 home, a man with 15 children, 2 of them in the cradle, in the middle of the night, the valve goes. Why not finish your whole drama?

Mr. GRAVEL. I will give you one. The Senator is familiar with Brown-Sperry. We are dealing with Brown-Sperry; let us talk about Brown-Sperry.

Mr. PASTORE. All right. Who died?

Mr. GRAVEL. We have a multimillion-dollar reactor, and a guy underneath the reactor inspecting with a candle, testing whether or not there might be a leak somewhere. Why does he have a candle? Because if it flickers, he can tell there is a leak.

He finds a leak, and do you know where the leak is? In the electrical wires coming out from underneath the vessel.

So he finds some polyurethane, stuffs it up in there, and tests it again, and the flame gets sucked up and causes a fire. He begins to panic, and takes a flashlight and tries to put the fire out with the flashlight.

Mr. PASTORE. Which is all stupid.

Mr. GRAVEL. Oh, purely stupid. But what happens? A few minutes later, someone comes in with a small extinguisher and tries to put it out. After that, the fire starts raging, with smoke coming into the control room.

Then what? After that, they are going to press the button to save the whole thing; they are going to activate the emergency core cooling system. And what happens? It does not work, because they caught the electrical system on fire.

We continue with these impossible occurrences——

Mr. PASTORE. Before you go into that——

Mr. GRAVEL. Do you think they would call the emergency crew? Oh, yes, they finally call the emergency crew.

Mr. PASTORE. I would like to interrupt, before you stop crying.

Mr. GRAVEL. After a period of time, they call the emergency crew in, an hour later, and do you know what happens? They get the wrong number. They could not get the emergency crew because they did not have the right number.

But now finally the emergency crew comes in, and they are going to fight this fire; all of a sudden the firemen come in, and they get into an argument, because they do not have any more of these carbon dioxide containers to put out the fire.

One of them says, "Let's turn on the water."

The other says, "No, you can't fight an electrical fire with water."

So they stand there and watch it burn for 3 hours. Finally, after 3 hours, they take a gamble on turning on the water, and put it out in 20 minutes.

This is a whole day that went on. Do you think they would turn around and call the emergency civil defense? Oh, no. They did not even alert the emergency civil defense in the neighboring community.

But you have to give them an A for credit, because of the American ingenuity of an individual who was able to rig some pumps so that they were able to move the rods down when the activation of the emergency core cooling system did not take place.

No, when my colleague stands here and says these things cannot happen, when you get an emergency situation like this, here is a $50 billion industry running around with a candle looking for a leak, and of course the poor citizens of Alabama——

Mr. PASTORE. If the Senator will yield——

Mr. GRAVEL. If this accident had occurred, what would the poor citizens of Alabama have gotten? Three cents on the dollar. My God, if you are concerned about the children in that cradle, if you are concerned about the grandchildren of the people in Alabama, what about paying them for the liability?

Mr. PASTORE. Well, of course, if anyone was hurt they would have been paid, under Price-Anderson.

Mr. GRAVEL. Three cents on the dollar. That is what the amount, in an extreme accident of this type, would have been. An extreme accident would be a $15 million accident.

Mr. PASTORE. The fact still remains that, thank God, nobody was hurt.

Mr. GRAVEL. We do not want to thank God; we want to be able to thank the checks and balances of our system, if it will work.

Mr. PASTORE. In the establishment of the Alaska pipeline, some people are going to be hurt, and that is regretable——

Mr. GRAVEL. Would you put the same limit——

Mr. PASTORE. Wait a minute. A short while ago, two planes almost collided coming into O'Hare. Does that mean we have to ground every plane?

Mr. GRAVEL. I am not asking you to ground every plane.

Mr. PASTORE. The point is, when you raise your voice and say "a $50 billion industry lighting a candle," that was an individual who did that. That was the stupidity of an individual, and that is why that happened.

After all, God made us all, but he did not make us all perfect, and he did not make everyone as smart as the Senator from Alaska. Maybe that is what is wrong with the world.

Mr. GRAVEL. All I can say is, if you are talking about planes colliding, why not go along with the same liability as the airline industry has, if you think nuclear power is so great? The aviation industry can get $225 million of insurance.

Mr. PASTORE. And they do not have no-fault. The Senator knows that.

Mr. GRAVEL. If you are talking about no-fault, fine. I think it is a good feature. I think you have done good work in this regard. But are you saying to the American people, "We are going to pay you 3 cents on the dollar for your damages"? That is what you are saying. You are saying, "We are protecting you," and that is as much as you are protecting them. You are giving them 3 cents; if

their house is destroyed and their wife is killed, that is all you are giving them.

Do not give them 3 cents. Give them their rights under the Constitution of the United States to sue under tort law, as we have given the rights for aviation accidents and for any other industrial activity in this country.

Why does the Senator want something different? If it is so safe why can they not stand the test?

The very existence of this law is the indictment that the position is bankrupt. That is the very existence of the law.

What we are trying to do is bring some sanity to this situation.

The Senator says now, and I repeat it again, that we will kill or we want to gut the nuclear industry. We do not want to gut the nuclear industry. I am not smart enough to make that decision.

I wish to let everyone in our society come into play and contribute to that decision, and if this amendment passes it will not be us, any Member of the Senate, or myself. It will be the people who know most about it.

Under the present situation, those who know the most take the least risk.

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

The ACTING PRESIDENT pro tempore. The Senator from Alaska has 7 minutes remaining.

Mr. GRAVEL. I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island has 15 minutes remaining.

Mr. PERCY. Mr. President, will the Senator from Tennessee or the Senator from Rhode Island yield?

Mr. PASTORE. How much time do we have remaining?

The ACTING PRESIDENT pro tempore. Fifteen minutes.

Mr. PASTORE. I yield 5 minutes to the Senator from Illinois.

Mr. PERCY. That is fine.

The Senator from Illinois very much appreciates the comments made by the Senator from Tennessee (Mr. BAKER).

The Senator from Illinois has also had an opportunity this morning through his staff to check with one of our major public utilities in the nuclear field to get its attitude, which I think is consistent with the pattern of attitude that we are getting from several that we have contacted.

They accept the notion that there is some level of limited tort liability in addition to Price-Anderson no-fault funds which could be instituted without seriously damaging the nuclear industry.

If they accept that principle, and I seem to feel that on that principle there can be some universal and general agreement, then the question is how much liability?

The Senator from Illinois would be the first to say that this is the kind of a thing that it would be desirable to have hearings on, to have a considered judgment, and not try to legislate something that important in the Chamber without knowing what the end result would be.

The concern that the Senator from Illinois has is, as the Senator from Alaska has said, we might not get any changes in 10 years. Now the Senator from Illinois does not believe that. It is a real problem we are going to have to face up to, and there is a possible solution. We are going to find the solution and bring it to the Chamber as soon as we can.

But it is true the incentive for doing it, with the steady pressure of work Senators all have, would be removed.

The thought occurs to the Senator from Illinois that this is not emergency legislation. It does not have to be enacted until August 1977, and it is in effect for a 10-year period.

The concern the Senator from Illinois would have is that if we let the day go by and enact this—if we enact the Gravel amendment obviously we will open up a tremendous area of unlimited liability about which the Senator from Illinois shares the concern of Senators from Rhode Island and Tennessee but if we do nothing today, the Senator from Illinois would be concerned that we may simply not get around to this as quickly as we can or should.

Would it be possible for the full debate to not take place on this issue today, but to take this back to committee to have such hearings early next year, so that before the August 1977 deadline, hopefully before August 1976, we would dispose of it, but be able to at least establish in principle that there should be limited tort liability? This would then insure that the industry would take every due diligence in addition to their social conscience and responsibility. It would be an additional financial liability that they would have. We should be able to determine a figure that would not cripple the industry but would pass on to consumers adequate costs for this additional liability that now, in the general interest, we feel the companies actually should assume.

I simply would ask the question whether or not it would be possible for this measure to be reconsidered in committee and taken up and what the time frame would be that the Senator from Rhode Island would have in mind for having such hearings, and opening this issue for comment by the industry as well as by consumer interests.

Mr. PASTORE. It would be most unfortunate to do that. We ought to go through with it today. If the Senate wishes to knock this down, let them knock it down. We have spent hour after hour on this, and this is a new proposition that comes up.

Apparently the Senator's staff has been picking up the telephone, and certain people are agreeing in principle to this, that, and the other.

I tell the Senator I am perfectly willing to hold hearings, but I do not think this bill ought to go back to the committee. There is a lot of pressure on the part of the administration to pass this bill. It takes 7 to 10 years to build a reactor. This will dam it up at this time. We have 64 construction permits outstanding, 78 applications under construction permit review, and additional plants on order. We have not gotten to the point of licenses to operate for these plants. We could run concurrently. I see no harm in looking at this once we have passed it, if we can pass it, and then if we have to add on we can always add on.

But what the Senator is saying here now has been raised in the committee, and there has not been that forthright willingness to do what he said when they came before our committee.

If there is a change of mind, I am perfectly willing to hear it again, but I do not think we ought to send this back to committee. I tell the Senator frankly, if it goes back to committee, it will go on the back burner and stay there as long as I am in the Senate.

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

Mr. PASTORE. I yield.

Mr. BAKER. Mr. President, I am sympathetic with the point of view of the Senator from Illinois, but I must say I hope he will not press for that course of action. It is too important that we proceed with the passage of this renewal now, not, as he pointed out, because it is about to expire—it does not expire until 1977—but because of the impact failure to pass would have on those long-leadtime articles that have to be ordered years in advance in order to put a reactor in place. There is testimony before the committee, I believe, that the failure to renew Price-Anderson at this time would have adverse effect and impact on the willingness of utilities, engineers, and suppliers generally to go forward with the projects that have a long leadtime anyway.

One of the reasons we are behind schedule in nuclear power now is because the leadtime has stretched out farther and farther because of necessary regulatory efforts and because of the delay in fabricating components.

It is essential that we not have any further time delays, and to avoid that it is essential that we go ahead with the renewal of Price-Anderson at this point.

I share with the Senator from Rhode Island willingness to take a look at this, to call the utilities back in to ask them their point of view on the Percy proposal, but I very much hope he will not press now to send this bill back to committee. We need to act on it at this time.

Mr. PERCY. I would like to ask both the Senator from Tennessee, as the ranking minority member, and the chairman, to give some indication as to when this could be taken up in committee and in what form they might envision it so that we could enact a change in policy that would take into account what I detect to be a willingness of the industry, in its maturity, to assume a greater degree of liability so as to remove some of the consumer pressures that now exist and are evident by the Gravel amendment.

Mr. PASTORE. If the Senator will yield, if he will have his staff give us the names of all companies he has been talking to, we are coming back on January 19, and sometime after our recess, in February we would be very happy to hold hearings. But we have to have names. We have to have names. I want to know these companies, who are now willing to assume a greater risk, who appeared before our committee and refused to do so.

Mr. PERCY. The Senator from Illi-

nois would be misleading if he is saying there is anyone in the industry that is out front asking Congress to impose upon them greater liability. That is not the case at all.

Mr. PASTORE. That is what we wish to know. That is not the way they testified before our committee.

Mr. PERCY. I think the Gravel amendment has created and opened up an area for responsible discussion. It has created an atmosphere where the industry has admitted they would be willing to accept change but they are not going to go to seek it. I do not expect that we ever will write legislation if we leave it to the industry to impose costs upon itself. They are not out looking for that.

Mr. PASTORE. That is the reason why I cannot understand why the Senator says that we checked with these people and there is a willingness to do it, when they come before our committee and say, "No." I would like to know the names of the people who are willing to do it. After all, we have a lot of things to do in the Senate. I am not going to waste my time up there.

I repeat: If the Senate wants to kill the nuclear power reactor program, let it do so on the floor of the Senate.

Mr. BAKER. Mr. President, I do not think we have come to that pass. I believe that we can accommodate the aspiration of the Senator from Illinois to take a look at this, with the obligation we have to go forward in the committee. I am willing to hear whoever from industry is willing to get in touch with us, either individually or the committee en masse. I think that is the solution to it. Let us defer just until we do hear from industry and they are willing to make their representations.

Mr. PASTORE. Whom do we call in?

Mr. BAKER. Whoever gets in touch with us.

Mr. PASTORE. Nobody is going to get in touch with us, because the Senator has said they are not going to impose an extra fee on themselves. There has been some contact with some people who today are saying they are willing to assume a little more than they said when they came before the committee. All I say is, "Give us the names, and we will call them in."

Mr. BAKER. Mr. President, I have another matter I should like to discuss briefly, if there is time, if the Senator will yield.

Mr. PASTORE. I yield.

The ACTING PRESIDENT pro tempore. The managers of the bill have 5 minutes.

Mr. BAKER. Mr. President, the Senator from Alaska made reference to the fire at Browns Ferry, and I would like to say a word or two about it.

To begin with, the Browns Ferry Nuclear Plant belongs to the TVA, the Tennessee Valley Authority, and is a matter of great interest to me because that is the agency that serves all the power subscribers in my State. It is headquartered in my hometown of Knoxville.

The Tennessee Valley Authority did, indeed, suffer an extraordinarily unfortunate fire there, and it is going to cost many millions of dollars, possibly tens of millions of dollars, to put that plant back in service at full capacity. But let us separate what happened down there and what it means to us.

To begin with, they did have an electrical fire caused by an installer who was in fact using a candle that set fire to insulation. That is not the first industrial fire we have had, and it is not the last industrial fire we will have—not even the last of that size. It probably will not even be the last fire from burning insulation on wire that takes several hours to put out.

It is important to remember that no aspect of that accident involved the nuclear components of that plant. There was never a runaway reactor incident. There was never a failure of the control rods. There was never a failure of the water to cool the reactor. There was never the inability to stop the reactor, to deactivate it. There was never the loss of any radioactive material. No one was injured. There was no threat outside the containment vessel. The plant is going to be put back in service.

We lost a lot of money, and unfortunately the power subscribers in my region are going to have to pick up the tab for those tens of millions of dollars.

As I understood the Senator from Alaska, the point he made was that the emergency core cooling system was called on to operate and it failed to operate. That is not so. It operated in the automatic mode. I believe it was three times—more than once—and was tripped out after it was determined that coolant was there; that it was receiving a false signal saying that a situation existed which did not exist—that is, a danger to the reactor. The emergency core cooling system operated not once or twice but three times. There was never a loss of coolant. The coolant was there to cool the reactor and was in fact used to cool the reactor.

It is true that some of the valves could not be operated from the remote locations, that some of the sequence of valving could not be accomplished from the control room. But there was also full and in most cases redundant ability to shut down that reactor, to scram it, which they did. There was never any threat to anyone from that. There was an extremely unfortunate insulation fire, but there was never a nuclear threat to anyone. It is going to cost the people of the Tennessee Valley a great deal of money, but it says nothing about the safety of nuclear power.

Mr. GRAVEL. Mr. President, I disagree with the statement of the Senator from Tennessee.

I ask unanimous consent to have printed in the RECORD several articles relating to the incident.

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

[From Business Week, Nov. 17, 1975]

HOW BROWN'S FERRY SKIRTED DISASTER

For years the nuclear power industry has insisted that the chance of a reactor meltdown—a calamity that would spew radioactive gases for miles around a nuclear power plant—is negligible. Indeed, safety systems upon safety systems are built into these plants to prevent such a disaster. But last Mar. 22 the impossible almost happened at the Tennessee Valley Authority's three-reactor Brown's Ferry (Ala.) plant, designed by General Electric Co. Says Stephen Hanauer, the Nuclear Regulatory Commission's top technical adviser: "It was the worst accident in light-water reactor history."

The incident started soon after noon, while an engineering aide was making a routine check beneath the plant's control room for air leaks that could carry radioactive contamination from the reactors to the outside world. As usual, he was carrying a candle, counting on its flame to flicker with the slightest breath of air. Suddenly it did. Air, he discovered, was escaping from a hole through which many of the plant's 2,000 electrical cables passed.

He tried to block the leak with polyurethane foam, then lit the candle again. This time the draft sucked the flame right into the hole, igniting the foam. Yelling "Fire!" the technician started beating at the flame with a flashlight, but to no avail. Next he tried to smother it by stuffing rags in the hole. No luck. Then another worker handed him a carbon-monoxide extinguisher. Then a dry-chemical extinguisher. Another one. Too late. By now the fire was moving down the cables.

SMOKE

Above, control room personnel were beginning to realize how serious the situation was. Though the cooling system pumps had triggered automatically in the two reactors that were operating, "panel lights were changing color, going on and off," recalled one operator later. "I was sent to bring back flashlights. When I returned there was smoke in the control room."

At 12:51 an engineer shouted "Let's scram the unit!" and the operators inserted control rods between the fuel rods to halt the fission reaction. But as they waited, one was jotting down some increasingly ominous notes on the performance of one reactor: Pressure on the vessel rose to max of 1,000 psi . . . relief valves were popping . . . lost the ECCS"—meaning that the emergency core cooling system, the very heart of the safeguards, had conked out. The fire had burned through the system's cables.

Without power, water could not continue to flow through the core, and the decay heat quickly started to evaporate the water that was already there. "The control room was filling with smoke and fumes," said one engineer. "It was obvious the control room would have to be evacuated in a short time unless ventilation was provided." Despite the pandemonium, TVA personnel managed to jury-rig pumps normally used to drive control rods into the reactor to pump water instead. Now the problem seemed under control.

But at 6 p.m. the emergency pressure relief valves failed and pressure began to build up again. By 9:50 the water level dropped from 12 ft. to within 48 in. of the fuel rods, when a worker was finally able to repair the valves. Had he been unable to do so, the reactor core could have melted, the containment structure would probably have ruptured, and nearby Decatur, Ala., might have been decimated.

A TENUOUS LINK

Industry spokesmen point to the happy ending as evidence that the layers of safety systems do work. But it is also clear that the human element remains a tenuous link in today's reactor designs.

Incredibly, a quarter hour passed before anyone thought to call the plant's emergency crew—and when someone finally did, he got a wrong number. An hour and a half after the fire started the local Athens (Ala.) fire crew finally arrived on the scene. The fire chief immediately advised the TVA man in charge to spray water on the blaze, but the man refused to use water on electrical cables. The fire burned out of control for five hours

before workers finally took the fireman's suggestion. The blaze was extinguished in 20 minutes. All through the day, no one even bothered to notify the civil defense coordinator for Limestone County, Ala., where the plant is located.

Eventually the incident may force the TVA and all other nuclear-power utilities to spend millions of dollars to improve their reactor systems. Sums up the NRC's Hanauer: "It was like a mild heart attack. Maybe it woke us up."

[From the Washington Star, Oct. 22, 1975]

A NUCLEAR PLANT NIGHTMARE MAY CHANGE SAFETY RULES

(By John J. Fialka)

The story of a $100 million fire that devastated one of the nation's largest nuclear power plants, that threatened to send a massive atomic reactor out of control, and that will probably change fire prevention plans for the entire nuclear power industry begins with one man and a candle.

It was March 22. Inside the Browns Ferry Nuclear Plant, operated by the Tennessee Valley Authority near Athens, Ala., an electrician's helper was confronted with a problem. There was a 2-by-4 inch hole in the 30-inch thick concrete wall of the building that houses one of the plant's two operating nuclear reactors.

The worker was standing in an adjoining "cable spreading room" filled with thousands of spaghetti-like cables that linked the reactors and their multiple safety and control systems with the plant's control room on the floor above him. He solved the problem with what was the standard operating procedure at the plant, which is among the largest and most sophisticated of the nation's 56 operating atomic power facilities.

He stuffed a sheet of highly flammable plastic foam into the hole, which had been made to accommodate a new cable going into the reactor building. Then he lit a small candle and held it in front of the hole.

Nuclear power plants bristle with redundant safety devices, designed to operate as a "defense in depth" against the possibility of a major release of radioactivity or the possibility that a reactor might overheat and turn into a massive, molten glob of radioactive metal.

But on this fateful day at Browns Ferry, parts of this system operated perversely, enhancing the first which knocked out a major portion of the plant's safety and control systems and brought one of the plant's reactors, "Unit 1," dangerously close to running out of control.

As detailed in a 1,194-page report released by the Joint Committee on Atomic Energy, the near-disaster began with what was a commonly accepted test in the plant to see if holes in the wall had been plugged.

The electrician's helper held the candle in front of the hole. If the hole had been plugged, he would know because then the flame would burn straight up. But the hole wasn't plugged and a draft—created by a slight imbalance in air pressure in the reactor room designed to create an inward draft to help keep any radioactive particles from escaping—stretched the flame out horizontally, drawing it into the hole. The foam ignited and began to burn.

The worker pointed out the fire to an electrician who gave him a flashlight and told him to "beat the fire out." The fire melted the lens on the flashlight.

Another electrician working nearby offered some rags to smother the fire. The worker stuffed these into the hole, but they quickly began to burn because the fire was feeding on the air trapped in the plastic foam.

Then somebody gave him a fire extinguisher and he shot a cloud of carbon dioxide (CO_2) into the hole. It shot right through the hole and out the other side into the reactor room. When the extinguisher was emptied, the flames popped up again, burning more brightly and moving deeper toward the reactor room side.

Within moments, an acetylene-like flame appeared into the reactor room. The hole was on the wall, 20 feet above, the floor of the room and the flame, feeding on the polyurethane foam and the draft, spluttered and roared as it burned.

Workers inside the reactor building climbed ladders and quickly sprayed more CO_2 on the flames, quenching them momentarily. But as soon as the fire extinguishers were exhausted, the fire blazed anew.

"There was a lot of blue arcing and popping of electricity, and the fire was slowly backing down the cable tray into the spreader room," a public safety officer told investigators later. (The report does not contain the names of most plant employes.) He ran out of the room to get more chemical extinguishers and oxygen masks.

But many of the special oxygen packs designated for firefighting in the plant were found to be useless because they lacked masks or sufficient oxygen to bring the men to the scene of the fire. And the CO_2 from the hand extinguishers seemed to have little effect.

An assistant shift engineer then resorted to the ultimate defense against fire in the cable spreading room. It was a special chemical sprinkler system installed on the ceiling. When the room was evacuated, the system was designed to pour a massive dose of CO_2 on the cable trays.

The problem was the system wouldn't turn on. First, the engineer tried the automatic switch but found the electricians had cut the power off. Then he found the power switch and turned it on but nothing happened. Then he turned to a special emergency manual switch, designed like a fire alarm handle. You had to break the glass before you could pull the handle.

Someone, however, had installed a metal plate behind the glass, so the switch couldn't be reached. (Later investigators found that all the safety switches in the plant had been covered in this manner to prevent damage while the plant was under construction.)

After trying to pry the plate off without success, the engineer was relieved to hear the CO_2 rumbling through the pipes and into the cable room. The automatic switch had worked after all.

But as soon as the CO_2 system was shut off, the fire in the cable spreading room resumed again, so the system had to be activated again. This went on through most of the afternoon. Afterwards, investigators found that the switch that started the CO_2 system did not cut off the room's ventilation system, which drew a considerable portion of the CO_2 away from the fire and out of the room.

And some of the CO_2 as well as the smoke from the burning neoprene drifted up through holes in the room's ceiling into the plant's control room above, where the plant's operators were struggling with a problem that was growing more serious than the fire: how to keep the plant's two reactors under control.

It had taken about 15 minutes for word of the fire to reach the control room. At first the electricians had failed to sound the alarm. Then someone picked up the phone to warn the control room, but dialed the wrong number.

By about 1 p.m., however, it had become abundantly clear in the control room that something was wrong. All of the instruments that were supposed to monitor the chain reaction in unit 1, had become "inoperative."

By that time the operators at Browns Ferry had managed to "Scram" both reactors, a maneuver that consists in slamming the control rods down into the fuel cores, slowing down the chain reaction or the process of nuclear fission to the point where power production is stopped.

But the Scram does not completely stop the fission. There is always a certain amount of "decay heat" in the fuel core that must be constantly dissipated to keep it from overheating. From 1 p.m. on, that became the major problem at Browns Ferry as the fire raged on, out of control.

"At 2 o'clock," according to one investigation report, "fire-fighting efforts in the Reactor Building were abandoned in favor of an orderly station (reactor) shutdown. For the next two hours, the cable fire was allowed to burn uncontrolled for lack of manpower, lighting and visibility."

The fuel core of a nuclear power plant consists of a living room-sized assembly of uranium fuel, arranged in metal tubes. This sits inside the reactor, which is, essentially, a large stainless steel pot designed to keep the fuel core constantly immersed in water. The water must be circulated constantly to remove excess heat.

There are 13 separate defense systems at Browns Ferry against the possibility of a meltdown. One is a group of high-pressure pumps designed to force water into the reactor, even when there is steam at high pressure inside. There are five systems in this group and each is protected by a redundant set of control cables. But the cables were in the same burning room and, by 1 p.m., two of the five systems were knocked out. Engineers had to rewire, or jury-rig the plant's control panel to keep two others running.

Backing up this group, there are six low-pressure systems that can be called into play. But by 1 p.m., these could not be used at all because there was too much pressure inside the reactor.

And backing up these two groups are 11 relief valves which can be used to release the steam from the reactor in order to bring the low-pressure systems into play. By 1 p.m., the fire had burned through the compressed-air system which operates these valves. The engineers could still operate four of these valves manually, but the other seven valves were locked shut.

In short, much of the "defense in depth" of reactor No. 1 had been penetrated. (After the fire investigators found that 482 safety cables leading from the unit had been burned.)

Normally, the fuel core is covered by at least 15 feet of water. As the pressure built up in unit 1, however, operators watched the water level drop to just 4 feet above the radioactive fuel. The remaining high pressure systems, they decided, were not enough to prevent the water level from dropping further and uncovering the fuel core. At that point, they decided to attempt a "blowdown." This was a maneuver to release the steam through the four operable valves in an attempt to bring the low-pressure cooling systems back into play.

That worked for a while, until the last four valves slammed shut and the pressure inside the reactor began to build again, knocking out all of the low-pressure water delivery systems.

Time and time again, various plant employes braved the smoke and the darkness of the reactor room in attempt to get at stuck valves and open them manually. But they were frequently driven back by insufficient oxygen, or masks that leaked in the acrid smoke. Some could not find the right valves in the darkened room, several passed out. Some received shocks from the arcing cables.

After an afternoon of often heroic attempts to reach the right valves, the problem was finally solved by wiring the valves open.

By 7 p.m., it had become clear that a major nuclear disaster had been averted. With the valves wired open, there were enough systems available to keep the reactor depressurized and cooled down. The fire, however, remained to be dealt with.

With all of the sophisticated fire-fighting equipment and trained expertise in the complex, billion-dollar array of technology that the Browns ferry plant contains, it might be difficult to believe that the solution to the fire problem had arrived at the plant at as early as 1:45 p.m. in the form of Chief A. E. Bumpus, chief of the Athens, Ala., Fire Department. He brought six firemen and a pumper truck up to the plant gate. His men were given radiation detection badges and admitted to the plant.

Bumpus, 59, a 31-year veteran of the department, had to be led into the reactor room "You couldn't see nowhere," he told a reporter. "You had to go pretty much by feel."

When Bumpus saw the problem, he recommended spraying water on the cables. "I informed them," Bumpus later told investigators, "that this was not an electrical fire and that water could and should be used because the CO_2 and dry chemical were not capable of providing the required cooling. Throughout the afternoon, I continued to recommend the use of water to the plant superintendent. He consulted with people over the phone, but apparently was told continue to use CO_2 and dry chemical."

Later, when members of the Joint Committee asked about this, the plant's superintendent, Harry J. Green, testified: ". . . I did not authorize the use of water, and it was because we had lost so much control equipment and we didn't understand at the time the mechanism whereby we had lost so much. We had lost redundant components that we didn't think you could lose, and I was afraid that if we put water on (the cables) we would short out additional controls that we needed."

By 4:30, there were enough oxygen packs and portable lighting units available to make another attempt to enter the reactor room and put out the fire.

"This was not your average corner store," explained Bumpus, who said his men had been inside the huge plant before during numerous fire drills, but were unable to find their way, unaided, to the reactor room. Several plant employes with a radiation monitor went in ahead of them. "There are people who have worked in there for years and they still lost," added Bumpus.

Flames were still spewing up from the cable trays and a black liquid, a by-product of the burning neoprene was seeping down the plant's walls. Several employes climbed ladders to get a better shot at the cables with the CO_2, but they were often driven back by the smoke. When the CO_2 hit the flames, they went out. Afterwards, however, they sprang up again.

Bumpus noted that there was a fire hose position about 60 feet away from the major part of the fire and again pressed Green to use water. Green still resisted the idea.

Finally, sometime after 6 p.m., Green gave in and told Bumpus to go ahead and try the water. Bumpus and two of the plant's shift engineers grabbed the firehose nearest the fire and pointed it up at the flames.

The hose, however, was fitted with a special nozzle designed for electrical fires that emitted a fine spray. There was no way the men could get the nozzle to shoot water up to the burning cable tray, 20 feet above them.

* * * * *

About 7:15 they returned and discovered that water cascading down on the trays had put out the fire.

The crisis was over, but Browns Ferry's two reactors had been heavily damaged. Burning neoprene creates a corrosive acid that had been spread by the smoke, almost uniformly, over the metal components of the reactors. The fuel cores had to be removed. TVA officials estimate that it will cost them $3 million to repair the plant and around $100 million to buy electricity from alternate sources until Browns Ferry's units resume again, sometime in January.

Investigators from the Nuclear Regulatory Commission (NRC), have swarmed over the plant and are said to be in the process of compiling plans for a major revision in nuclear plant fire-fighting and safety regulations, revisions that, according to some industry sources, could require major "retrofitting," and the expenditure of "billions of dollars" by owners of existing plants. The NRC report will be released next month.

In an interim report, NRC investigators pointed out that the hole in the wall where the fire started was made in violation of existing regulations. Leaving the hole unsealed while operating the plant is another violation. So far, however, according to NRC spokesman, no charges have been filed against the TVA, which is, like the NRC, a federal agency.

Expert investigators from the Factory Mutual Engineering Association, retained by the NRC, have criticized the lack of adequate oxygen and fire-fighting equipment in the plant. They have also noted:

". . . It is obvious that vital electricity circuitry controlling critical safe shutdown functions and control of more than one production unit (reactor) were located in an area where normal and redundant controls were susceptible to a single localized accident."

The most scathing criticism of the incident, however, has come from the Nuclear Energy Liability and Property Insurance Association (NELPIA), members of a pool of private companies that insure nuclear plants.

The NELPIA report notes: "The widespread use of combustible nonmetallic cable constructions in nuclear power stations has introduced a fire hazard that is not sufficiently appreciated by station (plant) operators. Unless those in authority begin to recognize the seriousness of this hazard and its consequences, losses involving millions of dollars can be expected.

"The premise that grouped nonmetallic cables will not burn or propagate flame has been a fallacy often promoted by certain interest groups. Up until recently users of electrical cable often believed that their tray cable was 'nonburning,' 'nonpropagating,' 'fire resistant,' or 'self-extinguishing'. Not so!"

And as for the cable spreading room, NELPIA points out that it was a mess of cables "situated in every direction conceivable," without any aisles or spaces that could accommodate a fireman. "To go into the heart of this (room) full of smoke and acrid fumes to put out a fire even wearing self-contained breathing apparatus would be considered beyond the realm of heroism."

TVA officials have accepted some of the criticisms, although they claim that, at no point, was the plant on the verge of a nuclear disaster. In fact, they conclude, the fire really shows that "defense in depth" worked.

"In effect," Aubrey J. Wagner, the chairman of TVA's board, later told the Joint Committee, "the Browns Ferry fire was a test—although a most unwelcome one—of the ability of a nuclear power plant to shut down safely under very difficult and extreme conditions. The plant and TVA personnel met that challenge successfully, but it was a costly test."

Although the plant's radiation monitoring system was also knocked out by the fire, it appears that there were no releases of radiation to the surrounding area. This was fortunate, because two backup systems designed to detect radiation also failed.

One of them was a radiation monitoring system that was supposed to be run by the Alabama Department of Public Health downwind from the plant. According to Aubrey V. Godwin, an official of the department the system had broken down three months before the fire and the department hadn't found the funds to replace it.

Neighboring cows, Godwin later pointed out, would have ingested any escaped radiation, and their milk could be tested. So he contacted a local dairy. That "system" didn't work either, though, as he later explained to the joint committee.

"We called him (the dairyman) up and said, 'How about holding some milk?' I didn't get there before the other guy (a customer) came around buying milk, so they sold it to somebody else. He (the customer) lives rather close to the reactor and I take it that he was not too concerned."

[From Newsweek Magazine, Oct. 20, 1975]

INCIDENT AT BROWNS FERRY

Shortly after noon last March 22, two technicians were on a routine search for air leaks beneath the control room of the Tennessee Valley Authority's Browns Ferry nuclear plant near Decatur, Ala. They used the usual technique: a naked candle flame that would flicker at the least breath of air. Suddenly the candle flame was pulled out almost horizontally. A careful search disclosed the source of the draft, a 2- by 4-inch wall opening through which passed some of the more than 2,000 cables serving the control room. The men filled the hole with two pieces of polyurethane-foam sheet, and one of them rechecked the repairs with the candle. The draft, which had not been blocked, sucked the flame into the hole, and the foam ignited instantly.

Thus began one of the most dramatic and disturbing episodes in the entire history of the U.S. nuclear-energy program—an incident that may cost the industry billions of dollars to refit the 56 reactors now in operation, and lead to even stricter reguiations for the new plants that are to augment them. One of the technicians at the Browns Ferry plant described what happened next:

SMOTHER

"The electrician handed me his flashlight with which I tried to knock out the fire," he explained. "This did not work and then I tried to smother the fire with rags stuffed in the hole. This also did not work and we removed the rags. Someone passed me a carbon dioxide extinguisher with a horn that blew right through the hole without putting out the fire, which had now gotten back into the wall. I then used a dry chemical extinguisher, and then another, neither of which put out the fire."

By this time the blaze was a serious one, but no one in the room thought to dial 299, the plant's emergency number. When an electrician sprinted to a nearby guard post to grab another fire extinguisher, the guard sensing trouble, grabbed a phone to report the incident. He got the wrong number, but the man who received the call reported the fire himself. Nevertheless, it was fourteen long minutes after the blaze erupted until the fire alarm sounded. And despite the alarm the operators in the control room did not immediately close down the reactors.

Six minutes after the alarm sounded, in the control room just above the fire, the engineer monitoring one reactor saw vivid evidence that danger was imminent. An indicator showed that the pumps in the reactor's emergency cooling system had started automatically; lights on his control board flashed brightly, dimmed, went out; and then came on again. He remembers saying, "These are unknown conditions." Then ominous clouds of smoke came billowing up from behind the control panel.

RISK

At 12:51, the pumps stopped, and the operator shouted "Let's scram the unit!"—that is, close down the reactors by inserting

special control rods between their radioactive-fuel units. They did and this stopped the major heat-producing process of the nuclear reactions. But it was not sufficient to prevent the fuel from generating what is known as "decay heat" as it settled down. Engineers knew that the decay heat alone could melt the reactor fuel, a process that in turn would destroy the plant, release clouds of radioactive gas into the atmosphere, and expose thousands of people to the risk of radiation injury and even death. Only huge amounts of water—stored in tanks against just such an emergency—could prevent that disaster, but at 12:55 the electrical supply to the water-pumping system was knocked out by the fire.

Desperate plant personnel improvised ways to pump at least some water into the shutdown reactors, and finally succeeded in bringing the plant under control—though not until the level of water in one reactor had fallen from 200 inches to a mere 4 feet above the core. By the time the fire was finally doused seven hours later, standard emergency procedures had been found wanting, radiation monitors around the complex had been put out of action, and at least seven of the plant's twelve safety systems had failed.

The damage to the nuclear industry's reputation was more severe. Government investigations of the fire have revealed a series of errors and omissions, by both men and machines, so great as to shake confidence in the adequacy of safety arrangements in the nation's nuclear power plants.

EMERGENCY

Nuclear Regulatory Commission investigators pinpointed eleven specific deficiencies in the plant's preparation for, and reaction to, the fire. Among them: construction personnel using open candle flames had received no training in fire fighting, and many were not even familiar with the plant's emergency procedures; plant management apparently made no effort to obtain expert advice on fighting the fire; emergency breathing apparatus had not been maintained properly and did not work; and more cables had been installed in the area where the fire started than the plant's approved design specified.

Coincidentally, the Reader's Digest Press last week published an account of the most harrowingly spectacular nuclear accident that has yet occurred in the U.S.—an incident marked also by minor mistakes and human errors. Entitled "We Almost Lost Detroit," the book recounts the steps that led to the partial melt-down of fuel—but no atmospheric release of radioactivity—in Detroit Edison's experimental Enrico Fermi Atomic Power Plant's fast-breeder reactor in October 1966. Author John G. Fuller takes an unabashedly skeptical view of the prospects for nuclear power, and even industry spokesmen concede the accuracy of his reporting. According to the Atomic Industrial Forum, an industry lobbying group, "Fuller's reconstructions of the early reactor accidents are valuable reminders of the consequences that can still result from insufficient attention and care."

TESTS

The warning seems equally appropriate for the TVA, which runs the Browns Ferry plant. According to a report by the Nuclear Energy Liability-Property Insurance Association to be released this week, the TVA gave only "minimal consideration" to the "obvious burning characteristics" of the cables used at Browns Ferry, while the area beneath the control room where the fire started "was considered to be poorly designed form an operational and fire protection standpoint." Amazingly, investigators found that no one had run flammability tests on the polyurethane used to seal air leaks. The government also came in for its share of blame because the Atomic Energy Commission, the predecessor of the NRC, had licensed the installation at Browns Ferry.

Representatives of the nuclear industry downploved the implications of the accident. They pointed out that the safety systems did work, despite the pressure on them, and so prevented any radioactivity from escaping.

FIGHT

What most distresses the nuclear industry is the prospect of increased governmental regulation as a result of the Browns Ferry fire. NEWSWEEK has learned that nuclear lobbyists are fighting NRC regulations so strongly that they have privately called on the White House to fire William Anders, the exastronaut who heads the commission. But Anders is determined to send commission inspectors to check each of the nation's 56 nuclear reactors for signs of the malfunctions that allowed the Browns Ferry fire to spread.

That action is likely to get support from Congress's Joint Committee on Atomic Energy, once a rubber stamp for the nuclear industry. Nuclear power "has an excellent safety record as witnessed by the fact that no one has been killed or injured in a nuclear accident as a commercial power plant," said committee chairman Sen. John Pastore of Rhode Island last week. "However, the fire at Browns Ferry is a striking example of how things can and do go wrong. The scope, magnitude and implications of this fire are of considerable importance for the development of commercial nuclear power in the U.S." Certainly the fire did not indicate that present reactors are unsafe to the public. But it did reveal some surprising flaws in the system—and these cannot fail to stir new public fears about the safety of nuclear power.

[From the National Observer, Aug. 23, 1975]

THE FRIGHTFUL LOG OF A NUCLEAR NEAR-MISS—CANDLE STARTS A FIRE, SHAKES FAITH IN SAFETY SYSTEMS AT POWER PLANTS

(By William J. Lanouette)

It began with a candle, which accidentally lit some flammable insulation, burned some cables, and nearly caused one of the most serious nuclear-power plant accidents possible—a "meltdown" of the heat-producing, radioactive core.

From the Browns Ferry Nuclear Plant near Athens, Ala., where the seven-hour blaze began, warnings and misinformation fanned through the emergency network of the Tennessee Valley Authority (TVA), the plant's owner, to state and Federal officials in nearby cities. One official recalls reports that the plant's reactors were "wiped out" and that the only way to keep the radioactive fuel from melting was "to bring in river water and circulate it to and from ditches for cooling."

That's history now, although the March 22 fire sparked a controversy about the safety and reliability of nuclear power that is sure to smolder for years. And while some public officials and nuclear-industry executives were angered with the spread of misinformation about the accident, they are equally disturbed about coming so uncomfortably close to serious trouble.

THE OTHER CLOSE CALL

How close? A spokesman for the Nuclear Regulatory Commission (NRC) now considers the March fire at Browns Ferry to be one of the two most serious accidents in the U.S. nuclear-power industry's 18-year history. The other close call was a partial core melt-down at the Fermi fast-breeder reactor near Detroit in 1966. But in many ways the shadow cast by the candle at Browns Ferry may be darker. For that fire has raised new questions about the reliability of the safety systems that protect the nation's 53 nuclear-power plants.

In the hours and days after the accident, the Browns Ferry fire was reported as just that—a fire. No members of the public received abnormally high radiation doses, the NRC reported. No plant employes were seriously injured, the TVA said. And it appeared for a while last spring that the most serious public impact of the $50 million accident fell on TVA's customers. The utility must spend an extra $10 million a month to buy the 2 million kilowatts of electricity that the Browns Ferry units can't produce.

Now the NRC has released a 463-page report on the fire, based on a four-month investigation, and its details reveal just how close the Browns Ferry reactors were to being "wiped out" and how they were saved from core meltdown. What follows is an account of the fire based on the NRC's report and augmented by Observer interviews with NRC inspectors and administrators, TVA officials, nuclear engineers, representatives of the General Electric Co. (the plant's designer), and spokesmen for groups that favor and oppose the spread of nuclear power.

MAINTAINING A VACUUM

To prevent escape of radioactive air around a reactor's core, nuclear-power plants use a vacuum to maintain a "negative pressure" in the buildings that surround the core. Then, if a radiation leak develops, air would rush *in* to those buildings, not out.

Whenever wires, pipes, and cables pass through the concrete walls of the reactor building, the space around them must be sealed to prevent air from constantly rushing in. At many nuclear plants, including Browns Ferry, the wires and cables that monitor and control the reactor go through the reactor building's walls, into an adjacent cable-spreading room, and then to the control room one floor above.

On March 22, several plant workers were in the cable-spreading room testing the polyurethane foam used as seals around cables that pass through the walls of the unit-one reactor.

A common method to find air leaks at the Browns Ferry plant was to hold a lighted candle up to the wall openings, then watch to see if rushing air moved its flame. It was 12:20 p.m. when, as one engineering aide remembers:

HORIZONTAL FLAME

"We found a 2-by-4-inch opening . . . with three or four cables going through it. The candle flame was pulled out horizontal, showing a strong draft. [An electrician] tore off two pieces of foam sheet for packing into the hole, but he could not reach the opening. I inserted them as far as I could into the hole. . . . I rechecked the hole with the candle. The draft sucked the flame into the hole and ignited the foam, which started to smolder and glow. [The electrician] handed me his flashlight, with which I tried to knock out the fire. This did not work and then I tried to smother the fire with rags. Someone passed me a CO2 [carbon dioxide] extinguisher . . . which blew right through the hole without putting out the fire, which had gotten back into the wall. Then I used a dry-chemical extinguisher, and then another, neither of which put out the fire. . . . In the past, on three or four occasions, I have had fires started by the candle . . . which [were] readily extinguished."

Another electrician ran out to a guard post nearby and returned with a fire extinguisher. This alerted the guard to report the fire by telephone. But he dialed the wrong number. The person who answered in turn dialed the control room, warning the unit-one operator about the fire. In the control room, an assistant shift engineer flipped on the fire alarm. It was 12:34 p.m.

REINFORCEMENTS

The assistant shift engineer then grabbed a dry-chemical fire extinguisher and ran into the reactor building. Flames were shooting along the cables through the air leak.

Recalling that fires had been set by the use

of candles before, another engineering aide said later, "The flames were always easy for me to extinguish with my gloved hand." At least two other employes interviewed by the NRC also recalled setting fires with candles, but these were always contained by using gloves, extinguishers, or bare hands.

A candle fire two days earlier had been noted in the plant's operating logs, and some supervisors said later they were concerned about continuing this method of testing for leaks. It appears that concern hadn't reached senior administrators, however, for as one assistant superintendent told NRC investigators, "I do not know of any requirement to make written reports of small fires."

At about 12:40 p.m. the spreading-room fire began affecting the plant's operations. Unit two's operator lost power in half the systems used to shut down the reactor. But he managed to control his unit.

"CONDITIONS UNSTABLE"

Unit one was another story. Just after 12:40 p.m. the control-panel instruments indicated that the two pumping systems of the unit's emergency core cooling system had begun to run automatically. "I checked, but the pumps were not running," the operator said. He called for help at the control panel because, he said, "conditions were unstable."

Alarms signaled that two more unit-one pumps were running, yet the operator's panels didn't show it. The unit-one operator remembers that "the lights on the [cooling-system] panel . . . began getting bright and then getting dim. These were more unknown conditions." Smoke began drifting up from behind the cooling-system panel. "Numerous alarms occurred on all control panels and the unit [was] in unstab'e swing," according to the operator's log.

At 12:51 p.m. the operator said, "Let's scram the unit." A "scram" is the sudden shutdown of a nuclear reactor. "Safety rods" are inserted between the radioactive fuel elements to interrupt the heat-producing process of nuclear fission. A scram is not enough to prevent the radioactive core from melting however, because the radioactive fuel still generates much "decay heat." The core must constantly be cooled by circulating water.

If the fuel had melted from its own heat—"a meltdown"—it could have destroyed the building that contained it, released plumes of radioactive clouds and steam, and endangered people for miles around.

CONFIRMING A "SCRAM"

Just as the unit-one operator confirmed that the scram had occurred, he lost his ability to monitor the core's radiation and heat.

Then pressure began building rapidly within the steel chamber that surrounds the core. Water must be continuously pumped into this chamber to replace what is boiled away as steam by the core's heat. Electrical failures had limited the operator's choices to two pumping systems, then to one as 7 of the 11 relief valves used to lower pressures were also lost.

At 12:59 p.m. the water level in the chamber began to drop. Normally the radioactive core is covered by more than 16 feet of water, but in the next half hour this level fell to less than 4 feet above the top of the fuel, which always must be covered by water. "At this time I knew that the reactor water level could not be maintained, and I was concerned about uncovering the core," the operator said later.

At 1:35 p.m. an assistant operations supervisor recalls, the control room "was full of smoke and the operators were wearing Scott Air Paks." Adds an assistant shift engineer: "I saw people forcing rags in holes under the electrical operator's desk. CO2 was coming through them."

Meanwhile, the fire continued to run along the cable trays, in the cable-spreading room, and farther into the reactor building. In the cable-spreading room, the plant's fire fighters couldn't turn on an overhead CO2 spray system because metal construction plates, in which the system had been shipped to the plant, could not be removed without a screwdriver. "A wheeled dry-chemical cart had been brought . . . [in] but its nozzle was broken off . . .," an assistant shift engineer recalls.

"I hit my mask against something and got a leak," he continued. "I got quite a bit of smoke and passed out. . . . I remember reviving on top of a table in the lunchroom. I didn't know how I got there. I rested a bit and, since the first-aid room was locked . . . went back to the control room."

AIR PACKS FAIL

"The whole fire-fighting effort was hindered due to lack of air," a reactor operator said later. Many of the air packs were designed to provide 30 minutes of breathing, but because the recharging equipment was broken, the refills diminished as the afternoon wore on. Some men were forced to use 10-minute air supplies.

Just after 1 p.m. the Athens Fire Department was called. The department's chief said later that he recommended putting water on the fire in the cable-spreading room, but the plant's superintendent, who was in control, objected because he didn't want water used on electrical wires. The chief said it was not an electrical fire. "Throughout the afternoon, I continued to recommend use of water," the chief said.

When the plant superintendent agreed, there were still problems. Firefighters didn't pull a water hose completely from its rack, restricting water pressure for several minutes. With the nozzle on the plant's hose, water couldn't reach to all the burning trays, but when Athens firemen tried a substitute nozzle they found that the threads didn't match. Nevertheless, once the use of water was authorized, the fire was extinguished in 20 minutes—at about 7:45 p.m.

Throughout the afternoon's firefighting efforts, several more problems arose. At 1:57 p.m. the control room lost its phones and public-address system to the rest of the plant, making it difficult for supervisors to dispatch men to manually open and close various valves. At times as many as 75 people were in the 40-by-100-foot control room, an eyewitness remembers.

A computer needed to monitor events during the accident ran out of tape. Electrical fuses blew. Attempts to record all telephone calls in and out of the plant failed because of faulty recording equipment. Some valves that had been opened manually had to be wired to prevent closing.

With widespread electrical failures throughout the plant it also became impossible to monitor automatically for possible releases of radioactivity to the atmosphere. Some air samples were taken at a meteorological tower near the plant beginning at 5:14 p.m., but at 6:05 p.m. the tower was abandoned as smoke headed toward the tower. Other samples showed that radiation levels were within NRC limits.

At 5:45 p.m. TVA's health-laboratory director reported that environmental air sampling for possible radiation had started in Athens, 10 miles northeast of the plant; in Hillsboro, 10 miles southwest; and in Rogersville, 25 miles northwest. "The sampler at Decatur, Ala., [20 miles southeast] was thought to be inoperable," the NRC staff reported, and ". . . at 7:50 p.m. there was no air sampler available at Decatur," a city of 40,000 directly downwind from the plant. No radiological samplers were available at Decatur that evening, the NRC notes, although an air-pollution sampler was set up there at 9 p.m. At 8:37 p.m. the aircraft-warning lights on the plant's 600-foot stack went out.

DELAYS IN REPORTING

NRC investigators also discovered some serious gaps in the response of public-safety officials. Limestone County's (Athens) sheriff heard about the fire after it was out, and said he would rely on the county's civil-defense coordinator for information about possible public evacuations. The county's civil-defense co-ordinator said he heard about the fire two days later, and thinks the plant's emergency plan needs updating and revision. And the sheriff of Morgan County (Decatur) said he heard about the fire that afternoon, but "I was asked to keep quiet about the incident to avoid panic. . . ."

How close was unit one to a meltdown? Opinions vary. "It gets awfully fuzzy to play 'what-if' on this," says Norman Moseley, director of the NRC's Atlanta regional office. "There are just too many variables." A TVA spokesman says, with a nervous chuckle, that "all that would have had to occur is to lose all cooling water." But, he insists, unit one always had at least one high-pressure and one low-pressure cooling pump working. Adds a spokesman for Central Electric, the plant's designer: "We really weren't very close, but I'd just as soon not be that close again."

Mr. GRAVEL. In point of fact, it did lose the coolant. It dropped from 12 feet to 48 inches.

I quote from this "liberal" magazine, Business Week:

TVA personnel managed to jury-rig pumps normally used to drive control rods into the reactor to pump water instead. Now the problem seemed under control.

That was after a whole day.

Mr. BAKER. The Senator from Alaska is wrong, and so is Business Week. I went down and inspected that plant, and that is an error.

Mr. GRAVEL. I hope my colleague will back up the error with writing of authorities on the subject. I just put some in the RECORD. I do not know if they are authorities, but that is what I have available to me. I hope my colleague will do the same, so people will not be relying on just my opinion and his opinion.

Mr. BAKER. Mine already are in the RECORD. The hearing records are published Senate documents; and if the Senator from Alaska will read them, he will know why I made the statement I made.

Mr. GRAVEL. I probably read the joint committee's records more than any other Member of the Senate.

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

Mr. GRAVEL. I yield.

Mr. HATHAWAY. Mr President, I believe that the Senator from Alaska and the Senator from Illinois have raised very serious questions which, in the time I have been here this morning, have not been answered satisfactorily.

It has been indicated that $560 million is nowhere near enough to cover possible damages today. If that were a sufficient amount 20 years ago, just the rate of inflation alone, as put out by a Library of Congress study, which takes into consideration the rate of inflation and other factors, indicates that the amount should be at least $3 billion.

The answer which the proponents have given is that in a 10-year period with

premiums paid in by utilities, the amount of money that will be on hand to pay claims will be about $1 billion. That, 10 years from now, will be only about a third of what is estimated should be the amount today.

The argument has been made by the proponents that this is a tradeoff, that there is no-fault liability or absolute liability in exchange for a limitation on the amount that has to be paid out. I think that in most jurisdictions, if an accident such as the one we are contemplating would happen, any court would hold it to be an ultrahazardous activity and would hold that there is absolute liability, anyway.

I wholeheartedly agree with the Senator from Illinois when he suggests that the matter should be sent back to committee. There is no reason why we have to take this matter up at this time. The act does not expire until August of 1977. Although it would delay, I suppose, the construction of some nuclear plants, it should not be more than 6 months or a year. Certainly, that much of a delay is well worth the time in which we could be exploring the questions that have been asked here today. We could see if we could come up with some more realistic basis for liability, a much more realistic amount of liability, and a more realistic pinning of the responsibility on the utilities, at least to a certain percentage of their assets. Perhaps we could set up a tier system.

There is no question that there are some small producers, putting out small parts, who could not afford to incur the liability that might be imposed upon them; but certainly the giant utilities and the giant companies of this country who are in the energy business could afford a great deal more than what is being imposed upon them by the bill before the Senate.

I thank the Senator from Alaska for yielding.

Mr. GRAVEL. I thank my colleague. I think he has put forth a good thought.

What is the remainder of my time, Mr. President?

The ACTING PRESIDENT pro tempore. The Senator has 1 minute.

Mr. GRAVEL. I can close simply by saying there are three elements to the argument we have made. One is the constitutionality. The American people are deprived of their rights under the Constitution by the existing law.

Two, it would bring about safety. That is something the proponents have not been put to. I think they have made the agrument that they want to give a liability umbrella. That, in my mind, does not add to safety.

Three, with respect to energy policy, we all want to become independent and have a good energy policy, but we have to internalize the real cost so we can make a true comparison among the various forms of energy. As long as we keep nuclear in the cocoon of Government protection, we will never know what the real cost is. More importantly, we shall never know what the true risk is to our society until a catastrophe occurs. God pray that never happens, but when and if it does, there are many people who will bow their heads.

Mr. THURMOND. Mr. President, I rise in opposition to the amendment offered by the Senator from Alaska (Mr. GRAVEL) which would remove the legal liability limit of $560 million for utilities in case of nuclear accident. I feel this amendment is unnecessary because S. 2568 calls for the orderly phaseout of Government indemnification and for an increase in liability as more reactors become operational. The report of the Joint Committee on Atomic Energy directs the Nuclear Regulatory Commission to establish a new retrospective premium schedule sufficient to end Government indemnification by 1985. After that date, it is expected that total public protection will surpass the current $560 million and exceed $1 billion when more nuclear powerplants are built and operating.

Mr. President, the liability limit of the Price-Anderson Act is balanced by a valuable public protection, the "no-fault" provision. The provision enables citizens to recover financially from a nuclear incident by merely showing their damage from such an incident and the dollar amount of damage.

Additionally removal of the liability limit would subject electric utilities and others to unacceptable financial exposure, with serious threats to the public interest. Many architects, engineers, and component suppliers would withdraw from the nuclear industry because their potential profit from nuclear-related business is insufficient to warrant placing all of their assets at risk. This would reduce competition and diminish sources of supply. Passage of this amendment would result in increased cost of investment capital for nuclear projects because of the decreased financial security of investors. This lack of capital would relegate the smaller utilities to fossil fuels, which are in short supply, because they could no longer qualify financially for the Federal licenses needed to build and operate nuclear plants.

Mr. President, I feel passage of this amendment would result in more costly and potentially less available electric power to the consumer. The House of Representatives has already defeated a similar amendment. I urge the Senate to do likewise.

Mr. HUGH SCOTT. Mr. President, with considerable deliberation and thought, I have withdrawn my cosponsorship of the Gravel-Hart amendment to the Price-Anderson legislation. I have done this because in my best opinion this amendment commits an injured party to expensive and protracted litigation in an attempt to prove fault just at the time when he—the victim—most needs funds to rebuild his shattered life.

Further, if there were a catastrophic nuclear accident, the damages would be in the billions of dollars, an amount far in excess of what the majority of firms in the nuclear industry would ever be able to repay if a judgment were awarded.

Since the Government would in all probability have to provide disaster relief funds because industry could not make reparations, it is my opinion that we are deluding ourselves if we think we are giving the potential victims anything but a false sense of security.

Now, as we discuss this amendment, I do not want anyone to think that I am predicting that catastrophic nuclear accidents will occur. As we all know, we have never had that type of accident—I pray we never will. We believe the probability of such an accident is quite slight; the amount of damage, however, is overwhelming. Therefore, even though the current Price-Anderson legislation eventually causes industry to bear the financial burden of maintaining liability insurance, which it should, we must realize that there are not sufficient funds to fully repay all victims of a catastrophic accident; and we must begin to think about these victims.

Further, Mr. President, let me point out that I have long been a supporter of the development of nuclear power, and I will continue to be a supporter as long as its development is consistent with sound environmental policies. Only through the use of every single source of energy including nuclear resources, can we lessen our requirements for foreign energy resources and achieve true energy independence. This must be our goal.

Mr. BUCKLEY. Mr. President, I believe the proponents have the better of the argument on every point. I can see no reason why the stockholders of the affected industries ought not bear the risk of unindemnified damages that the industries assure us will not exist. The Gravel-Hart amendment poses no impediment to the building of new nuclear energy plants that cannot be accommodated by administrative action modifying the regulations defining financial capacity.

Mr. President, I believe a phased-out system of insurance subsidies, as proposed in the bill itself, is not unreasonable given the lack of experience and limited number of plants with which the insurors are required to deal. There is no actuarial base on which to calculate premiums.

I believe that the preservation of the public's right to sue in tort for damages incurred is equally reasonable.

The ACTING PRESIDENT pro tempore. All the time of the Senator from Alaska has expired. The Senator from Rhode Island has 1 minute.

Mr. BAKER. Mr. President, I wonder if the Senator will yield?

Mr. PASTORE. I want to read something into the record.

Mr. BAKER. While he is looking for that, I was going to inquire if we could reach some agreement on a time to vote.

Mr. GRAVEL. How about right now?

Mr. BAKER. That would be fine, but today is Tuesday and that is the day the Republican policy meeting is held, from 12:30 until 2. I have no desire to stop that progress, but I wonder—may I ask unanimous consent to postpone the vote on this amendment or any other amendment, to begin sequentially at 2 p.m.?

The ACTING PRESIDENT pro tempore. Is there objection? The Chair

hears none. Without objection, it is so ordered.

Mr. PASTORE. Mr. President, I should like to read into the record a statement made by Hubert Nixon, senior vice president, Commonwealth Edison Co., representing the Edison Electric Institute. Here is what he had to say:

It is not at all clear what the expiration of Price-Anderson will do the ability of utilities who plan nuclear plants to raise capital.

Certainly, all electric utilities have found it increasingly difficult to compete in the money market. Failure to extend Price-Anderson is very likely to increase the difficulties.

The absence of the limitation of liability may be regarded as adding an element of risk, however attenuated the risk may be, to the securities of companies with nuclear projects. That inevitably means that the expiration of the Price-Anderson would make capital harder to get, increase its price, and, therefore, increase the costs that consumers must ultimately bear.

For these reasons, we believe that abandonment of Price-Anderson would be adverse to the public interest . . .

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. BAKER. Mr. President, just so there is no lack of clarity on my unanimous-consent request, it was meant only to apply to rollcall votes.

The ACTING PRESIDENT pro tempore. The Chair understands.

Mr. BUMPERS. Mr. President, there are two points. One, I want to call up an amendment. Before doing that, I should mention that I have to leave here precisely at 2 o'clock to catch a plane. I should like to vote on at least the Gravel amendment. Would it be possible to start the voting at 5 minutes to 2? Would the Senator have any objection to that?

Mr. BAKER. Mr. President, I have no objection to that.

The ACTING PRESIDENT pro tempore. The unanimous-consent agreement is modified, without objection, for the rollcall votes to commence sequentially at 5 minutes to 2.

Does the Senator request that the Gravel amendment thereby be set aside until 5 minutes to 2, for voting thereon then?

Mr. BAKER. I understand that is the effect of the unanimous-consent request if the time has expired.

The ACTING PRESIDENT pro tempore. Time has expired. The yeas and nays have not been ordered.

Mr. GRAVEL. I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is at this time not a sufficient second.

Mr. GRAVEL. Could we try at 5 minutes to 2?

Mr. PASTORE. The only trouble with that is if they start at 5 minutes to 2, the Senator will never make his plane.

The ACTING PRESIDENT pro tempore. There are three Senators too few for the second.

Mr. BUMPERS. Mr. President, I have an amendment which will only take 3 or 4 minutes. I think I have discussed it with the managers of the bill and the sponsors may try again for a second at the conclusion of that.

The ACTING PRESIDENT pro tempore. Does the Senator call up his amendment?

Mr. BUMPERS. Yes, sir.

The ACTING PRESIDENT pro tempore. It would take unanimous consent to take it up at this time. Is there objection?

Mr. GRAVEL. Reserving the right to object, I shall not object.

This would not automatically push the bill into third reading, would it? Other Members may have amendments.

Mr. PASTORE. No, it will not do that.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The amendment of the Senator from Arkansas will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. BUMPERS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 9: strike lines 21, 22, and the first three words of line 23, and insert in lieu thereof the following: "reported to the Joint Committee, to the Congressmen of the affected districts, and to the Senators of the affected states, and, except for information which would cause serious damage to the national defense of the United States,"

Mr. BUMPERS. I think I can explain the amendment in 60 seconds. I have discussed it with the managers of the bill.

The bill simply provides that in the case of a nuclear accident, the President of the United States, when he receives a full and formal report of the accident, its cause, and all other information contained in such report, can withhold the contents of that report from the public if he finds it in the interest of national defense. My amendment provides that he can withhold it in the interest of national defense, but he must notify any Congressman from affected districts or any Senators from the affected States.

My reason for the amendment is simple. I simply feel, for example, in my own State, where I have two atomic energy plants, that I would not want the President withholding information from me while I am a representative of the people of my State. I should want to know the full consequences, no matter how dire they might be. That amendment will simply require the President to furnish that information to the Senators and the Congressmen.

Mr. PASTORE. Will the Senator yield?

Mr. BUMPERS. Yes, I will.

Mr. PASTORE. I ask for the yeas and nays on the Gravel amendment.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is not a sufficient second.

The Senator from Rhode Island is recognized.

Mr. PASTORE. I have discussed this amendment with my colleague. It is a good amendment.

Mr. BAKER. Mr. President, I understand it is virtually identical with an amendment passed on the House side. I think it is a good amendment.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment was agreed to.

The ACTING PRESIDENT pro tempore. The question recurs on the yeas and nays on the amendment of the Senator from Alaska.

Mr. BAKER. Mr. President, I suggest the absence of a quorum and ask unanimous consent that it be charged to neither side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

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

Mr. PASTORE. Mr. President, I ask for the yeas and nays on the Gravel amendment.

THE ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The ACTING PRESIDENT pro tempore. The rollcall with take place at 1:55 by unanimous-consent agreement.

The bill is open for further amendment.

Mr. BAKER. Mr. President, I ask unanimous consent that I may call for a quorum without charging it to either side.

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

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

RECESS UNTIL 1:45 P.M.

Mr. PASTORE. I do not know of any other amendments pending at this time, and since we have an agreement to vote at 1:55, I move we stand in recess until a quarter of 2.

The motion was agreed to, and at 1:13 p.m., the Senate recessed until 1:45 p.m.; whereupon, the Senate reassembled when called to order by the Acting President pro tempore (Mr. STONE).

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

SPORTS BROADCASTING ACT OF 1973

Mr. PASTORE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2554.

The ACTING PRESIDENT pro tempore (Mr. STONE) laid before the Senate a message from the House of Representatives insisting upon its amendments to the bill (S. 2554) to amend Public Law 93–107 with regard to the broadcasting of certain professional sports clubs' games, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. PASTORE. I move that the Senate agree to the request of the House for a conference on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Acting President pro tempore appointed Mr. MAGNUSON, Mr. PASTORE, and Mr. BEALL conferees on the part of the Senate.

PHASEOUT OF GOVERNMENTAL INDEMNITY

The Senate continued with the consideration of the bill (S. 2568) to amend the Atomic Energy Act of 1954, as amended, to provide for the phaseout of Government indemnity as a source of funds for public remuneration in the event of a nuclear incident, and for other purposes.

Mr. BAKER. Mr. President, if I may have the attention of the distinguished Senator from Rhode Island, from the colloquy with the senior Senator from Illinois earlier today as we were discussing the Gravel amendment, I was not quite sure I fully understood the situation as it ended.

It is my understanding that the chairman of our committee has indicated to Senator PERCY from Illinois that the Joint Committee on Atomic Energy next year, say, after our February recess would be willing to hear and look into the representations made by the Senator from Illinois.

Mr. PASTORE. That is correct, the first week in March.

Mr. BAKER. I thank the Senator for yielding for that purpose.

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

SMALL RECLAMATION PROJECTS ACT AMENDMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 523, H.R. 6874, and I ask for the immediate consideration of the bill.

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

The assistant legislative clerk read as follows:

A bill (H.R. 6874) to amend the Small Reclamation Projects Act of 1956, as amended.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to consider the bill.

Mr. CHURCH. Mr. President, I rise in strong support of Senate passage of H.R. 6874, a bill to amend the Small Reclamation Projects Act of 1956.

With the passage of the original Small Projects Act in 1956, Congress created a valuable tool for the development and effective utilization of water and related land resources in the arid Western States. For almost 20 years this program has been wholeheartedly pursued by the water resources community and the program's history is one of continued success. The importance of the program to the Nation can be measured by the number of projects which have been initiated under the act. Nationwide, 49 loan projects have been completed with loans totaling $95 million, and 15 more projects valued at $65 million are under construction. Over $240 million worth of potential projects are presently in various stages of preparation. Without question, this program benefits the entire Nation.

On May 21 of this year, I introduced S. 1794, a companion measure to H.R. 6874. On September 16 the Subcommittee of Energy Research and Water Resources of the Senate Interior and Insular Affairs Committee held hearings on S. 1794. As chairman of the subcommittee, I can report to my colleagues that the small reclamation projects program is continuing to function well but is in need of revision. Congress has periodically reviewed the small projects program and has amended the basic act to reflect changing times or congressional intent for the program. Evidence gathered by the subcommittee during the September 16 hearing indicates that the act is again in need of amendment if it is to continue to be a viable asset in the development of Western water resources.

Foremost among the needs faced by the program is the ability to adjust to inflationary cost increases in construction. Over the past 3 years since the act was last amended, inflation has eaten away at the authorized cost ceiling for projects in such a way that current projects under the act are only two-thirds the size originally envisioned by Congress. H.R. 6874 would provide for the adjustment of cost ceilings to reflect inflationary pressures. Additionally, because of the enthusiasm with which the program has been pursued by the water resources community, there is a need to increase the authorization level for the entire program. And finally, testimony indicated that a saving may be realized to the program if authorization is given for the use of program funds for the purchase of existing project related facilities, thereby preventing useless duplication of project features.

Mr. President, H.R. 6874 reflects two decades of experience with a widely used Federal program and with enactment, Congress will insure that the Small Reclamation Projects Act will continue to be of vital service to the production of food and fiber for the Nation and the world.

I strongly urge the Senate's approval of H.R. 6874 as reported by the Committee on Interior and Insular Affairs.

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

McKAY DAM, UMATILLA PROJECT, OREGON

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 530, S. 2361, and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to consider the bill (S. 2361) to reauthorize and modify McKay Dam, Umatilla project, Oregon, for multiple functions, and for other purposes, which was read the first time by title and the second time at length.

The ACTING PRESIDENT pro tempore. The bill is open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 2361) was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That McKay Dam and Reservoir, Umatilla project, Oregon, is hereby reauthorized for the purposes of irrigation, flood control, fish and wildlife, recreation, and safety of dams, and the costs thereof shall be reallocated among these purposes by the Secretary of the Interior, hereinafter referred to as the Secretary, in a manner consistent with the provisions of this Act.

SEC. 2. The Secretary is authorized to perform modifications to the spillway structure at McKay Dam as he determines to be reasonably required for safety of the dam from failure due to overtopping by potential flood inflows to the reservoir.

SEC. 3. Not to exceed six thousand acre-feet of storage capacity in McKay Reservoir shall be allocated for the primary purpose of retaining and regulating flood flows.

SEC. 4. Costs incurred in the modification of McKay Dam to insure its safety from failure shall be nonreimbursable and nonreturnable. All other costs of McKay Dam and Reservoir, heretofore or hereinafter incurred shall be allocated among the authorized purposes served by the dam and reservoir in accordance with standard cost allocation procedures, and the joint costs allocated to flood control, recreation, and fish and wildlife shall be nonreimbursable.

SEC. 5. The Secretary is authorized to enter into amendatory repayment contracts with the Stanfield and Westland Irrigation Districts, or other water users, if appropriate, to secure the return of reimbursable irrigation construction and operation and maintenance costs arising from the modification and reallocation of McKay Dam and Reservoir.

SEC. 6. There is hereby authorized to be appropriated for modification of McKay Dam the sum of $1,300,000 (based on July 1975 prices), plus or minus such amounts, if any, as may be justified by reason of changes in construction costs as indicated by engineering cost indexes applicable to the types of construction involved, and, in addition

thereto, sums as may be required for operation and maintenance of McKay Dam and Reservoir.

ORDER FOR FILING REPORT ON S. 2371 NOT LATER THAN MIDNIGHT

Mr. METCALF. Mr. President, I ask unanimous consent that the Committee on Interior and Insular Affairs have until midnight tonight to file a report on S. 2371, Minings in the National Park.

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

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

PHASEOUT OF GOVERNMENTAL INDEMNITY

The Senate continued with the consideration of the bill (S. 2568) to amend the Atomic Energy Act of 1954, as amended, to provide for the phaseout of government indemnity as a source of funds for public remuneration in the event of a nuclear incident, and for other purposes.

The ACTING PRESIDENT pro tempore. Pursuant to the previous order, the Senate will now proceed to vote on the amendment of the Senator from Alaska.

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) and the Senator from Idaho (Mr. CHURCH) are necessarily absent.

I also announce that the Senator from Connecticut (Mr. RIBICOFF) is absent because of illness.

I further announce that, if present and voting, the Senator from Connecticut (Mr. RIBICOFF) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Ohio (Mr. TAFT) is necessarily absent.

I further announce that, if present and voting, the Senator from Ohio (Mr. TAFT) would vote "nay."

The result was announced—yeas 34, nays 62, as follows:

[Rollcall Vote No. 596 Leg.]

YEAS—34

Abourezk	Hart, Philip A.	Moss
Biden	Hartke	Muskie
Brooke	Haskell	Nelson
Buckley	Hatfield	Packwood
Bumpers	Hathaway	Proxmire
Case	Javits	Randolph
Clark	Kennedy	Roth
Cranston	Leahy	Schweiker
Culver	Long	Tunney
Durkin	McGovern	Williams
Gravel	McIntyre	
Hart, Gary	Mondale	

NAYS—62

Allen	Bentsen	Byrd, Robert C.
Baker	Brock	Cannon
Bartlett	Burdick	Chiles
Beall	Byrd, Harry F., Jr.	Curtis
Bellmon		Dole
Domenici	Jackson	Scott, Hugh
Eagleton	Johnston	Scott, William L.
Eastland	Laxalt	Sparkman
Fannin	Magnuson	Stafford
Fong	Mansfield	Stennis
Ford	Mathias	Stevens
Garn	McClellan	Stevenson
Glenn	McClure	Stone
Goldwater	McGee	Symington
Griffin	Metcalf	Talmadge
Hansen	Montoya	Thurmond
Helms	Morgan	Tower
Hollings	Nunn	Weicker
Hruska	Pastore	Young
Huddleston	Pearson	
Humphrey	Pell	
Inouye	Percy	

NOT VOTING—4

Bayh	Ribicoff	Taft
Church		

So Mr. GRAVEL's amendment was rejected.

Mr. PASTORE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. LAXALT). What is the will of the Senate? The bill is open for further amendment.

Mr. GRAVEL. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. GRAVEL. 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 7, line 11, strike out "1987" and insert "1982" in lieu thereof.

On page 7, line 14, strike out "1987" and insert "1982" in lieu thereof.

On page 7, line 19, strike out "1987" and insert "1982" in lieu thereof.

On page 10, line 6, strike out "1987" and insert "1982" in lieu thereof.

On page 10, line 25, strike out "1983" and insert "1981" in lieu thereof.

Mr. PASTORE. May we have order in the Chamber?

The PRESIDING OFFICER. The Senate will please be in order.

Mr. HATHAWAY. Mr. President, will the Senator from Alaska yield for a unanimous-consent request?

Mr. GRAVEL. Yes, I yield.

Mr. HATHAWAY. I ask that a member of my staff, Elizabeth Boynton, be allowed privileges of the floor during debate on this and succeeding amendments.

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

Mr. BAKER. Mr. President, will the Senator yield to me for a similar request?

Mr. GRAVEL. Yes, I yield.

Mr. BAKER. On behalf of Senator DOLE, I ask unanimous consent that Stuart Hardy be accorded privileges of the floor during the remainder of debate on this measure.

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

Mr. LEAHY. Will the Senator yield for a unanimous-consent request?

Mr. GRAVEL. I yield.

Mr. LEAHY. Mr. President, the Senator from Vermont makes a unanimous-consent request that Douglas Racine of his staff have floor privileges during the vote and consideration of the matter involving Price-Anderson.

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

Mr. GRAVEL. Mr. President, the amendment that I have before the body is exactly what the committee did last year. I have been mystified as to why the committee should seek a 10-year extension or renewal when, last year, it came up with a 5-year renewal. The controversy has gone on unabated. In fact, it has increased. Certainly, we have raised a lot of questions. Therefore, I present the amendment to do exactly what the committee had done last year. That is, because this is such a controversial issue, because it raises such a question in the minds of the American population, I wish to return to the decision made by the committee last year, made by the Senate last year, made by Congress last year; that is, to have a renewal for 5 years rather than 10 years. That is all the amendment is. I hope the managers of the bill will accept the amendment.

I reserve the remainder of my time.

Mr. PASTORE. Mr. President, while it is true that that was done, that amendment was a compromise because there were certain sensitivities of the bill which do not exist at this time. It takes between 7 and 10 years to bring a reactor from the planning to the operational stage. This has been thoroughly analyzed since the occurrence of last year. This is the amount that was recommended by the administration and the amount reported by the committee this year. If there is no further debate, I am going to move to lay this on the table.

Mr. GRAVEL. There is further debate. I wish to discuss this one point.

The Senator says it takes 10 years to build a reactor. That is something the committee knew last year. That is not new information. I still do not understand why the committee, though it takes 10 years to build a reactor, approved 5 years before. What we are talking about is giving sufficient leadtime. So a reactor that will be finished 10 years hence, if it were started right now, would have the benefits of Price-Anderson up until 1977. In point of fact, the effects of this law would stay in being without a renewal at all up until 1987. If we put a 5-year extension on it, that will make it until 1992.

I do not know why we have to go until 1997, to get almost to the turn of the century, before we can permit a serious reexamination of this. I see no reason why the committee should have reversed itself from last year to this year. The statement made by the manager of the bill offers no new information. That same information was available to the committee last year. They knew it. They went for 5 years.

Certainly, the dialog in the Nation has not diminished from last year to this year. If anything, it has increased; all the more reason why we should keep this industry, with respect to this particular spoon-feeding, on a short leash.

My colleague can table my amendment. I should like an up-and-down vote on

this issue and ask for the yeas and nays. Certainly it is within his prerogative to table or have an up and down. I do not think anything is to be gained by tabling it. Obviously, he is the judge of his own tactics.

I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BAKER. Mr. President, I shall not take much time, except to point out that each of our preceding bills, except for the last one, has been for 10 years. The last one was made 5 years by agreeing last year, I believe, on the floor of the Senate.

Ten years is the timeframe that we have dealt with in the past. It seems necessary for an orderly transition. It takes us to upward of a billion dollars of financial protection for third-party liability claims. It gets the Government indemnity down to zero. I think it is an appropriate timeframe and I shall oppose the amendment.

Mr. GRAVEL. If I may respond on the billion dollar indemnity: That is the way this bill is being sold. What it does is take the Government out of the insurance business. It does not take the Government out of the protection business. It really does not offer much indemnity, because the accident that the Nuclear Regulatory Commission has come up with on the outside is a $15 billion accident. What they are talking about is 10 years from now, if we expand the nuclear industry to that level, we will have $1 billion worth of protection, which is one-third of what the $560 million would be if we had let inflation blow that figure up to what it should be now, which is $3 billion.

This was passed in 1957. If we are talking about inflated dollars, then the amount of money should be $3 billion that this should have been expanded to. But the committee has insisted on keeping regressive protection. I say regressive, not for the people who are protected, but from the public's point of view. At least in 1957, they had $560 million worth of protection. Now they do not have that amount of protection, because everything else costs more. We should have at least a minimum of $3 billion. We do not have that.

What the Senator says now is that in 10 years, we will give them $1 billion worth of protection, when the accident that the Nuclear Regulatory Commission defines, that could happen, could have a cost of $15 billion.

I might say that if the Nuclear Regulatory Commission said $15 billion, that is only for property. That is not paying 1 cent for life. We can take our own guesses as to what life would be.

Since this body insists on treating the nuclear industry differently from any other industry, all I ask is why? There is an ever-growing body of people in this country who are asking why is it that General Electric has to be protected while it makes profits and might sell us a value that is not as safe as a valve that is sold to Boeing Aircraft, why is it that an industry that has more insurance than the aviation industry has to be protected?

When they say the sky is the limit, I say the sky is the limit in every other facet of life. Why should it be any different in the nuclear facet of life?

We want nuclear plants to be safe. There is only one way we are going to make them safe: That is by keeping the constitutional privileges we have. Giving the nuclear industry protection by breaching a person's constitutional rights, in this case under the fifth amendment, makes no sense at all. All I am saying is that the committee, in its wisdom last year, saw fit to limit it to 5 years because they knew the controversy was here. They knew it should be kept on a short leash, but now, for whatever reasons, they go back to 10 years. The fact that it was done that way the last time for 10 years is not answer enough. I think what we need is a discipline. This is asking very little discipline, to have 5 years rather than a 10-year renewal. This means that plants built will have protection up until 1997 if the committee position goes through. If my amendment goes through, they will have protection up until 1992—a big difference.

Mr. PASTORE. Mr. President, the Senator from Alaska is dead wrong. I hope he would read this bill and see what the committee was trying to accomplish. There is no cruelty in this bill. We are not out to persecute or prosecute anyone. We are out to protect the people. If trouble is here, this results because there are some people adverse to the development of nuclear power reactors, and they feel that way about it. They want a moratorium, a phaseout of nuclear power. They just do not want nuclear power, so they come here with all these gimmicks, whether it is this or that, in order to create something that will impede the progress of this program.

What is this program intended to do? Under this program $560 million is made available as a floor. Of that $560 million, $125 million is private bought insurance. The rest of it, the $435 million, is the indemnity on the part of the Government in case of a catastrophe, which is very unlikely and is said to be one in a billion of ever happening.

We have already gone through with the arguments the Senator from Alaska is making, but what is the effect of this 10-year period? As each new reactor comes on the line above the 55 that we already have—and there are 64 construction permits now underway—what happens? Between the figure of $5 million and $2 million the Nuclear Regulatory Commission will make a judgment as to what the responsibility is of the new entrepreneur between the figure of $2 million and $5 million.

So, as you go along and you add on that $125 million of private insurance, you will reach the stage where you get the Government completely out of the picture by absorbing the $435 million, and then even going above the $560 million total, and that is the reason for the 10 years. The reason for the 10 years is to put the Government out of it, but not abruptly as the Senator from Alaska would want to do it, but to do it gradually.

After all, industry did not get itself into this business; we urged industry to get into this business back in 1954. We had a cooperative program on which we spent almost $2 billion, and here we are today where we are in a tight squeeze. We need energy. We are trying to create independence from foreign governments, and the only practical, realistic alternate source you have today is nuclear energy, whether you like it or not.

Now, the argument is going to be made that you are going to contaminate the world. That is an easy assertion to make, but we have been under this act since 1957, and the Government has not paid one red penny in damages for a third-party injury. How more in fact can you make an argument? Here we have had this program for almost 17 years, and we have never had an incident whereby the Government had to pay one nickel for a commercial nuclear reactor. Yet they come over here and say, "Well, it is possible." Well, it is possible for the world to be burned by fire; it is possible for the world to come to an end tomorrow. How do we know? Anything is possible.

But to stand up here with a background of an experience of 17 years, where we have not had to pay a nickel, stand up here and say that this is for the protection of General Electric, it is for the protection of Union Carbide—it is for the protection of the people. All we are saying here is that the people need protection, and this is the only fund they can look to, and that is what this is all about.

Now, 5 to 10 years, yes, I agreed to 5 years the last time. Do you know why? Because I had to make a concession because of certain amendments that came up. That is not new on this floor. But this is a new day, and here we are, we are a year later, and I say if you want to achieve independence on the part of the Government, if you want to free the Government from this responsibility, stay with 10 years.

In due time, when the time is up, I am going to move to lay this amendment on the table.

Mr. GRAVEL. I would like to debate it further. The fifth amendment to the Constitution of the United States says that a person is entitled to just compensation.

My colleague here is saying we are protecting the people. Is it not so that the Nuclear Regulatory Commission has come out with its appraisal of what an accident could be, what an extreme accident could be, and that is $15 billion? If the Nuclear Regulatory Commission says that an accident could be $15 billion, and all you have in terms of protection is $560 million, that would mean you would have 3 cents on the dollar.

If General Electric manufactured a valve, and this valve was deficient, and they sold it to a utility, that utility would be liable to the tune of $125 million. A person who lived within the environs of that utility, and if he suffered damage, and it went to a total of $15 million or $25 million, then that means General Electric, which manufactured the valve,

which might be the culprit that caused the whole chain reaction of the accident, would not suffer any liability at all. But the citizen who has his home destroyed or may have his family destroyed, the most he can collect when it is all washed out would be 3 cents.

I would like to know how the proponents of this measure can stand up and say they are protecting the public when, in point of fact—and let me state it again—the Nuclear Regulatory Commission said that the outside accident could be $15 billion and we only give them $560 million. The committee comes forth and says with great magnanimity, "After 10 years we are going to give him $1 billion." Is that not generous, one-fifteenth?

I do not know what kind of rhetoric you can use to say that is protecting the public. How, when a person suffers damage, and he can only get 3 cents on the dollar, how can that person stand up here, using the English language, and tell us he is protecting the public when General Electric, Westinghouse, Union Carbide, and the others who sell the equipment suffer no threat of liability for their normal commercial activities?

In this regard, their normal commercial activities could conceivably have started the chain reaction that set this $15 billion holocaust into action. I do not know what kind of logic can be used. Obviously, it is logic that is persuasive enough to win votes in this body but, I submit, it is not logic that is persuasive enough to gain the full agreement of the American people.

This is a complex issue, and a lot of people can be stampeded and scared into saying this is going to wipe out the nuclear industry. Let me state one more time, obviously, this amendment will not wipe it out. But any effort to restore equality of treatment to the nuclear industry, if that wipes out the nuclear industry, then it should be wiped out. All I am trying to get here is the possibility that Congress will examine this at least within 5 years and not 10 years, and I still think the arguments made thus far—and I could pose the question—I thought it came out of committee last year as 5 years, and it was not something that came out on the floor. I pose that question, was it on the floor or did it come out of committee last year? Perhaps the manager of the bill can answer that question.

The question is, last year when it passed, the 5-year limitation extension, did that come out of committee?

Mr. PASTORE. No, it came out of the committee with 20 and out of the House with 10. We reduced it to five in order to accommodate certain Senators who opposed it for one reason or another.

I did that as sacrifice and as an accommodation.

Mr. GRAVEL. But that was agreed to on the floor?

Mr. PASTORE. That is right.

Mr. GRAVEL. And the Senator was able to carry that position in conference?

Mr. PASTORE. Yes, but the President vetoed the bill.

Mr. GRAVEL. Did he veto it for that reason?

Mr. PASTORE. No.

Mr. GRAVEL. Then this amendment could be acceptable to the conferees and it would keep a tighter rein by the Congress on this very controversial issue.

I do not think it is unreasonable to ask the managers of the bill to accept something that they themselves were for at a more reasonable time.

The controversy has increased, not abated.

Is it unreasonable to ask this? We can win it in conference.

Mr. PASTORE. I have already explained my reasons to the Senator. I told him why we compromised for the 5 years and why we cannot do it now.

I realize how the Senator feels about the nuclear power reactors. He has a perfect right to this feeling, and I respect it, but I do not think he ought to stand there time and time again and try to destroy the program.

Mr. GRAVEL. If I could——

Mr. PASTORE. This idea of $15 billion, if I thought 1 minute we were dealing with a $15 billion accident, I would say we should forget the nuclear power reactor program.

We can take the figures, and I have something that says one in a billion, and that is even better than an earthquake in San Francisco.

Mr. GRAVEL. In point of fact, greater likelihood.

Mr. PASTORE. Do we want nuclear power or do we not want it?

Mr. GRAVEL. I would want it, like any other American, to be safe.

Mr. PASTORE. I do not know about that.

Mr. GRAVEL. If it is safe.

Mr. PASTORE. There we go again.

Mr. GRAVEL. We cannot stand and say, "Do you want it or not."

Do we want cancer, or not? That is not a question.

Mr. PASTORE. Let us not dramatize that again.

Mr. GRAVEL. It is the same thing. It is either a legitimate question, or not.

Mr. PASTORE. Let me ask a question. Can the Senator point out anyone, or any one accident, where we had to pay a third-party indemnity? Can the Senator point out one?

Mr. GRAVEL. That means it is so safe that I cannot point out one. It is so safe we do not need this cocoon. We do not need to protect them. Let them act like any other industry.

If it is so safe, what is the Senator afraid of?

Mr. PASTORE. If it is so safe, what is the Senator afraid of?

Mr. GRAVEL. I do not claim it is that safe, the Senator does.

Mr. PASTORE. My goodness.

Mr. GRAVEL. I do not claim it is that safe. I want it to be tested in the marketplace. I want Mr. John Q. Public to make the decision, not the rarified group here, is all I am saying.

Let the people out there decide. It is a free world. If they do not want nuclear power, let them decide, not MIKE GRAVEL and JOHN PASTORE.

Mr. PASTORE. What makes the Senator think he speaks for the people outside any more than I do?

Mr. GRAVEL. I am not saying that. I am saying if we do not protect the industry, then they have to act like any other industry.

Why should we protect them if they are so safe, as the Senator keeps saying? If they are so safe, let them act like anybody else.

They can get more insurance than the airline industry. Why is it that the Senator has some thought in his mind that there is a greater threat to the nuclear industry than the airline industry? The airline industry can get only $225 million. We can get $125 million for people and $175 million for reactors.

Why do we have to protect them? Why do we have to build this form of energy on a breach of the Constitution? Why?

Mr. PASTORE. Mr. President, what is the time situation here?

The PRESIDING OFFICER. The time for the Senator from Alaska has expired. The Senator from Rhode Island has 7 minutes remaining.

Mr. TUNNEY. Mr. President, I ask unanimous consent that Bob McNair of my staff be granted privilege of the floor.

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

Mr. HATFIELD. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. PASTORE. Yes.

Mr. HATFIELD. Mr. President, I ask unanimous consent that my staff person, Larry Smith, be granted privilege of the floor for this afternoon.

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

Mr. PERCY. Will the Senator yield for a question?

Mr. PASTORE. Yes.

Mr. PERCY. The Senator from Illinois concurs with the principle of not extending it for 10 years simply to have a benchmark so that we can come to grips with this issue.

I am very grateful, indeed, for the agreement that has been reached while the Republicans were in their policy committee meeting that hearings will be held in March. That is most reassuring.

Can the Senator from Rhode Island indicate why it is necessary to extend it for 10 years if we are going to have such hearings, why could we not have a cutoff on this legislation at 1980 rather than even 1982 or 1988, so that at least we are on notice?

What my concern is that if there is too long an extension, why would anyone come in and say, "We will assume and take on additional liability"?

Mr. PASTORE. Because the Congress at any point——

Mr. PERCY. Why would it not be a good idea to set a shorter time frame than 1988 if, in effect, we are going to take them up and seriously grapple with this question?

Mr. PASTORE. Because the administration, the members of the committee, were quite disturbed when I compromised on 5 years for the simple reason that the whole thrust of this legislation is to work the Government out of becoming an insurer.

They have said that the proper media would be the 10-year period which would

allow them to go above this $435 million for which the Government is responsible and, thereby, ultimately taking the Government out of this picture entirely and letting the private companies assume full responsibility.

That was the reason for it.

But the point is that at any point in time if we find there have to be any amendments, we can do that easily. It is done all the time.

I hope we will go along with the House on the 10 years at this time because it is consonant with the formula we inaugurated when we reported the bill in order to make sure the Government gets out of this picture because, after all, we have been in it 17 years and the time will come when we will get out of it.

The industry is maturing day by day and the point is that ultimately we will be out of it with the exception in cases where there is a default on the deferred premium. That is the reason for it, and I think it is good sense.

I do not think we are shut off forever whether we make it 5, 10, or 20 years. At any point in time, we may bless this day. When they shut off the spigot on foreign oil coming in or we run out of natural gas, we will bless this day, in all probability, that we had the acumen in this time, on this 16th day of December, to do something that would encourage private industry to go forward with this program.

As I said here before, if anybody feels that the nuclear power program is useless, that it is unsafe, then they ought to have the courage and the gumption to come on the floor and introduce a resolution to do away with it.

But this idea got it in by the back door. This is for the protection of the people. The Government is guaranteeing, at this stage of the game, $435 million so that if that little utility company in Vermont, Maine, or wherever, should happen to have an accident and cannot meet their responsibility because they cannot buy that kind of insurance, the Government is backing them up.

Why anybody should be against this is beyond me, because that is the reason why we passed the law, to protect the public. At the time, the utility companies were rather uncertain about building nuclear power reactors and in order to give them some assurance so that this program could go forward, we not only got into a cooperative research and development program where we spent billions and billions of dollars, we made certain warranties on fuel. That is the reason why they came about.

The only living alternative we have to fossil fuels today is nuclear energy. So why pass it up? Why pass it up, why sweep it under the rug now?

We have these people marching up and down saying, "Well, you know, we can afford to conserve, we can afford to shut off the lights at 6 o'clock, we can afford to do this."

What am I going to tell the people that work in the factories in Rhode Island when they turn on that switch to make the loom move, to let the machinery go? What am I going to tell them? "Go see GRAVEL"?

Mr. PERCY. The Senator from Illinois is certainly for this program.

Mr. PASTORE. I certainly am.

Mr. PERCY. The Senator from Illinois does not want to discourage expansion and certainly does not want to impede the flow of capital into it from the private sector. But we want to do so consistent with every degree of safety and every measure of safety that we can build into it. The Senator from Illinois is very reassured that hearings will be held in March.

Mr. PASTORE. That is right.

Mr. PERCY. I look forward to participating in those hearings. If we have an understanding that if it looks feasible to move ahead, still putting a limit on liability but increasing the liability to the industry, and it can be done without crippling that industry and impeding its future growth and progress, and we can be assured we will have a chance then to modify existing law at the earliest opportunity after those hearings, then the Senator from Illinois is certainly reassured.

Mr. PASTORE. I want to say this: I would like to see that happen, but I hope if we do it, we do it no-fault all the way. The minute we begin to mix these two, we are causing more troubles than we solve. Nobody is going to straighten out a case on no-fault if they know they are going to be sued tomorrow for something else because of the same accident. If we are going to do it all, it has to be all no-fault or we have to revert back to the tort procedure. We cannot have the two mixed up.

Mr. PERCY. The Senator from Illinois will reserve his judgment until the hearings so we can get as much evidence as we possibly can. I would feel better with the shorter time frame extending this authority, but the most reassurance I have is the agreement which has been reached between Senator BAKER and Senator PASTORE on this issue.

The PRESIDING OFFICER. All time on the amendment has expired.

Mr. PASTORE. Mr. President, I move to lay the amendment on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table.

Mr. GRAVEL. I thought I had the yeas and nays on this.

Mr. PASTORE. The Senator had the yeas and nays on his amendment. Does he ask for the yeas and nays on the motion to table?

Mr. GRAVEL. Yes.

Mr. PASTORE. 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 second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Arkansas (Mr. BUMPERS), the Senator from Idaho (Mr. CHURCH), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I also announce that the Senator from Connecticut (Mr. RIBICOFF) is absent because of illness.

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. FANNIN) and the Senator from Ohio (Mr. TAFT) are necessarily absent.

I further announce that, if present and voting, the Senator from Ohio (Mr. TAFT) would vote "aye."

The result was announced—yeas 62, nays 31, as follows:

[Rollcall Vote No. 597 Leg.]

YEAS—62

Allen	Glenn	Moss
Baker	Goldwater	Muskie
Bartlett	Griffin	Nunn
Beall	Hansen	Pastore
Bellmon	Hatfield	Pearson
Bentsen	Helms	Pell
Brock	Hollings	Scott, Hugh
Brooke	Hruska	Scott, William L.
Burdick	Huddleston	Sparkman
Byrd, Harry F., Jr.	Inouye	Stafford
Byrd, Robert C.	Jackson	Stevens
Cannon	Javits	Stevenson
Chiles	Johnston	Stone
Curtis	Laxalt	Symington
Dole	Magnuson	Talmadge
Domenici	Mansfield	Thurmond
Eagleton	McClellan	Tower
Eastland	McClure	Weicker
Fong	McGee	Young
Ford	McIntyre	
Garn	Montoya	
	Morgan	

NAYS—31

Abourezk	Hartke	Nelson
Biden	Haskell	Packwood
Buckley	Hathaway	Percy
Case	Humphrey	Proxmire
Clark	Kennedy	Randolph
Cranston	Leahy	Roth
Culver	Long	Schweiker
Durkin	Mathias	Tunney
Gravel	McGovern	Williams
Hart, Gary	Metcalf	
Hart, Philip A.	Mondale	

NOT VOTING—7

Bayh	Fannin	Taft
Bumpers	Ribicoff	
Church	Stennis	

So the motion to lay on the table was agreed to.

Mr. PASTORE. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BELLMON. Mr. President, will the Senator yield to me for a unanimous-consent request?

Mr. PASTORE. I yield.

Mr. BELLMON. Mr. President, I ask unanimous consent that Mr. Bill Oakley of my staff be granted privileges of the floor during the remainder of the day.

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

Mr. HATHAWAY. Mr. President, I call up my unprinted amendment which is at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. HATHAWAY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 11, at the end of line 6, add the following:

"SEC. 12. Section 170 of the Atomic Energy

Act of 1954, as amended, is amended by adding subsection q., to read as follows:

(q) (1). Congress finds:

(a) That a limitation of liability on the part of the nuclear power installation creates uncertainty regarding the property values and personal rights of citizens as the result of construction of such nuclear power installations; and

(b) that if such persons are not clearly authorized to resolve such uncertainties by judicial process they may sustain immediate loss in property values and may be denied an opportunity adequately to insure themselves and their property against loss.

(2) Any person may bring a declaratory judgment action in the United States District Court for the District of Columbia not later than 90 days after the effective date of this section to determine the constitutionality of this section or any provision thereof. Any such action shall be heard by a district court of three judges appointed in accordance with 28 USC 2284, and any appeal from a decision of that court shall be directly to the Supreme Court of the United States.

Mr. HATHAWAY. Mr. President, the purpose of this amendment is to set up a procedure whereby the constitutionality of the limited liability provision can be tested.

The amendment provides that within 90 days after the enactment of this bill, after the President signs it, an action may be brought in the U.S. court for the District of Columbia and that a three-judge panel shall be established to determine the question of the constitutionality of the limit on liability, and there shall be a direct appeal from that court to the Supreme Court of the United States.

The action must be brought within the 90 days, or it cannot be brought at all.

It has been brought out in the course of debate all day long that there is a question on the constitutionality of the limitation of $560 million that has been establishd in this bill. I do not argue that under certain circumstances a limit on liability can be imposed.

As the Senator from Tennessee and the Senator from Rhode Island have pointed out, limits on liability have been upheld as constitutional in workmen's compensation cases and perhaps other cases.

The question is whether or not there is a rational connection in this case between the no-fault or absolute liability that is imposed and the $560 million that is established as the maximum that can be paid out.

At the present time there is a case in North Carolina pending to determine this question. It seems that the outcome of that case may be in the negative, and the court may decide that the plaintiffs in that case have no standing to sue.

A similar case has been so decided in the District Court for the District of Columbia. I have the memorandum and order, which I ask unanimous consent to print in the RECORD at this point.

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

[U.S. District Court for the District of Columbia]

MEMORANDUM AND ORDER

The Conservation Society of South Vermont, Inc., et al., Plaintiffs, v. Atomic Energy Commission, et al., Defendants. Civil Action No. 19–72.

Plaintiffs are environmental groups which oppose the construction and operation of various nuclear power facilities located around the country. In 1972 they filed this action in district court attacking the constitutionality of the Atomic Energy Act of 1954. 42 U.S.C. § 2011 et seq. They claimed that the Act violated their due process rights by vesting both developmental and regulatory functions within a single agency, the AEC, depriving them of a fair and impartial hearing in individual licensing proceedings. Alternatively, they argued that the AEC's implementation of the Act's regulatory provisions had been biased by the agency's promotional activities. Their complaint requested declaratory and injunctive relief, requiring that the agency be split into separate licensing and developmental components and prohibiting further licensing activities until that separation had been accomplished. Their complaint also raised a subsidiary issue of the constitutionality of the Price-Anderson provision, 42 U.S.C. § 2210, which sets a ceiling of $560,000,000 on aggregate liability resulting from a "single nuclear incident." A three-judge district court was convened to hear the case pursuant to 28 U.S.C. § 2282.

Late in 1974, while various preliminary motions were still pending, Congress passed the Energy Reorganization Act, P.L. 93–438, which divided the AEC's functions among two new agencies. The research and development functions were absorbed by the Research and Development Administration, and the Nuclear Regulatory Commission assumed the AEC's licensing responsibilities. Nevertheless, plaintiffs strenuously oppose defendant's motion to dismiss as moot on the grounds that although the new act takes case of the future, it does nothing about the past. Licenses already issued will remain in effect until they expire by their own terms, or until modified by further proceedings. Thus, plaintiffs assert, there is a residual impact which warrants resolution of the question of the prior arrangement's validity.

Plaintiffs focus on the past is new. The injunctive relief requested by the complaint would operate prospectively only. We do not suggest that plaintiffs are bound in this respect by their pleadings: their claim should be measured by the relief to which they may be entitled, not necessarily the relief for which they have asked. Fed. R. Civ. P. 54 (c). But we think it is significant that plaintiffs have always been, and are still, free to raise the issue of bias in the context of individual licensing proceedings, and to press such claims before the courts on review of final agency action. By remedying the broad structural and operational defects alleged by plaintiffs, we think Congress robbed the present action of any vitality which it may have possessed independent of such proceedings.

There remains the problem of the Price-Anderson provision, which is unaffected by the Energy Reorganization Act. We cannot agree with the Government that because the complaint did not make a request for relief on the Price-Anderson issue, we can ignore that claim in deciding the mootness question. If the issue is a viable one, the action is not moot. See, e.g., Powell v. McCormack, 395 U.S. 486 (1969).

The present injury giving plaintiffs standing to bring this suit was the consequences of a proliferation of nuclear plants. Although plaintiffs have not so stated, their position must be that the Price-Anderson provision contributes to this proliferation by reducing the cost-of-doing-business for nuclear power companies. Without the limitation on liability, potential investors might prefer conventional plants whose potential for large-scale damage is not so great. But the interest in which plaintiffs' attack on the provision's validity is rooted is not their interest in non-proliferation atomic power plants. Rather, it is the property interest of those who might be injured in a nuclear accident. In any accident in which damages exceed $560,000,000 plaintiffs assert, at least some of those injured will be deprived of their rights to seek full recovery. The Act thus imposes a forfeiture of "legal rights never voluntarily surrendered or limited by the legal owners thereof" in violation of due process.

We may assume, for purposes of our analysis, that plaintiffs would have standing to assert the rights of those injured in a serious nuclear accident, even though not affected by it themselves. Our question is whether, even granting this point, the issue is ripe for adjudication. Plaintiffs do not allege that a nuclear accident causing damages in excess of the statutory ceiling has actually occurred. Indeed, our understanding is that the likelihood of an accident of that magnitude is quite small, although not capable of precise measurement. The Supreme Court has allowed review of the constitutionality of statutes prior to their official application, *see, e.g.*, City of Chicago v. Atchison, Topeka & Santa Fe Railroad, 357 U.S. 77 (1959); Pierce v. Society of Sisters, 268 U.S. 510 (1925), but never where they had no real or immediate impact on the rights asserted, *see, e.g.*, Poe v. Ullman, 367 U.S. 497 (1961). Plaintiffs' failure to base their claim on a legally protected interest which is currently threatened by the Price-Anderson provision leaves us with no choice but to dismiss. Accordingly, it is

Ordered that defendants' Motion to Dismiss be, and hereby is, granted.

DAVID L. BAZELON,
Chief Judge, U.S. Court of Appeals.
WILLIAM B. BRYANT,
Judge, U.S. District Court.
JOSEPH C. WADDY,
Judge, U.S. District Court.

Dated: April 16, 1975.

Mr. HATHAWAY. The reason that this case was dismissed was because there was no case or controversy, there was no standing to sue, no one had been hurt, and so there was no basis to bring the action.

I should think that the proponents of this bill, the private utilities, and others that might be subject to liability at some date in the future would welcome this amendment. Let us say that this amendment is not adopted and it does not become part of the legislation. This question would be brought up at a later date when a nuclear accident occurred and damage was done. At that time a person who does suffer injury could raise this question.

If the Supreme Court at a later date should decide that this limitation on liability was unconstitutional, the whole provision could easily be stricken from the act as not being constitutional and would leave the company that had this nuclear accident subjected to an unlimited liability.

So I should think that the companies involved would welcome this amendment so that they could be protected for the future so that they would know just how they stand.

As a last point that I wish to make in my argument in favor of this amendment, we already have such a provision in the campaign finance laws. As a matter of fact, as all of us know, there is a case now pending before the Supreme Court to test the constitutionality of that law.

If it will aid in helping to pass this amendment, I shall make the following statement which is really taken out of the Campaign Act, that I consider that it shall be the duty of the court of appeals or the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter that comes before them affecting this provision.

Mr. President, I reserve the remainder of my time.

Mr. GRAVEL. Mr. President, I ask unanimous consent that I may be added as a cosponsor of the amendment.

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

Mr. PASTORE. Mr. President, first of all, it is unwise for the Senate to pass any law unless it thinks it constitutional. But in order to make doubly sure, the fact remains that we did seek an opinion sometime back in 1965. Ramsey Clark at the time was the Deputy Attorney General, and he wrote this:

DEAR MR. CHAIRMAN: This is in response to your request for the opinion of the Attorney General concerning constitutionality of section 170e of the Atomic Energy Act of 1954, as amended.

It goes on:

I am enclosing a memorandum which has been prepared in the Department concerning the constitutionality of section 170 e. of the act and the proposed amendment thereof. Although the memorandum does not, of course, constitute an "opinion" there would appear to be little question that the section and the proposed amendment are within the constitutional authority of the Congress. It is hoped that this memorandum will be of assistance to your committee.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

Mr. President, I ask unanimous consent to have printed in the RECORD the letter from Ramsey Clark, together with his memorandum.

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

DEPARTMENT OF JUSTICE,
OFFICE OF THE
DEPUTY ATTORNEY GENERAL,
Washington, D.C., August 24, 1965.

Hon. CHET HOLIFIELD,
Chairman, Joint Committee on Atomic Energy, Congress of the United States, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the opinion of the Attorney General concerning the constitutionality of section 170 e. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2210(e)), and the proposed amendment of that section as provided in H.R. 8496 and S. 2042.

I am enclosing a memorandum which has been prepared in the Department concerning the constitutionality of section 170 e. of the act and the proposed amendment thereof. Although the memorandum does not, of course, constitute an "opinion" there would appear to be little question that the section and the proposed amendment are within the constitutional authority of the Congress. It is hoped that this memorandum will be of assistance to your committee.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

MEMORANDUM RE CONSTITUTIONALITY OF SECTION 170 e. OF THE ATOMIC ENERGY ACT OF 1954

Two bills now pending before the Joint Committee on Atomic Energy, H.R. 8496 and S. 2042, would amend section 170 of the Atomic Energy Act of 1954, as added September 2, 1957, 71 Stat. 576, and amended, 42 U.S.C. 2110. In the hearings on these bills, the constitutionality of the proposed amendments to section 170 e. and of section 170 e. itself has been questioned.

Section 170 of the Atomic Energy Act provides for the indemnification of and limitation of liability of licensees and permittees of the Atomic Energy Commission. Each license or permit issued for the commercial transfer, production, possession, use, import or export of atomic utilization or production facilities, for medical or other research utilization of atomic facilities, or for construction or modifiction of atomic production or utilization facilities, must require that the licensee or permittee maintain financial protection to cover public liability claims. Similar requirements may be made of those acquiring or distributing source material, special nuclear material or nuclear byproducts. The Atomic Energy Commission determines the amount of financial protection required.

In addition the Atomic Energy Commission must agree to indemnify all licensees and permittees of whom it requires financial protection, with respect to licenses issued between August 30, 1954 and August 1, 1967. The indemnity extends to public liability arising from nuclear incidents which is in excess of the level of private financial protection required. However, the aggregate indemnity for all persons indemnified may not exceed $500 million for any single nuclear incident. Further, the Commission is authorized to indemnify its own contractors up to $500 million for incidents occurring in the United States and up to $100 million for incidents occurring outside the United States.

Section 170 e. provides that the aggregate liability for any single nuclear incident for all persons indemnified (including reasonable costs of investigating and settling claims and defending damage actions) shall not exceed $500 million plus the amount of private financial protection required. For incidents occurring outside the United States, however, the aggregate liability is limited to $100 million plus the required private financial protection. If it appears that the public liability arising from any nuclear incident is going to exceed the limitations imposed by this section, the Commission or any person indemnified may apply to the district court having bankruptcy venue over the location of the incident for an order limiting liability, staying payment of claims or judgments, permitting partial payments of claims, setting aside part of the funds for possible latent injury claims, or similar appropriate relief. If the incident occurs outside the United States, venue is in the U.S. District Court for the District of Columbia.

The amendments to section 170 e. proposed by H.R. 8496 and S. 2042 would insert a new proviso limiting the total aggregate liability, including both insurance and indemnity, to $560 million.

It has been suggested that Federal legislation limiting the tort liability of corporate or other persons engaged in the field of atomic energy and, consequently, limiting the recovery of persons injured by a nuclear incident, exceeds the constitutional authority of Congress. This memorandum concludes, however, that in the area of atomic energy Congress may, in the interest of developing maximum utilization of nuclear resources, limit the public liability of those engaged in this industry. Further, Congress may limit not only the liability covered by Federal indemnity, but may also limit the aggregate liability covered by Federal indemnity and private financial protection. In summary, section 170 e. of the Atomic Energy Act is constitutional and the amendments proposed by H.R. 8496 and S. 2042 are likewise constitutional.

BACKGROUND OF SECTION 170

The original Atomic Energy Act (act of Aug. 1, 1946, 60 Stat. 755), vested complete control of the entire field in the Federal Government. At that time the chief use of nuclear energy was military, and national security and defense required strict Federal control. By 1954, however, the peaceful uses of atomic energy were also being emphasized and the Atomic Energy Act was revised to provide for increased private participation in nuclear development (act of Aug. 30, 1954, 68 Stat. 921). However, private industry appeared somewhat reluctant to enter the field and it was brought to the attention of the Joint Committee on Atomic Energy that one of the reasons for this reluctance was the difficulty of insuring against liability arising out of nuclear accidents. (See S. Rept. 296, 85th Cong., 1st sess. (1957).)

In 1956 the Joint Committee conducted hearings on proposals for governmental indemnity against reactor hazards in private industry. Witnesses for the AEC testified that the safety record in atomic energy facilities had been good but that industry representatives had indicated reluctance to enter the field until some liability insurance could be arranged (hearings before the Joint Committee on Atomic Energy, "Governmental Indemnity," p. 68 (1956)). A memorandum from the General Counsel of AEC pointed out that in the event of an accident or "nuclear incident" various theories of public liability might be applied in the different States, such as strict liability, an application of the doctrine of res ipsa loquitur or an extension of liability to manufacturers or suppliers and this uncertainty as to the determination of liability created further insurance problems (hearings, pp. 70–74).

Witnesses from various public utilities and electronics industries emphasized that the inability to obtain comprehensive liability insurance would retard full-scale efforts by many companies to enter the field and they urged some form of governmental protection against the possibility of enormous damage claims. They pointed out the high damage claims based on a single incident could exceed the entire assets of a company and could bankrupt it (hearings, pp. 103, 109, 141, 182). Representatives of the insurance industry explained that in a field as new as atomic energy they were not equipped to calculate the risks or to offer coverage which would protect against the incalculable claims which could arise from a single major accident.

Various forms of Government protection were suggested: Government insurance, reinsurance, indemnity, and limitation of liability. Several witnesses expressed doubt as to the constitutionality of a Federal limitation on public liability (hearings, pp. 43, 190). However, the Special Committee on Atomic Energy of the Association of the Bar of the City of New York submitted a supplemental memorandum expressing the view that the constitutional validity of a limitation of liability could be supported by findings that the likelihood of exceeding a $500 million limitation is remote, that limited Federal indemnity plus limited private liability would serve the public better than no indemnity and unlimited liability, and that the $500 million should not be interpreted as an absolute limit beyond which

Congress would never be willing to go (hearings, p. 328).

At the request of the Joint Committee, the Legislative Reference Service of the Library of Congress and the counsel for the Pennsylvania Power & Light Co. submitted memorandums on the constitutionality of limiting liability. Both concluded that such a limitation would be constitutional. The Library of Congress memorandum pointed out that when Congress assumes an obligation that it is moral rather than legal it may impose limitations. Further, it concluded that Congress could limit the liability of others in carrying out one of its enumerated powers and cited as an example the limitation of shipowner's liability (46 U.S.C. 183) under the commerce clause. It suggested that a limitation of liability in the event of nuclear accident might be justified under the bankruptcy clause (art. 1, sec. 8, clause 4), since a major disaster could wipe out an entire company (hearings, pp. 406–407).

The memorandum of Pennsylvania Power & Light Co. pointed out that the Atomic Energy Act itself rests on the defense power, the commerce power, and the power to regulate the use of Government property (production facilities and special nuclear material). In the exercise of these powers, Congress may adopt measures which limit or affect private rights as long as such measures are reasonably related to the objectives they are designed to serve. Thus, shipowner's liability has been limited to encourage private capital to enter the industry and homesteads have been exempted from liability for certain debts in order to promote development of public lands. The memorandum concluded that Congress could limit liability of private industry in order to promote increased development and utilization of nuclear energy (hearings, pp. 386–390).

There was no congressional action on the indemnity and limitation of liability provisions in the 84th Congress, but there was little discussion of the constitutionality of a limitation of liability (hearings before the Joint Committee on Atomic Energy, "Governmental Indemnity and Reactor Safety" (1957)). Thereafter, a bill to provide both indemnity and limitation of liability was reported. Senate Report 296, 85th Congress, 1st session, recites the constitutional bases of the bill as the power to provide for the national defense and security, the responsibility to supervise and protect the use of special nuclear materials to which the Government retains title, and the power to provide a uniform rule of bankruptcy. It explains that the determination of liability in the event of a nuclear incident would be left to the States, but if it appeared that insurance and indemnity were not adequate to cover all claims, a Federal court would take jurisdiction in order to prorate the available amount equitably. The so-called Price-Anderson Act became law on September 2, 1957, and it added section 170 to the Atomic Energy Act.

THE CONSTITUTIONAL BASES OF SECTION 170 e.

The second section of the Atomic Energy Act (42 U.S.C. 2012) recites certain congressional findings which indicate the constitutional bases of the entire act. It refers to providing for the common defense and security, protecting the public health and safety, regulating interstate and foreign commerce, protecting against interstate damage occurring from the operation of nuclear materials, and promoting the general welfare. In the exercise of these powers, Congress undertook to regulate the entire field of atomic energy from its inception. This absolute Government monopoly was unique in American law, but the circumstances surrounding the development and utilization of nuclear energy were also unique. The importance to national security of controlling the use of nuclear energy resulted in provisions which vested the ownership of almost all production facilities in the Federal Government (42 U.S.C. 2061(a)), retained title to all special nuclear materials (42 U.S.C. 2072), and imposed strict control over the ownership, possession, and transfer of source materials and byproduct materials (42 U.S.C. 2092, 2111).

It was not until August 26, 1964, that private ownership of special nuclear materials was permitted (Public Law 88–489, 78 Stat. 602). That statute repealed 42 U.S.C. 2072 and deleted the congressional findings that Government ownership of such materials was necessary to national security and public safety (42 U.S.C. 2012 (b), (h)).

Apparently few have questioned the constitutionality of the Atomic Energy Act itself. In *Pauling* v. *McElroy* (164 F. Supp. 390 (D.C.D.C. 1958), aff'd 278 F. 2d 252 (C.A.D.C. 1960), cert. denied, 364 U.S. 835 (1960)), the court indicated that the defense power alone would provide ample constitutional basis for that act. Nor would there appear to be any doubt that the processing and utilization of nuclear material is so involved in interstate and foreign commerce as to justify Federal regulation of the industry on this basis.

The question raised in the present hearings is not whether the Atomic Energy Act is constitutional but whether section 170 e. of that act, limiting the liability of private industry, is constitutional. In effect, the issue may be stated as follows: Is the limitation of liability of private industry engaged in nuclear development and utilization *necessary and proper* to the unquestioned authority to regulate atomic energy?

When section 170 e. was enacted in 1957, various constitutional bases were cited as justifying the limitation of liability:

1. The necessity of protecting the public against interstate damage occurring from the operation of facilities (42 U.S.C. 2012(f));

2. The necessity of protecting the public and encouraging the development of atomic energy in order to promote the general welfare and the national defense and security (42 U.S.C. 2012(i));

3. The responsibility of protecting the public from damages resulting from the use of Federal property—special nuclear material (S. Rept. 296, 85th Cong., 1st sess.); and

4. The authority to provide a uniform rule of bankruptcy (S. Rept. 296, 85th Cong., 1st sess.).

Since enactment of Public Law 88–489, title to special nuclear material need no longer be vested in the Government, and thus protection of the public from hazards resulting from the use of Federal property may no longer justify section 170 e. It has also been suggested that the consideration of national defense and security which justified section 170 e. in 1957 may no longer be valid today (transcript of hearings on H.R. 8496 and S. 2042, p. 258).

Before considering whether the limitation of liability in section 170 e. is a necessary and proper exercise of the defense power, the commerce power, and/or the bankruptcy power of Congress, it is appropriate to point out that section 170 e. is an act of Congress, approved by the President. Congress was aware that doubts had been expressed as to its constitutionality and, in enacting it, Congress expressed its judgment that the section was constitutional. Similarly, in approving the act, it must be assumed that the President was also satisfied that it was constitutional. From these facts alone, section 170 e. is entitled to a presumption of constitutionality.

A. The exercise of the defense power

The Senate report in what is now section 170 e. indicated that the national defense and security required increased private development and utilization of nuclear energy and that full-scale entry of private industry into this field could not be assured unless private industry were protected from enormous private damage claims by Government indemnity and limitation of liability (S. Rept. 296, 85th Cong., 1st sess). Further, the Price-Anderson Act contained the following congressional findings:

"In order to protect the public and to encourage the development of the atomic energy industry, in the interest of the general welfare and of the common defense and security, the United States may make funds available for a portion of the damages suffered by the public from nuclear incidents and may limit the liability of those persons liable for such losses" (sec. 1, 71 Stat. 576; 42 U.S.C. 2012(i)).

It has been suggested that the facts which justified this finding in 1957 no longer exist. However, Congress has not seen fit to withdraw or amend this finding, and thus it remains as an indication of the congressional judgment of the necessity for section 170 e. It is not the purpose of function of this memorandum to look behind the congressional finding. Congressional findings are not conclusive as to the facts recited and they may be examined in the light of changed circumstances. But they are entitled to great weight and are generally accepted unless clearly unfounded or irrational (*Communist Party* v. *Control Board*, 367 U.S. 1, 94–95 (1961); *Block* v. *Hirsch*, 256 U.S. 135, 154 (1921)). Absent a clear showing that the facts which justified the finding in 1957 no longer exist, it must be assumed that Congress has a rational basis for considering the continuing development of the atomic energy industry to be necessary to the national defense.

The power of Congress to provide for the national defense and security is unquestioned. Having determined that private development of atomic energy is necessary and proper to this end, and having determined that a limitation of liability is necessary and proper to secure the private development of atomic energy, Congress has the constitutional authority to limit the liability of persons engaged in the atomic energy industry.

B. The exercise of the commerce power

The Senate report on the Price-Anderson Act places little emphasis on the interstate and foreign commerce aspects of the atomic energy industry. However, the Atomic Energy Act itself recognized that the processing and utilization of source, byproduct, and special nuclear material affect interstate and foreign commerce (42 U.S.C. 2012(c)) and it further recites:

"The necessity for protection against possible interstate damage occurring from the operation of facilities for the production or utilization of source of special nuclear material places the operation of those facilities in interstate commerce for the purposes of this Act" (42 U.S.C. 2012(f)).

Whatever changes may have occurred in the defense relation of the atomic energy industry since 1957, it is beyond question that the interstate aspects of the industry have not altered since 1954.

During the 1956 hearings on "Government Indemnity and Limitation of Liability," both the Legislative Reference Service of the Library of Congress and the Counsel for the Pennsylvania Power & Light Co. pointed out that Congress has imposed a limitation on the liability of shipowners in order to promote this aspect of interstate and foreign commerce, and that this had been held a constitutional exercise of the commerce power. The provisions for limiting the liability of shipowners (46 U.S.C. 181 et seq.) date from 1851. They were designed to encourage the development and expansion of the American shipping industry and the Supreme Court has determined that protecting shipowners from financially crippling liability claims arising from marine catastrophes is a valid exercise of congressional authority under the Commerce Clause (*Providence &*

N.Y.S.S. Co. v. *Hill Mfg. Co.*, 109 U.S. 578 (1883)).

While it may be argued that the limitation of shipowner's liability is not a direct precedent for limiting liability in the atomic energy industry, there are similarities which should be noted. A single marine disaster involving tremendous loss of life and property could give rise to liability claims of such staggering amounts that an entire shipping company could be wiped out by a single accident. Likewise, a major nuclear incident in an atomic reactor plant could result in claims exceeding the total assets of even an "industrial giant." Corporations and public utilities therefore might well be as reluctant to risk their existence by entering the atomic energy field, as shipowners might be to risk a marine disaster. Certainly it is reasonable for Congress to conclude that fostering the atomic energy industry today is as important as fostering the shipping industry was in 1851.

It might also be noted that, by accepting the Warsaw Convention on International Air Transportation (49 Stat. 3000), Congress agreed to a limitation of the liability of air carriers (art. 22, 49 Stat. 3019). Although this involved an exercise of the treaty power rather than the commerce power, there would appear to be no relevant difference in the applicable considerations of constitutional law.

It has been argued that by limiting liability for nuclear incidents Congress has deprived individuals of their rights to compensation and has infringed the power of the States to enforce their own rules of tort liability. Yet it is no longer open to question that in the exercise of its commerce power, Congress may supersede the laws of the States and may restrict the rights of private individuals (*United States* v. *Darby*, 312 U.S. 100 (1941); *Wickard* v. *Filburn*, 317 U.S. 111 (1942)).

The background of the Price-Anderson Act indicates that the limitation of liability was designed to serve two purposes: (1) to encourage the entrance of private industry into the atomic energy field, and (2) to protect the public by assuring equitable distribution of the available funds to meet all damage claims. As indicated above the limitation of liability to encourage an industry was found to be a valid exercise of the commerce power with respect to the shipping industry. It is certainly arguable that the limitation of liability to protect the public from losses resulting from the operations of an interstate industry would also be a legitimate exercise of the commerce power.

There does not appear to be any legislative precedent under the commerce clause for limiting liability in order to insure that all claimants will receive at least partial payment of their claims. Legislation of this type is more directly related to the bankruptcy power. Nevertheless, interstate businesses have been regulated in countless ways in order to protect the public, and it is not unreasonable to assert that Congress may choose this means of protecting the public from personal and financial losses resulting from the operation of an industry involved in interstate and foreign commerce. Indeed, it may be particularly appropriate to provide for the limitation and apportionment of funds to cover damage claims in the atomic energy industry, since the nature of nuclear energy increases the likelihood that injuries resulting from nuclear incidents would occur not only at the site of the incident but in neighboring States as well.

In summary, the atomic energy industry is clearly involved in interstate and foreign commerce and is, therefore, subject to congressional regulation and supervision. Having determined that a limitation of the liability of persons engaged in that industry for damages resulting from nuclear incidents is necessary and proper both to foster the industry and to protect the public, Congress has the constitutional authority, under the commerce clause, to provide a limitation of liability.

C. The exercise of the bankruptcy power

Article I, section 8, clause 4, of the Constitution provides that Congress shall have the power to provide "uniform Laws on the subject of Bankruptcies throughout the United States." The Legislative Reference Service of the Library of Congress suggested in 1956 that this authority would justify the limitation of liability of persons engaged in the atomic energy industry, and Senate Report 296, 85th Congress, 1st session, recites this as one of the constitutional bases of section 170 e.

The general bankruptcy laws of the United States are published in title 11 of the United States Code. They are designed not only to protect the rights of creditors, but to protect debtors as well. For example, insolvent corporations may petition for reorganization (11 U.S.C. 530), insolvent railroads may petition for reorganization (11 U.S.C. 205), and insolvent wage earners may petition for an adjudication of bankruptcy (11 U.S.C. 1022). The Supreme Court has emphasized that the bankruptcy power is not limited to the protection of the creditor alone and that voluntary bankruptcy can be authorized for the debtor's benefit:

"The determination of the *status* of the honest and unfortunate debtor by his liberation from incumbrance on future exertion is a matter of public concern, and Congress has power to accomplish it throughout the United States by proceedings at the debtor's domicil." (*Hanover Nat'l Bank* v. *Moyses*, 186 U.S. 181, 192 (1902); *cf., Louisville Joint Stock Land Bank* v. *Radford*, 295 U.S. 555, 588 (1935)).

Moreover, in an industry affected with the public interest, the congressional authority extends to measures which are designed to forestall actual bankruptcy (*Continental Ill., Nat'l Bank & Trust Co.* v. *Chicago Rock Island & Pac. Ry.*, 294 U.S. 648 (1934)).

The 1956 hearings on "Government Indemnity and Limitation of Liability" indicate that the purpose of section 170 e. was to prevent the financial destruction of those involved in the atomic energy industry and to assure at least partial payment to all having damage claims arising from a nuclear incident. It was pointed out that damage claims might exceed the available liability insurance and might even exceed the corporate assets of persons liable for a nuclear incident. Thus, a single incident could result in bankruptcy. In addition, injuries resulting from a nuclear incident might not be immediately detectable, and one suffering from latent radiation injuries might be unable to obtain damages because earlier claims had consumed all insurance and assets.

Accordingly, section 170 e. provides that if it appears that damage claims will exceed both insurance and the indemnity afforded by the Government, a petition may be filed in the court having jurisdiction in bankruptcy to postpone payment of claims until the available funds can be equitably prorated among all claimants. While such a provision appears to be unique among bankruptcy laws, it is not so unrelated to the bankruptcy power as to be obviously unreasonable.

If Congress has determined that section 170 e. of the Atomic Energy Act is a necessary and proper exercise of the authority to provide a uniform rule of bankruptcy, then it would appear that such protection of both "debtor" and "creditor" is a constitutional exercise of that power.

D. Exercise of combined powers

This memorandum has indicated that section 170 e. of the Atomic Energy Act would be a constitutional exercise of the defense power, the commerce power, or the power to provide a uniform rule of bankruptcy. However, in enacting that section, Congress did not rely on any single express power. Rather, it indicated that section 170 e. was enacted as an exercise of several powers enumerated in the Constitution. Certainly Congress is not obligated to select a single constitutional basis for legislation but may rely on a combination of powers in order to provide for the common defense and promote the general welfare. Since section 170 e. would be a constitutional exercise of any one of the three powers mentioned, it is likewise a constitutional exercise of the combined defense, commerce, and bankruptcy powers.

CONSTITUTION OF PROPOSED AMENDMENTS TO SECTION 170 e.

Both H.R. 8496 and S. 2042 would amend section 170 e. by adding the following proviso in the first sentence: *"Provided, however,* That such aggregate liability [*i.e.*, the aggregate liability for a single nuclear incident] shall in no event exceed the sum of $560,000,000."

The present aggregate liability under section 170 e. is $500 million plus the private financial protection required of the person indemnified. The effect of the proviso quoted above would be to limit the total aggregate liability, including both Federal indemnity and private financial protection, to $560 million.

Should Congress determine that such a total limitation is both necessary and appropriate to accomplish its purposes in limiting liability, there is little question that the limitation would be constitutional. The constitutional bases for the statutory limit of aggregate liability would be the same as the constitutional bases for section 170 e. If the present section is constitutional—and it seems clear that it is—the proposed amendment would be no less constitutional.

Mr. PASTORE. Mr. President, while it is true that an amendment of this kind could very well be taken to conference, the fact still remains that the same amendment was proposed in the House and was defeated by a vote of 225 to 161. So it would not have a chance in conference, to begin with. The House would have to reverse itself, and it will not reverse itself.

The regular process of challenging the constitutionality of any act is still in being and is still available to any person who would like to challenge it.

I think it would be a mistake at this time to set up a procedure which creates at least a suspicion, if not curiosity, on the part of many people that we were not sure of the constitutionality of the law we were passing.

Mr. HATHAWAY. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HATHAWAY. Mr. President, I point out that the Attorney General's statement, as I understood it from the Senator from Rhode Island, is dated in 1965. I am sure that the situation has changed considerably since that time. It already has been brought out in debate that inflation alone has increased or should increase the limit of liability well beyond $560 million.

I do not think it is particularly relevant that the House voted down this particular amendment. We have never considered ourselves bound by a House vote previously. There are many instances in which the House votes one way and we vote another way, and we try to hammer

it out in conference. Simply because the House voted against it does not mean that our conferees could not prevail and make this part of the final law that is enacted.

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

Mr. HATHAWAY. I yield.

Mr. GRAVEL. Information has been brought forth that changes the situation. The first Brookhaven study came out in 1956–57. At that time, the outer limits of liability on an accident that could occur was about $7 billion, and now it is double. The Nuclear Regulatory Commission has come out with a figure of $15 billion on an outside accident, and that is not even counting the loss of life.

If we are going to have special treatment, which is what this legislation would do, by limiting the liability, then we should have the perspicacity to set up the mechanism whereby we can have a special look at this from a legal point of view, to see that what we have done is legal. From 1956 to date, we do not know whether or not it is legal. We make these statements. I think that an adjudication of a court certainly would be warranted under the circumstances.

I commend the Senator from Maine for bringing forth this amendment, which I think could lay the matter to rest. Certainly, the amendment of the Senator from Maine is an asset to the industry. Think of all the companies that have gone nuclear and that intend to go nuclear, and they do not know whether or not they truly have any liability. Five years from now or 10 years from now, if the Supreme Court renders a decision knocking down the 1957 act with respect to limited liability, that would mean nothing prospective; it would be retroactive. So if there is anything that a reasonable financial manager should know, it is whether or not this is truly legal, and that is all the Senator from Maine asks—that we set in motion the mechanism to make this determination.

Mr. President, I ask unanimous consent to have printed in the RECORD a summary of the argument made in the North Carolina case.

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

SUMMARY OF ARGUMENT

Plaintiffs come to this Court with a live question of the utmost national significance. What is involved here is not a request merely to lay a statute next to a constitutional provision and determine whether the former squares with the latter; rather, this Court is asked to determine a question of first impression and importance: Whether Congress can limit a citizen's common law right to recover damages arising out of a nuclear incident to a proportionate share of an arbitrary and obviously insufficient sum.

Plaintiffs submit that by limiting liability arising out of nuclear incidents to $560 billion, Congress has, at the admitted behest of the energy industry, violated principles embodied in the Fifth Amendment by (i) limiting the aggregate amount of damages from a nuclear incident to a sum wholly unrelated to the damages predicted by the Government itself; (ii) irrationally treating victims of a nuclear incident less favorably than victims of all other private wrongs; (iii) unreasonably limiting persons affected by the Act in their access to the courts and to their common law remedies against private persons for private wrongs; and (iv) contravening the requirement of Art. 1, § 8, cl. 4 of the United States Constitution that all laws on the subject of bankruptcies be uniform throughout the United States.

Plaintiffs are actually injured by the subsidy which the Act effectively confers upon defendant Duke Power Company and others and which in truth makes possible and encourages construction of facilities (without adequate safety incentives) which plaintiffs claim will deprive them of life, liberty and property in violation of the Fifth Amendment.

II. The limitation of liability provisions of the Price-Anderson Act violate plaintiffs' rights under the fifth amendment to the United States Constitution.

Plaintiffs have set forth above in detail the results of the invasion of their rights occasioned by the Price-Anderson Act which gives them standing to challenge its provisions. This section of the memorandum points out the four principal ways in which the limitation of liability imposed by the Act violates the rights of persons, including plaintiffs, affected by the Act.

A. The limitation of liability is not reasonably related to the probable damages from a nuclear incident and thereby constitutes a taking of property without just compensation and a deprivation of due process of law.

The Government defendants have suggested in their initial memorandum that limitations of liability relating to private conduct have been sanctioned both by Congress and the courts. What the defendants have failed to point out is that in each case the limitation of liability has strictly conformed to the overriding principle of the Fifth Amendment that the damage limitations must ". . . reasonably approximate the probable damages . . ." *Crowell v. Benson*, 285 U.S. 22, 75 L.Ed 598 (1932) and that the courts will strike down any limitation of liability which ". . . is not proportioned to the actual damages." *Mo. Pac. Ry. Co. v. Tucker*, 230 U.S. 340, 57 L.Ed 1507 (1913). Although the due process review applicable to economic legislation (which the plaintiffs do not concede this to be) may well be restrained, the minimal constitutional standard of rationality is clearly applicable. *Id.* Plaintiffs have shown above that they are prepared to prove that the $560 million limit contained in the Price-Anderson Acts bears no reasonable relationship to the damages to be sustained even in a small nuclear incident. Thus, the Price-Anderson Act lacks even that minimum rationality necessary to sustain an act of Congress against challenge under the Fifth Amendment.[7]

The defendants have also alluded to the Warsaw Convention, 49 Stat. 3000 (1934), as evidence of an approved limitation of liability upon private conduct. Reliance on the Warsaw Convention to sustain Price-Anderson is weak indeed. First, the Warsaw Convention governs consensual, voluntary relationships. Purchasing a ticket subject to the Convention is a matter of contract whereas exposure to the risks of nuclear power plants is non-contractual and involuntary. Second, even the Warsaw Convention itself does not limit damages based upon willful conduct or gross abuse. Id. Art. 25 Price-Anderson, however, constitutes an absolute limit on all legal liability so that even if a plant operator intentionally caused a nuclear incident no one would be held accountable except in accordance with the Act's limits. Third, the limits of liability under the Warsaw Convention are made on a "per person" basis whereas Price-Anderson contains no lower limit of personal damages. Thus, if 1 million persons were equally damaged by a nuclear incident, each one would get only $560. At least under the Warsaw Convention each injured person is guaranteed a sum certain.

Finally, a close reading of the United States' participation in that Convention reveals that the Fifth Amendment precept of "just compensation" has affected even this exercise of the treaty power. In 1965 the United States filed a notice of denunciation on the ground that the limitation of liability had become obsolete and essentially unrelated to the damages suffered in an international air disaster. On May 13, 1966 United States withdrew its notice of denunciation upon the making of a special contract under Article 22(1) of the Convention to the effect that the limitation of liability for United States passengers would thereafter be $75,000. Accordingly, the Warsaw Convention, as modified by the Article 32(1) agreement, reasonably relates to the likely damages from an aircraft disaster. Furthermore, to the extent that a due process challenge may be made to such limits, there is a special reluctance on the part of the judiciary to enter into matters of treaty law and international relations.[8]

The principle of reasonable relationship to damages has not only covered United States participation in the Warsaw Convention, but it has also protected against arbitrary governmental action in other areas in which Congress has limited liability. For example, the workmen's compensation statutes have been approved because they "reasonably approximate the probable damages", *Crowell* v. *Benson, supra*, and because those statutes provide a "reasonably just substitute" for the common law remedies upon which workers had previously relied. *New York Central R. Co.* v. *White*, 243 U.S. 188, 61 L.Ed 667 (1917). *Accord, Hawkins* v. *Bleakly*, 243 U.S. 210, 61 L.Ed 678 (1917); *Mountain Timber Co.* v. *Washington*, 243 U.S. 219, 61 L.Ed 685 (1917). In a like manner other limitations of liability imposed by Congress upon private relations have clearly and reasonably related to the damages to be suffered.[9]

One act not mentioned in the footnote is the Act of March 8, 1946 which provides for a limitation of the liability of the United States in the event of a purchase of war surplus ships from the Government. That limitation of liability, which was designed to encourage maintenance of a merchant marine service, is strictly drawn to provide "just compensation" for purchases of such materiel.

See 50 App. U.S.C. § 1743. As the statutes cited in the text and in the margin clearly indicate, the exercise of congressional power

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[7] The Government defendants have suggested that special weight be accorded to Congress and the President by their approval of the Act after giving specific consideration to the question of its constitutionality. This argument hardly merits a response. Both ancient and recent Supreme Court decisions make clear that the judiciary is the ultimate arbiter of the constitutionality of an act of Congress. *Marbury v. Madison*, 1 Cranch 137, 2 L.Ed 60 (1803); *United States v. Nixon*, — U.S. —, 41 L.Ed. 2d 1039 (1974).

[8] E.g., *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398, 11 L. Ed 2d 804 (1964).

[9] 15 U.S.C. § 694b(b) (secondary guarantee of 90% of performance bonds for small business investment programs); 49 U.S.C. § 20 (11) (relief of common carriers from liability subject to principle that relief does not extend to liability for its own negligence); 46 U.S.C. § 181, 190 (limitation of liability with respect to certain vessels not applicable to negligent acts and damages allowed up to full value of goods); 46 U.S.C. § 1304 (Carriage of Goods by Sea Act allows liquidated damages for property damage); 10 U.S.C. § 2635 (limitation of liability in medical emergency helicopter transportation service not applicable to suits against the Government or other persons than those specified in the statute).

is always subject to the Fifth Amendment and limitations of liability, while no novelty, have always been carefully tailored to conform to the approximate amount of damages to which they relate. The glaring exception to this course of conduct is the Price-Anderson Act which limits liability to an amount wholly unrelated to the damages which the Government itself has predicted will be caused by a serious nuclear incident.

Finally, the defendants may rely upon the legislative history and declared purposes of the Price-Anderson Act which are, among other things, to promote the use of nuclear energy for peaceful purposes[9a] and insure public safety. By virtue of its arbitrary limitations of liability the Act appears to accomplish exactly the opposite of one of its declared purposes. By eliminating any possibility that the law can be used to affix financial responsibility upon either the Government or private entrepreneurs in excess of $560 million, the Act in effect destroys incentive for serious evaluation of all the possible social costs of a nuclear accident. *See* H. Green, *Nuclear Power: Risk, Liability and Indemnity,* 71 Mich. L. Rev. 479, 503–04 (1973).

In fact, the results of workmen's compensation and other such legislation limiting damages has been to "internalize" the costs of safety and thereby provide the requisite incentive for a safe work place. In the case of the development of private nuclear power, however, there is no "internalization" of safety costs; indeed, there is a protective umbrella placed over the treasuries of the exploiters of nuclear energy, and the very purpose of the Price-Anderson Act to assure safety is thereby subverted.

B. The distinction drawn by the Price-Anderson Act between persons injured by a nuclear incident and persons otherwise injured is, for purposes of limitation of damages, irrational and therefore in violation of the principle of equal protection of the laws embodied in the Fifth Amendment.

The principle of equal protection of the laws, which is expressly applicable to state legislation by virtue of the Fourteenth Amendment, is likewise applicable to acts of Congress by virtue of the Fifth Amendment, e.g., *Bolling v. Sharpe,* 347 U.S. 497, 98 L.Ed 884 (1954), and requires that this Court assess the rationality of the classification, for purposes of limiting damages, between persons injured by a nuclear incident and persons otherwise injured. Although there may well be a rational basis for distinguishing nuclear incidents from other liability-forming incidents for purposes such as limiting the flow of public information to protect national security, plaintiffs can discern no reasonable ground whatsoever for placing victims of a nuclear tragedy into a class of persons whose right to damages is limited to a proportionate share of an arbitrary (and unconscionably low) sum.

Neither the purposes of the Price-Anderson Act to assure public safety and to assure adequate compensation of persons damaged by nuclear incidents nor the legislative history of that act affords the defendants a basis on which to sustain this legislation as rational. As we have previously emphasized, the public safety is not fostered by legislation which virtually destroys private and governmental incentive to consider the costs of a catastrophic incident. *Supra* p. 21. Moreover, the aggregate damage limit of $560 million is woefully inadequate in terms of the damage likely to be caused by a major accident at a small nuclear power plant.

In fact, the very evils which the act ostensibly seeks to remedy may even be brought about rather than halted by this legislation, because this act, by insuring that no liability can be imposed beyond a meager extent, has encouraged and will continue to encourage the proliferation of nuclear power plants. Had Congress forthrightly declared the sole purpose of this act to be a means by which private entrepreneurs could exploit the nuclear energy field at the expense of its victims, perhaps a macabre rationality could be discerned in the limitation of damages provisions. This Court, however, must take the Act as it finds it—and no rational basis for classifying persons injured by nuclear incidents, for the purpose of limiting their damages, appears anywhere. *See* H. Denenberg, "Nuclear Energy is an Insurance Swindle" (Reprint 1974).

C. The limitations of liability provisions effectively deny to persons injured in nuclear incidents access to the courts and to common law remedies in violation of the Ninth and Tenth Amendments and thereby deny to such persons due process of law.

It is well established that federal law is interstitial, *see* H. Hart & H. Wechsler, *The Federal Courts and the Federal System,* (1st ed. 1953), and that primary human activities are to be governed generally by state law. *Hanna v. Plumer,* 380 U.S. 460, 14 L.Ed 2d 8 (1965). The Ninth and Tenth Amendments codify these important principles of our federal system, and any act of Congress in derogation of common law rights and remedies must be premised on a specific grant of power to the Congress and must conform to other provisions of the Constitution such as the Due Process Clause of the Fifth Amendment.

The defendants will probably seek to sustain this legislation by reference to the commerce, defense and bankruptcy powers in the Constitution.[10] To the extent that the defendants rely on the Commerce Clause, we have already shown that the limitation of damages provision of this act will not insure public safety and promote the just compensation of victims of nuclear tragedies. Thus, reliance on the commerce power to sustain this legislation as a means of facilitating interstate commerce must fail. To the extent that the defendants rely upon the Defense Clause, the link between national defense and the private exploitation of nuclear energy is tenuous at best and surely does not rise to the degree necessary to sustain this legislation as constitutional. This act was in fact promulgated for the peaceful use of the atom.

Moreover, our defense facilities do not rely upon power plants for production of fissionable material. As to the defendants' possible reliance on the Bankruptcy Clause, this legislation does not even conform to the constitutional requirements of a law relating to bankruptcies. *Infra,* § IID. There is, therefore, no apparent constitutional ground for the gross invasion of the fundamental right to sue. Cf. *Boddie* v. *Connecticut,* 401 U.S. 371, 28 L.Ed 2d 113 (1971). What the Price-Anderson Act has done is to eliminate reliance upon the law and substitute in its stead an insurance scheme to foster the exploitation of nuclear energy.

The importance of the virtual elimination of common law in the area of nuclear liability cannot be overstated. It is nearly incomprehensible that reckless or even intentional conduct resulting in liability will in all probability escape accountability. That circumstance flies in the face of the fundamental precept of the tort law that liability exists partly to guarantee that standards of care are observed. *See,* W. Prosser, *Handbook of Law of Torts,* p. 23 (1971 ed.). In short, a "nuclear exception" to the damages part of our tort law appears unconscionable and should be sustained only under the most compelling circumstances—none of which are present in this case.[11]

D. The limitation of liability provision of the Price-Anderson Act is not "uniform" within the meaning of Article 1, Section 8, Clause 4 of the Constitution and thereby denies persons affected by the Act due process of law.

Article 1, Clause 8, Section 4 of the Constitution provides Congress with the power "To establish . . . uniform laws on the subject of Bankruptcies throughout the United States." The Supreme Court has clearly and consistently held that the uniformity required by the foregoing section of the Constitution is geographic in nature and that the uniformity clause requires that an act of Congress apply in a like manner to all creditors and all debtors regardless of their respective geographic situations. *Regional Rail Reorganization Act Cases, supra,* 43 U.S.L.W. at 4048–49; *Vanston Bondholders Protective Committee v. Green,* 329 U.S. 156, 91 L.Ed 162 (1946); *Hanover National Bank v. Moyses,* 180 U.S. 181, 46 L.Ed 1113 (1902). It is manifest that debtors and creditors of persons in a geographic region affected by a nuclear incident subject to the Price-Anderson Act will be treated differently from debtors and creditors of persons in other parts of the nation. Although the Price-Anderson Act is not limited by its terms to a specific geographic region, the Act will be unconstitutionally applied because of the effect it will have on debtor-creditor proceedings and bankruptcy proceedings only in the geographic area affected by a nuclear incident. Thus, unlike the recent *Rail Reorganization Act Cases,* the Price-Anderson Act does, on the basis of regionalism, restrict the rights of creditors and materially affect the bankruptcy jurisdiction of the federal district courts.

Mr. BAKER. Mr. President, I ask unanimous consent that Kirk Betz, of the staff of the Committee on Government Operations, be permitted the privilege of the floor during the remainder of the day.

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

Mr. BAKER. Mr. President, the matter before us is not a new one. It has been considered a number of times in committee and in the House of Representatives and is now before the Senate in this amendment.

I really cannot quarrel with the idea of making sure that a controversial piece of legislation is constitutional. However, it seems to me that of late we have fallen into the habit of putting in place the mechanism for expedited hearing and argument in determination of a constitutional issue on virtually every piece of legislation we adopt.

[9a] To the extent that Price-Anderson was adopted to provide seed capital for private energy developers, that purpose has been fulfilled and no longer provides a justification for the Act. In fact, private enterprise is playing an ever-increasing role in nuclear energy development and Price-Anderson is no longer needed as a spur for capital formation. *See* President Ford's proposals for nuclear fuel production by private enterprise.

[10] Commerce Clause, Article 1, Section 8, Clause 3; Defense Clause, Article 1, Section 8, Clauses 11, 12, and 13; Bankruptcy Clause, Article 1, Section 8, Clause 4.

[11] Plaintiffs do not contend that certain modifications in affixing responsibility should not be imposed upon the law of torts as applied to nuclear incidents. For example, the waiver of defenses section of the Price-Anderson Act appears to be reasonably related to the ends of the Act. What plaintiffs object to is the limitation of liability to such a ridiculously low amount that access to common law rights and remedies is effectively foreclosed.

Reference was made to a similar provision in the Campaign Finance Act. I think that is an entirely different thing and of extraordinary importance because of its effect on an immediate, upcoming election.

There are any number of ways that this act can be challenged as to its constitutionality. If the parties have the appropriate standing, they can test it under the existing declaratory judgment statutes. There are certain other circumstances in which the matter can be presented directly and any number of others in which the question of constitutionality can be presented collaterally for determination.

I do not quarrel with the purpose. I believe it is a bad precedent. This is not the appropriate step to take at this point, and it is with some reluctance that the managers of the bill oppose this amendment.

Mr. HATHAWAY. Mr. President, I should like to ask the Senator from Tennessee if he could spell out in a little more detail how somebody could get standing to sue.

The District of Columbia case I have before me indicates that the complainants in that action were testing the same provisions and did not have any standing to sue. I think the same judgment is going to prevail in the North Carolina case. If it does not, we do not have to worry about it. It will go to the Supreme Court, and the provision I am offering will not be needed. I am offering this amendment only to assure us that we are going to have some way to test the constitutionality.

I agree with the Senator from Tennessee that we should not be putting this in every act, but here we have a situation in which irreparable harm could be done. Many companies could go bankrupt if there were an accident that amounted to several billion dollars and the Supreme Court decided that the $560 million was an unconstitutional limitation.

Mr. BAKER. Mr. President, in response, I reiterate that I have no quarrel with the purposes and the motives of the sponsor of this amendment. I think it is bad policy.

On the question of how someone could have standing to sue, I think the Senator will agree with me that part of the reasoning or rationale in the Declaratory Judgment Act is to test the constitutionality of legislative enactments. As I said earlier, a party must have the standing to sue. I can think of any number of ways that a party could have the standing to sue. A civil suit in damages, for example, would give a litigant a standing on whether or not there was a limitation on his claim under the circumstances or whether or not there had been an abridgement of his tort rights there and the common law rights.

Mr. HATHAWAY. Would that not be after he had sustained some damage?

Mr. BAKER. It could be after the conflict had arisen but not necessarily after he had sustained damages. He had the capacity to sue as a party in interest.

Mr. President, I believe and I assert the belief that the Federal Declaratory Judgment Act does provide a method for testing the constitutionality of this proposal and this act. I believe there are any number and range of circumstances in which a party could have standing to sue, in addition to the one I have stated, which could permit him to make a constitutional challenge under these circumstances, without the necessity of a nuclear accident beforehand.

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

Mr. HATHAWAY. Before the Senator does that, I have a few more remarks to make.

As I understand, it was an action that was brought in the district court under the Declaratory Judgment Act, and still the court stated that the parties did not have any standing to sue.

Even if the Senator from Tennessee should turn out to be right, that there was some way we might be able to engineer, under existing law, some case that would decide this matter, I would think that the Senator, as well as other Senators, would like to see this matter resolved expeditiously, and that is exactly what this amendment intends to do.

The action has to be brought within 90 days, and it goes to the Supreme Court of the United States, with the exhortation I have made, that it is our intent, in adopting this amendment, that the Supreme Court advance such a case on its docket so that it can be heard immediately after the appeal is taken from the three-judge court. So I would think that within a matter of no more than 6 months we should have a decision in this matter that would have some very far-reaching and long-ranging effects.

Mr. BAKER. Mr. President, I do not think it is a good idea.

Mr. HATHAWAY. Especially since the act does not expire until August of 1977, I think we have an ample amount of time to make this determination.

Mr. BAKER. Mr. President, I do not think it is a good idea to proceed in this way. I am sure my colleague would agree that part of our constitutional responsibility as Senators is to pass legislation that we conceive of as being constitutional, and it is not necessary for us to call on the courts to pass judgment on every act that we take as an abstract proposition. There is a remedy in place for someone to challenge the constitutionality of this act; we have gone already too far in putting in place a mechanism to challenge the constitutionality of each act. I therefore will oppose this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. PASTORE. We are ready to yield back our time, Mr. President.

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

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Arkansas (Mr. BUMPERS), the Senator from Idaho (Mr. CHURCH), and the Senator from Iowa (Mr. CLARK) are necessarily absent.

I also announce that the Senator from Connecticut (Mr. RIBICOFF) and the Senator from Alabama (Mr. ALLEN) are absent because of illness.

I further announce that, if present and voting, the Senator from Iowa (Mr. CLARK) and the Senator from Connecticut (Mr. RIBICOFF) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Ohio (Mr. TAFT) is necessarily absent.

The result was announced—yeas 46, nays 47, as follows:

[Rollcall Vote No. 598 Leg.]

YEAS—46

Abourezk	Hartke	Mondale
Biden	Haskell	Moss
Brooke	Hatfield	Muskie
Burdick	Hathaway	Nelson
Byrd, Robert C.	Huddleston	Packwood
Case	Humphrey	Percy
Cranston	Javits	Proxmire
Culver	Kennedy	Randolph
Dole	Laxalt	Roth
Durkin	Leahy	Schweiker
Eagleton	Long	Sparkman
Fong	Mathias	Tunney
Gravel	McGee	Weicker
Griffin	McGovern	Williams
Hart, Gary	McIntyre	
Hart, Philip A.	Metcalf	

NAYS—47

Baker	Glenn	Pearson
Bartlett	Goldwater	Pell
Beall	Hansen	Scott, Hugh
Bellmon	Helms	Scott, William L.
Bentsen	Hollings	Stafford
Brock	Hruska	Stennis
Buckley	Inouye	Stevens
Byrd, Harry F., Jr.	Jackson	Stevenson
Cannon	Johnston	Stone
Chiles	Magnuson	Symington
Curtis	Mansfield	Talmadge
Domenici	McClellan	Thurmond
Eastland	McClure	Tower
Fannin	Montoya	Young
Ford	Morgan	
Garn	Nunn	
	Pastore	

NOT VOTING—7

Allen	Church	Taft
Bayh	Clark	
Bumpers	Ribicoff	

So Mr. HATHAWAY's amendment was rejected.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. GRAVEL. Mr. President, I send an amendment to the desk and ask the clerk to report.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk proceeded to read the amendment.

Mr. GRAVEL. 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, line 21, strike "$2,000,000 nor more than $5,000,000" and insert in lieu thereof "$10,000,000".

Mr. GRAVEL. Mr. President, I will be very brief because I know Members want to go about their business.

If I could have the attention of the body, it is very easy to explain. Mr. President, may we have order?

The PRESIDING OFFICER. May we have order on the floor so that we may hear the Senator from Alaska?

Mr. GRAVEL. The purpose of the Price-Anderson Act, as it has been presented to us today, and its renewal for a 10-year period, is to try to increase the

indemnification by private industry. That is the way the proponents have cast this renewal.

What this amendment would simply do is to accelerate the process by saying that the private sector will carry its indemnification right now.

I strike the language "from $2 million to $5 million on an assessment basis if an accident occurs," and I would insert the amount of "$10 million," which means that since we have about 55 reactors in the country today, if there was an accident they can go ahead and have an assessment of $550 million right now. This means we will no longer be subsidizing because when you carry the insurance for somebody you subsidize him. There is a cost, and so what this would do is internalize this expense of insurance, and it would do no more than that. It is not asking too much. It is a very reasonable amendment, and I hope the managers of the bill will accept it.

Mr. PASTORE. This may sound rather fancy or rather good, but the purpose, why we went from five and down to two, is to help the small utilities and cooperatives. The small utilities in the Midwest and the West, as well as in other regions.

I realize that Commonwealth Edison in Chicago perhaps can be able to pay the $10 million, but I doubt very much that a small utility company that operates in a city, or a public utility or cooperative, can afford to do it.

If one wants to keep these people out of the nuclear business, pass this amendment.

That is what it is all about. That is why we had to reduce it down to two in order to give the Nuclear Regulatory Commission the flexibility it needs in order to accommodate the small utilities.

What the Senator is doing is levying a high tariff on those who can afford to pay it, and I do not question that, but the result is that what is actually being done is putting the small people, the municipals and cooperatives out of the nuclear business.

Mr. GRAVEL. I question whether that would be the result. Nobody can pay a billion dollars if there is an accident.

The Senator from Rhode Island stated on the floor, if there is an accident of more than $560 million, everything would be shut off and we would have mass panic. It would fall right back to Congress to do something.

All we say is that this increase—the people providing this form of energy must internalize the cost so the people of this country know exactly what they are paying for oil, gas, coal, nuclear power, and solar power.

If one wants to give nuclear power a break, why not give hydro power and oil a break, why not give other forms of energy a break?

This makes the accounting sheet, the balance sheet, at least square up. Otherwise, we are skewing the energy choices made in our society. Again, this will help the small utilities.

Big utilities, small utilities, to accept a tab of $2 billion to $5 billion is preposterous. They cannot hack it.

Mr. PASTORE. All I say, as far as hydroelectric is concerned, much has been financed by loans given by the Government because we want to cultivate our natural resources.

I find no fault with it. I have always supported it.

All I say is that this is the wrong amendment, the wrong amount.

What they are doing is leaving the small utilities right out of this business. That is it, pure and simple.

Mr. President, I am ready to yield back my time and let the will of the Senate decide.

Mr. GRAVEL. Mr. President, I ask for the yeas and nays.

Mr. PASTORE. The yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Alaska. The yeas and nays have been ordered and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Arkansas (Mr. BUMPERS), the Senator from Idaho (Mr. CHURCH) and, the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

I also announce that the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Alabama (Mr. ALLEN) are absent because of illness.

I further announce that, if present and voting, the Senator from Connecticut (Mr. RIBICOFF) would vote "yea."

The result was announced—yeas 19, nays 75, as follows:

[Rollcall Vote No. 599 Leg.]

YEAS—19

Abourezk	Hartke	Percy
Biden	Haskell	Proxmire
Clark	Hathaway	Randolph
Durkin	McGovern	Stevenson
Gravel	McIntyre	Tunney
Hart, Gary	Moss	
Hart, Philip A.	Nelson	

NAYS—75

Baker	Glenn	Morgan
Bartlett	Goldwater	Muskie
Beall	Griffin	Nunn
Bellmon	Hansen	Packwood
Bentsen	Hatfield	Pastore
Brock	Helms	Pearson
Brooke	Hollings	Pell
Buckley	Hruska	Roth
Burdick	Huddleston	Schweiker
Byrd, Harry F., Jr.	Humphrey	Scott, Hugh
	Inouye	Scott, William L.
Byrd, Robert C.	Jackson	Sparkman
Cannon	Javits	Stafford
Case	Johnston	Stennis
Chiles	Laxalt	Stevens
Cranston	Leahy	Stone
Culver	Long	Symington
Curtis	Magnuson	Taft
Dole	Mansfield	Talmadge
Domenici	Mathias	Thurmond
Eagleton	McClellan	Tower
Eastland	McClure	Weicker
Fannin	McGee	Williams
Fong	Metcalf	Young
Ford	Mondale	
Garn	Montoya	

NOT VOTING—6

Allen	Bumpers	Kennedy
Bayh	Church	Ribicoff

So Mr. GRAVEL's amendment was rejected.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

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

Mr. PHILIP A. HART. Mr. President, the question posed to the Senate by the Gravel amendment boils down to a rather simple issue. Are we going to continue to subsidize the nuclear energy industry at the expense of potential victims of a reactor accident?

The rationale supporting enactment of the Price-Anderson Act in 1957—that limited liability was a prerequisite to private investment in the infant nuclear industry—is no longer valid. The last two decades have seen substantial private participation in development and operation of nuclear reactors and have provided us with much operating experience as well as theoretical data on the magnitude and likelihood of risks from nuclear power. Some 56 nuclear reactors now provide about 8 percent of this country's electrical generating capacity. And yet, the Senate is being asked to continue the same $560 million limit on the industry's liability with no recourse beyond that sum for victims of a potential nuclear accident.

Mr. President, at the very least, we should adjust this $560 million figure to reflect inflation and the decrease in the value of the dollar since 1957. The Congressional Research Service calculates that a liability limit of $3 billion would be necessary to provide the same degree of public protection as was determined necessary in 1957. But even doing this would beg the basic point that the operating side of the nuclear energy industry is sufficiently grown up to compete on its own with other energy industries.

Mr. President, I would urge my colleagues to take a hard look at the Gravel amendment, understanding the light in which it is offered. We are not trying to cause the demise of the nuclear energy industry through a back-door route, nor are we seeking to impose on that industry burdens not borne by its competitors. We are simply saying that it is time that this industry assume the normal costs of doing business, and spread those costs among those who benefit from this activity rather than continue to place them on the shoulders of the taxpayers, and in the event of nuclear disaster, on the backs of the victims.

This is hardly an unreasonable request in view of the conclusions of the so-called Rasmussen Report on Reactor Safety. According to this several year, multimillion dollar study, the likelihood that a reactor incident of major proportions will occur is less than that a disaster will occur in one of our nonnuclear industries, such as airline operation, manufacture of explosive chemicals, and construction and operation of the Alaska pipeline. None of these endeavors is artificially supported by statutory limits on liability, and yet they continue as vital enterprises in this country. It is high time that the nuclear energy industry assume these same responsibilities and that we provide for nuclear accident victims, which we

never hope to have, the right to sue for compensation for losses.

Mr. BAKER. Mr. President, I am grateful for the opportunity to express my thoughts today regarding the enactment of S. 2568, the Price-Anderson Act. Often, seemingly routine legislation has an impact far beyond its surface benefits; and I will agree with the opponents of this bill that such is the case today. I am also willing to grant that all forces interested in this bill, either pro or con, are doing so on the basis of what they feel to be in the public interest.

The distinguished Senator from California, Mr. TUNNEY, in opposing the committee report, has forthrightly stated his position in a credible and laudible way. The amendment offered this morning by Mr. GRAVEL to extend unlimited liability in the case of the Price-Anderson Act is an amendment, I believe, based on Mr. GRAVEL's honest perception of the public good. Likewise, I am sure that the considerations expressed in Mr. HATHAWAY's amendments are designed to address sections of the bill that he conscientiously feels need strengthening.

The well-calculated remarks of these Senators have pointed up the need for consistent action on behalf of the public, as well as to enable the free-enterprise system to function without unnecessary requirements or assistance from the Federal Government. As each of these gentlemen has adequately developed the history of this legislation and the particular faults that they find with it, I do not intend to develop additionally the background of this bill, but rather, to focus upon the future import of this legislation.

I can admit to my colleagues today that I foresee a time in the not too distant future, when the nuclear safety record will be so well established, the investment response so overwhelmingly positive, and indemnity acceptance so universally acknowledged, that Price-Anderson will no longer be needed. I do not believe, however, that we have as yet reached that time.

Even more disturbing to me, Mr. President, than the legitimate opposition to this act itself, is the growing tendency on the part of some elements of the antinuclear community to seize on every issue as a vehicle for delay and sabotage of America's total nuclear energy development package. As Federal Energy Administration Director Frank Zarb has noted in a recent letter to Chairman PASTORE, of which I received a copy, the only two viable alternatives we have in the immediate future to meet America's energy needs are coal and nuclear power. It is imperative that America move to develop all possible energy sources at a time when her needs are so substantial. The major objection to the stance of delay or major change to the Price-Anderson Act which I have today, is that the stakes are so great at a time when America's energy needs are generally so substantial. Not only does an adequate energy supply contribute directly to the maintenance of the lifestyle the American people have come to enjoy, but it plays a significant role in impacting employment or unemployment, inflation or economic stability, business growth or recession, and the Federal tax base, among other things. Noting these areas, every major ERDA and FEA official is consistent in his belief that it is in the best interest of America and her energy development capability for Price-Anderson to be extended.

I would further encourage my colleagues to note that after a lengthy debate on this issue, and amendments pertinent to it on December 8, the House voted by the overwhelming margin of 329 to 61 to continue Price-Anderson as stated in this bill.

Let me reiterate in brief fashion my opposition to the Gravel amendment and to the recent amendment intended to shorten the extension of Price-Anderson from 10 to 5 years. The attempt today to remove the limitation of liability on the Price-Anderson Act is an amendment that is, in my opinion, totally unnecessary. The administration bill phases out Federal indemnity and the $560 million limit on liability in favor of private indemnity and establishes a constantly increasing limit of liability thereafter. As a matter of fact, Mr. President, the committee report of the Joint Committee on Atomic Energy has definitively stated that the Congress would act in the unlikely event of a significant nuclear accident. This intention has been further strengthened today by Chairman PASTORE and by me.

I believe that adoption of the Gravel amendment at this time would seriously impair the development of nuclear power, while unnecessarily focusing upon an issue to which the committee and the floor leadership has already addressed itself. This additional risk, if placed upon the utilities, rather than upon the country in toto, as is normally the case in the event of a disaster situation, would not only prove detrimental to further energy development, but the amendment totally ignores the fact that the utilities simply are unable to obtain additional insurance because the maximum amount of insurance which is available is not adequate to cover the potential risk of a total nuclear accident. In other words, the utilities are currently paying for as much insurance as they can obtain in the public market.

The other amendment that has disturbed me the most today is the one that would reduce the extension of the Price-Anderson Act from 10 to 5 years. Mr. President, I believe this is the most detrimental act we could take. The Senators need to understand that it will be during the second 5 years of this 10-year extension that Price-Anderson will, in essence, phase itself out. The projected numbers of nuclear reactors to be built during the next 10 years, based on existing work orders and construction permits, will provide for self-indemnification. Even those who oppose the Price-Anderson Act would be wise to note that their interests would likely be best served through a 10-year, rather than 5-year, extension as far as protection of the public is concerned.

Furthermore, because of the administrative and congressional action required, 5 years is, in my opinion, a simply unreasonably short extension. As a practical matter, this extension would make the act only cover new projects begun before 1978, since it takes some 4 years now to move from the need for new capacity to a construction permit. The additional extension of this second 5-year span is, in my opinion, one of the most crucial sections of this entire bill.

There are a number of other objections to the amendments that have been offered and general observations on the bill itself that I might make in closing if time permitted, but let me simply summarize in a succinct fashion my opposition to the amendments that have been offered and my general opinion as to why Price-Anderson should be fully extended for another 10 years:

First. Elimination of the liability limitation in Price-Anderson would seriously undermine the strict liability concept in the legislation. This would actually harm the public through elimination of the no-fault disposition of claims provisions;

Second. Many suppliers of nuclear equipment will be less likely to provide minor, yet important, parts if they face unlimited liability due to an unlikely malfunction;

Third. By 1985, and maybe sooner, Price-Anderson will phase itself out as far as Federal indemnity is concerned.

For these and other reasons, I would heartily encourage my colleagues to follow the example of the House and overwhelmingly approve the extension of Price-Anderson as embodied in S. 2568.

Mr. DOMENICI. Mr. President, the United States has made a commitment to the generation of electricity by nuclear power. Nuclear power is expected to supply an increasing part of the Nation's future energy input and by the year 2000, ERDA estimates that the national electric generating capacity will be about 2,000 plants generating on 1,000 megawatts each, of which nuclear power may account for slightly more than half. The Federal Energy Administration anticipates that nuclear power generating capacity will rise from between 47,000 and 52,000 megawatts in 1975 to from 500,000 to 730,000 megawatts by 1990.

Because of this commitment to development of nuclear power, it seems imperative that we extend the protection offered by the Price-Anderson Act. The primary issues to be considered for extension of the Price-Anderson Act are the need for continuing an upper limit of financial liability for damages resulting from a nuclear accident that released radioactive wastes to the environment, and the relative roles of Government, private industry, and the public in providing liability insurance and in accepting uninsured risks.

Central to these issues are questions related to long-term safety of nuclear facilities and radioactive waste disposal methods, and the estimation of short- and long-term damages to the population and property affected by a nuclear accident. I have read the committee report and hearing records and find that expert witnesses find that the likelihood of a serious nuclear accident occurring are

extremely remote. However, I feel that in the unlikely event of a nuclear accident, there is a need for the protection afforded by the Price-Anderson Act.

S. 2568, extends the Price-Anderson Act for an additional 10 years to provide funds to compensate the public for its losses in the unlikely event of a nuclear accident. It also provides for the nuclear industry to gradually assume greater financial risk through a system of private insurance.

I believe enactment of this legislation is important to provide needed public liability insurance while the private sector gains the assets to assume the full responsibility. The original Price-Anderson Act was for 10 years and was extended in 1965. The act is now scheduled to expire on August 1, 1977. Because of the long-lead times involved in planning new commitments and the promise nuclear energy offers in contributing toward energy independence, I believe the Federal Government should provide additional time for the private sector to develop this industry while assuring the public is protected. I am afraid without an extension of Government indemnity there would be an adverse effect on the ability of the private sector to finance nuclear projects.

Some critics of nuclear energy have questioned the safety of nuclear powerplants. Nuclear power is a controversial subject. But what is the nature of the controversy? I feel that a speech given by T. A. Nemsek, Director, Division of Reactor Research and Development, before the International Platform Association addresses this question. I ask unanimous consent that the speech entitled, "Nuclear Power—Myth and Reality," be printed in the RECORD at this point.

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

NUCLEAR POWER—MYTH AND REALITY

(By T. A. Nemzek)

INTRODUCTION

Dan Tyler Moore's letter asking me to speak on this program is perhaps the most intimidating invitation I've ever received. First his letter invokes the names of Daniel Webster, Teddy Roosevelt, William Jennings Bryan, and others. Then it cites some immortal prose drawn from talks delivered before this group and finally exhorts me to wordsmith my phrases so as to assure me a place in the . . . quote . . . "Pantheon of Great Speakers and Molders of Public Opinion." Let me tell you, Dan Tyler Moore, if you want to scare the hell out of an engineering manager who works for the government, your invitational letters are models of just how to do it.

But, at the same time, your letter asking me to defend nuclear power presented a challenge I could not, or would not, decline to accept. The stakes are too high; the problem of energy is too pervasive; the controversy which has enveloped nuclear power and our other energy options is too serious; and, very frankly, you are too important an audience to miss speaking before.

My talk today will not be a semi-technical recital of facts, figures and graphs. It is aimed directly at and for this audience. I hope to introduce you to some fresh and useful perspectives on the role of nuclear power. My ultimate hope is that you will incorporate this fresh perspective into your own unique and influential activities throughout America.

The International Platform Association has already heard several speakers with strong opinions about nuclear power. Last year's Association meeting featured speakers who were very critical of this energy source and today you heard more criticism. Nuclear power is a controversial subject.

But just what is the nature of this controversy? What are the issues which have escalated emotions to the point where many people have become involved in a pitched debate on the very merits of the technology itself? Well, the individual issues seem to have a certain vogue to them—they change and they are added to; they increase and decrease in popularity; but they never seem to completely go away, even when persuasive facts refute the arguments.

THE NUCLEAR MYTHOLOGY

At the core of the concerns expressed about nuclear power lies what appears to me to be a sincere, yet, self-fulfilling, mythology—with its disciples intent on converting believers with the zeal of a lay priesthood. What are the myths? What are the realities? At the risk of oversimplification, I would like to briefly address eight of them:

Myth 1.—"A nuclear power plant is a potential atomic bomb."

Reality.—This is completely untrue. There's no way that anyone could cause a nuclear explosion with today's nuclear power plants—no matter how he tried. There is neither the concentrated nuclear material nor the conditions needed to initiate such a reaction.

Myth 2.—"Nuclear power reactors are unsafe. Key safety systems have not been tested and there have already been numerous 'near misses'."

Reality.—Safety systems are exhaustively analyzed in the design stage and tested before and throughout the plant's operating lifetime. Power reactors do not rely on just one safety system. There are many, many safety systems which back each other up to assure safe operation, as well as, barrier after protective barrier to assure safe conditions, even if a serious accident should somehow happen.

The potential for a catastrophic accident has been studied and restudied for nearly 20 years. Most recently, a government-sponsored analysis by a team of scientists, working under the direction of nationally renowned MIT Professor Norman Rasmussen, concluded that the risk from nuclear power is exceedingly small. Their draft report covers 14 full volumes. In essence it concludes that you are 100 times more likely to be hit by a meteor when you walk out of this room than to be killed by the release of radioactivity from a nuclear power plant accident.

Yes, there have been minor accidents and incidents at nuclear power plants. None of these has caused radiation injury or death to either workers or the general public. This is due to sound conservative design, not luck.

The most serious accident to date at an operating U.S. nuclear power plant involved a fire among control cables. Even though several safety systems were knocked out of commission, many systems were still available and both of the plant's operating nuclear reactors were safely shut down. No one was injured and no radioactivity was released.

Of course, there is always room for improvement where safety is concerned, even when you already have an impressive safety record. That's why research continues on the development of ways to make today's reactors even safer. But of all the risks we face in this life, few are less cause for concern than nuclear power.

Myth 3.—"Low level radiation from nuclear power plants is causing disease and death."

Reality.—This tired argument continues to defy a simple fact. Even if nuclear energy had never been discovered, cosmic rays and naturally radioactive elements in the earth itself expose us to thousands of times more radiation than that released by nuclear plants. On the average, each American citizen annually receives about 180 units of radiation exposure from sources completely unrelated to nuclear power and less than one additional exposure unit from all the operating reactors. If you are going to permit yourself to be concerned with such small levels of radiation, then forget about going to meetings such as this—the people sitting next to you contain enough natural radioactivity to expose you to additional radiation.

For over a decade, every competent authority who has examined claims of damage from low level radiation from nuclear power plants has rejected them as being without scientific bases.

Myth 4.—"There is no way to safely handle or store the deadly radioactive wastes from nuclear power plants. They will remain deadly for thousands of years. Further, it is immoral to pass on to future generations the risk associated with managing these massive amounts of wastes."

Reality.—There are appropriate, adequate and well known methods available now for handling and disposing of nuclear waste from nuclear power plants. The simple fact is that today there just isn't very much waste from commercial power plants to dispose of, and there won't be for some time. If a waste storage facility existed today, it would stand empty.

There is neither mystery nor conceptual difficulty involved in solving the waste management needs for the future. This coming year, ERDA will complete its expanded environmental impact statement on handling both the interim management and the final disposition of nuclear wastes. After review and hearings on that plan, a choice will be made from the several available alternative methods and we will get on with the business of constructing and operating a federal waste disposal center.

As for quantity, the nuclear fuel that produces a year of electric power for the average family in this nation will produce highly radioactive wastes equivalent to the size of an aspirin tablet. We are talking about relatively modest quantities of high level waste to be managed, even taking into account all the reactors slated for operation past the turn of the century. Of course, though the waste material is small in size, this material is potentially hazardous and must be isolated from the environment—and it will be. There are several viable options for safely storing the wastes for many decades with little required supervision and for permanently disposing of the material in underground geological formations which have been stable for millions of years.

Myth 5.—"Nuclear power produces plutonium, which is the most deadly substance on earth. If stolen, a few pounds could be used to make a nuclear bomb."

Reality.—Plutonium is a by-product of nuclear power. It is also a vital form of nuclear fuel which can be used to generate additional electric power. Plutonium is not the most hazardous substance on earth, although it certainly is dangerous enough to require that it be handled with very great care.

If it were true, as the antinuclear mythology would have it, that a pound of plutonium could kill 9 billion people and that a speck will cause lung cancer, we should all be dead. Atmospheric testing of nuclear weapons during the past 30 years has put 10,000 pounds of plutonium into the world's atmosphere. There is no evidence that any-

one, worker or member of the public, has ever developed a cancer, let alone died from exposure to plutonium—not one.

Plutonium is cited as the skull and crossbones of nuclear power, while its same critics ignore other lethal realities. A single teaspoon full of botulism toxin could kill about 140 million people. Well, people die every year from botulism, but critics don't call for the shutdown of all home and commercial bottling and canning.

There is now only a relatively small amount of plutonium available in the U.S. from commercial operation of nuclear power plants. That amount will certainly increase, and along with it will increase the stringent safeguards to protect it. Most of it will remain in the safest possible location—inside power reactors where it will generate electricity. All of it will be strictly guarded and protected. Even if some plutonium were somehow diverted, it would take a very sophisticated and well manned operation, and a significant amount of time, to attempt to assemble a weapon. Even then the probability of success would be low.

Even if the United States were to halt its nuclear power industry, other nations would not. The worldwide task is to safeguard nuclear material, not to prevent its existence and use as a valuable energy source which is badly needed.

Myth 6.—"There is less than a 40 year supply of nuclear fuel available. We should abandon nuclear power in favor of renewable energy sources."

Reality.—This is the kind of argument where the critics try to have it both ways. On the one hand, they say there is not enough nuclear fuel and, on the other, they are against using plutonium and developing new reactor systems which would lead to a virtually inexhaustible supply of nuclear fuel.

It is true that today there are limited known reserves of relatively cheap uranium. But the ultimate solution to this problem is plutonium, which is produced as a by-product in today's generation of nuclear power plants. Nuclear fuel is the only fuel which can be recycled. About 20% of all used nuclear fuel can be recovered for reuse to generate electric power. In that respect, nuclear fuel is a renewable energy source. This is largely due to the presence and properties of plutonium, which can also be used in a new generation of reactors.

This new generation of nuclear power reactors is currently being demonstrated in France, England and the Soviet Union, with additional units under construction in Germany and Japan. They are called "breeder reactors." They create useful plutonium fuel from an otherwise useless form of abundant uranium. This new fuel is then used to generate electricity. The breeder reactor improves the efficiency of uranium fuel utilization 60 times over that of current reactors.

The U.S. government and private industry are partners in the construction of the first U.S. demonstration breeder reactor, which will be built in Tennessee. It is to go into operation in the early 1980's. At the same time, the U.S. Nuclear Regulatory Commission is currently conducting a comprehensive study of the implications of using plutonium in today's reactors and the new generation of breeders.

The fuel produced by the breeder reactor will permit the full scale implementation of nuclear power and its continued operation for hundreds of years. While breeder reactors are still being tested, they are not new. In 1951, an experimental breeder reactor in Idaho produced the first electric power from a nuclear reactor. At this very moment, breeder reactors are operating and producing electricity.

Myth 7.—"Nuclear power is uneconomical and unreliable."

Reality.—When analyzing the nuclear debate, this is one of the more curious myths one has to contend with. It relies heavily on the misuse of a dizzying array of statistics; but the carefully constructed house of cards collapses in the face of one unarguable fact: whenever a nuclear power plant goes into operation, electric bills go down.

Many in this audience have enjoyed that pleasant experience. While nuclear power plants are still more expensive to build than oil or coal fired plants they are much less expensive to operate. Because nuclear fuel is so much cheaper, each nuclear plant saves utility customers tens of millions of dollars every year. Nationwide, this savings was $800 million in 1974 and about $200 million in the first 3 months of 1975. While it's true that nuclear plants haven't, on the average, performed as well as we would like, their reliability compares very favorably with other plants. As new nuclear plants pass through their break-in periods, their performance will improve.

Myth 8.—"Nuclear power plants are so risky that insurance companies won't write policies on them."

Reality.—This myth is a perfect example that even when an issue has been beaten into the ground and shown to be untrue, it is never dropped from the litany of arguments against nuclear power. The myth that nuclear plants are too risky to insure has been around for years and years. So too has nuclear insurance, which began in 1957, before the first commercial nuclear power plant ever operated. Every nuclear power reactor in the United States is insured for a total of $735 million, $300 million of which is provided by the insurance industry, the rest by the Federal government. Since there have been no reactor accidents affecting the public, not one cent has ever been paid out under this insurance. Every year, the private insurance pools refund about 70% of the money paid in as premiums by the nuclear utilities, a practice not followed by the federal government, which retains all of the money it receives in insurance fees, about $1.5 million in 1974 alone.

So then these are eight of the more common myths about nuclear power. There are others, and there are facts and realities to rebut them.

NUCLEAR POWER AND OUR ENERGY OPTIONS

As the nuclear power debate swirls throughout the nation, its dusty rhetoric tends to obscure several essential points which constantly need re-emphasis. The most fundamental of these points is that we've run out of energy options for the short-term. We have precious little time to push ahead with the development of the new options we must have to make this nation self-sufficient in energy. The energy clock is ticking away our precious natural fuels. We can't wait until the eleventh hour to have alternative energy sources available. The age of cheap energy is over. The age of something for nothing never was. We will need a mix of energy sources—some that are known and proven, and some that we will have to push ahead with in the hopes that they will pay off.

We must have: extensive and increasing use of coal; enhanced recovery of oil and natural gas; continued use of current nuclear reactors and development of breeder reactors; synthetic fuels from coal and oil shale; development and utilization in the next century of solar energy and thermonuclear fusion for electric power production.

Those of you interested in examining in some detail the approach the government is taking will want to read "Creating Energy Choices for the Future," which is the recently released plan of the Energy Research and Development Administration. It's available from ERDA on request.

Coupled with programs to develop new electric energy sources are complementary efforts to improve the efficiency of existing devices for power generation and utilization. Improving the efficiency of things as diverse as electric power plants and air conditioners will help reduce the amount of energy needed to do the same amount of work. The nation has already demonstrated that it can effectively respond to the need to conserve energy and our designers, manufacturers, architects and regulators are all working towards greater energy conservation.

But, unfortunately, there are limits to what can be gained by conservation. Ralph Nader notwithstanding, there is no practical way to substitute conservation measures for the need for new electric generating capacity.

THE DELICATE ECOLOGY OF ENERGY

Now, with the mythology behind us, I'd like to switch themes and play an old game I'm sure you know: the "What If?" Game.

There's an old saying, "Be careful what you wish for, because you just might get it!" That's an apt admonition for those striving to drastically postpone or eliminate nuclear power as one of our available energy options. Let's take a look at what might happen if their wish were granted.

"America Abandons the Atom," the headlines would read. The Nuclear Regulatory Commission receives order to issue no more construction permits or operating licenses. Procedures are developed for the gradual phaseout, over a five-year period, of the nation's operating nuclear power plants (which in some regions now supply as much as 20 to 30 percent of all electric power). The stop order affects about 240 nuclear power plants in various stages of operation, construction and preparation. At a conservative $500 million per plant, over $120 billion is pulled out of the economy.

The impact on the labor force wipes out about 5½ million jobs. The multiplier effect of the lost income spreads the impact throughout the entire economy. The lost dollar flow is felt throughout the thousands of companies producing equipment for these plants and the thousands more that will lose business from the new unemployed. The welfare rolls swell. Taxes inexorably rise so that the welfare payments can be met. Investment expenditures are sharply cut back by those companies that survive; for many, no such decision is needed—they simply go under. In New England, New York, Illinois and elsewhere, electricity rationing begins, with rolling blackouts and constant brownouts.

One of the hardest hit areas is environmental protection. With nuclear power plants foreclosed as an energy alternative, utilities desperately turn to coal-fired stations. Anti-pollution laws are suspended to meet the national emergency. Massive strip and deep mining is necessary to supply the vast amounts of coal required. But there is not enough mining equipment and the nation's railroads are simply unable to transport the fuel in the quantities required. Airlifts are undertaken around the clock. Utility expenses skyrocket; electric rates inflate to the point where they overwhelm the ability to pay; and as more people are unable to pay their electric bills, the utilities are deprived of vital income and begin to go bankrupt, one by one.

Through it all, of course, the American people remain stalwart and optimistic, as they always do in times of stress. They recognize that nuclear power has been eliminated for their own good. Those who can, cheerfully pay the higher taxes needed to support the millions thrown on welfare. The blackouts are stoically accepted as a small price to pay for the increased safety and security offered by a nuclear-free United States.

U.S. oil imports steadily escalate. U.S. expenditures on oil jump from $26 billion to more than $100 billion. A tense confrontation with the OPEC ministers produces an agreement that they will limit their price increases to only 30% per year, and they agree to reinvest a portion of that in American corporations, which they suddenly begin to control.

The curtailment of such a large block of electrical power affects the processing of raw materials essential for the development of alternative energy sources. The recycling of materials also becomes too expensive to pursue. Aluminum manufacturers, intensive users of electric power, begin to close their facilities. The newly emerging solar power industry is halted by the staggering energy cost increases and the lack of raw materials. The nation's forests are felled to provide supplemental fuel for boilers and homes. As the impact of increased energy costs continues to grow, the cost of every manufactured item and all services steadily escalate. Inflation rises so fast people begin to barter things instead of carrying sacks of money.

Desperate schemes surface to cope with the emergency. One government scientist calculates the energy potential of a human worker. Since the average large nuclear power plant would have produced 1000 megawatts of electric power, his calculations show that the same energy equivalent could be provided by about 20 million laborers, working to full capacity. He advocates the establishment of regional treadmills to generate electricity, while helping to solve the unemployment problem. A committee is appointed to study the feasibility of the project.

While all of this is happening, Americans look at the rest of the world and are puzzled. Other countries relying more and more heavily on nuclear power flourish, they are experiencing no comparable health, social or economic problems.

If a lot of this sounds extreme, frankly, I agree. But make no mistake. There is more than an element of truth in the stark forecast I've just portrayed. There simply is no feasible energy alternative to nuclear power that we can develop in the next 10 to 15 years, regardless of how much money we spend.

Nuclear must stay in our energy base and its use must grow. Nuclear must also be steadily supplemented by new energy sources, whose very development and implementation will require vast amounts of raw materials, energy and a stable economy in order to secure the very large capital investments which will be called for.

The elimination of the nuclear option would be a disaster whose impact can hardly be conceived, let alone be calculated.

It is too often overlooked that, in addition to the ecology of nature, we've increasingly come to understand there is also a delicate ecology of energy. Once a significant segment of that energy ecology is disturbed, tremors spread throughout the entire economic and social environment, with serious and often irreversible impact.

The prudent course of action seems self-evident—conserve wherever possible, increase efficiency, eliminate waste, but still provide the electric energy needed to maintain an appropriate level of growth. Nuclear power is essential to these goals.

PUBLIC ATTITUDES

Those for and against nuclear power have candidly acknowledged that they are deeply involved in a struggle to capture public opinion. Ralph Nader says that, if they knew the dangers, the American people would prefer candles to nuclear power. Yesterday, the results of a nationwide public opinion poll conducted by the Louis Harris organization were released. It tells another story. This poll specifically explored the public's attitudes toward nuclear power.

According to the survey, the American people are strongly in favor of building more nuclear power plants. 63% endorsed nuclear power, while 19% were opposed and 18% were not sure.

Those in favor of nuclear power indicated that while they were aware of some problems and drawbacks involved in using it, they endorsed nuclear because they felt:

It will help to solve the problems of the energy crisis and dwindling fossil fuels

It is less expensive

It is the energy source of the future

It is clean and non-polluting

It will make the U.S. independent of foreign energy suppliers, and

There is an unlimited supply.

Those surveyed put scientists at the top of their list of credible sources of information on nuclear power. Last January, an important "Energy Manifesto" was issued by 32 prominent U.S. scientists, including 11 Nobel Prize winners. They expressed their confidence in nuclear power and urged that nuclear, along with coal, be utilized to the maximum, to come to grips with our immediate energy needs. Unfortunately, their statement received relatively little publicity.

Since then, it has become evident that the opponents of nuclear power are also seeking to enlist scientists to counter the overwhelming support of nuclear power by scientists worldwide. A drive is now underway to produce a petition linking scientist opposition to the peaceful use of nuclear power, with the anniversary of the Hiroshima bomb.

I wonder if they have read that the first recorded use of solar power was attributed to Archimedes, who used mirrored reflectors to set fire to an attacking fleet of Roman ships in the Battle of Syracuse. That was in 200 B.C. And obviously, this historical fact is irrelevant to the suitability or feasibility of developing solar power, just as the fact that nuclear weapons were the first major use of uranium and plutonium is irrelevant to the peaceful uses of nuclear power.

I know that the matter of whom to believe is becoming a very difficult and frustrating problem for you and the rest of the public who are being asked to take sides in the nuclear controversy.

There are those who choose to measure progress by its moments of darkness and terror. And, there are those who invariably measure the same moments of history by developments which bring light and promise. It was the same when the primitives discovered fire. Some saw the flames and feared death. Others felt the warmth and knew that it could be useful.

Today, there are those who would mark nuclear energy by the date it was first used as a weapon. Others mark it by the day it first produced electric power to light and warm homes.

You, each and every one of you, must make the same decision each generation before us has had to make, and each one after us will have to make. That decision is whether to side with fear and misgivings or to press forward with our collective talents to shape these promising technologies to our needs. Nuclear power is not a promise of the future. It is a reality of today.

As a nuclear engineer who has devoted his professional life to the task, I am convinced that nuclear power is feasible, is safe and is absolutely necessary. If we choose to stop its further use, we will be on an escalator taking us steadily backward. If we move forward, nuclear power will help clear the way to energy independence and stability. These are the stakes, and these are the choices.

Mr. DOLE. Mr. President, I rise to support S. 2568, the bill now before us. This commendable measure will eliminate the role of the Federal Government as an indemnitor of nuclear powerplants in gradual steps over a 10-year period. Moreover, it will significantly increase the financial protection to the public, in the highly unlikely event of a serious nuclear accident, by raising the liability ceiling as more plants come into operation. These worthy goals are accomplished gradually, and on a timetable that the nuclear industry can live with.

Mr. GRAVEL has offered an amendment that would entirely abolish the legal liability limit on individual nuclear plants, which is now set at $560 million. I fully share Mr. GRAVEL'S concern for the indemnity rights of potential victims of nuclear accidents. Nevertheless, I oppose this amendment for several reasons.

In the first instance, this amendment would subject nuclear utilities and their suppliers and designers to unacceptable financial exposure at a time when they can least afford it. S. 2568 already provides for a phaseout of the liability limitation—but at a gradual and orderly pace.

Immediate abolition of the liability limit may discourage investment capital—which is already scarce, and prevent smaller utilities from building nuclear plants. It may also precipitate the withdrawal of essential architect—engineers and component suppliers whose potential profit from nuclear related business does not warrant placing all of their assets at risk. Finally, the Gravel amendment ignores the fact that the liability limit is balanced by a "no-fault" provision, which allows potential victims to recover losses without long and costly litigation. Both aspects should be considered together. It is unfair to abolish one without the other.

In sum, I fear that the Gravel amendment, offered with the best of intentions, would have the unfortunate effect of seriously jeopardizing the future health of the vital nuclear industry. Nuclear powerplants now account for approximately 8 percent of national electric capacity. Given the shrinking supplies and rising costs of oil, nuclear power remains the only viable alternative to coal generated electrity. The industry must not be jeopardized by the well-intentioned, but precipitous action of this House.

Mr. MONTOYA. Mr. President, I support S. 2568, a bill which would provide for the phaseout of governmental indemnity in the unlikely event of a very serious nuclear accident and which would continue the financial protection provided by the act until 1987.

The Price-Anderson system has been in effect now for more than 18 years. During that time, the system has served well its dual purpose of providing financial protection to the public and of eliminating a potential deterrent to the establishment of a nuclear industry.

For as long as the Price-Anderson system has been in existence, the public has been absolutely assured that if a catastrophic nuclear accident were ever to occur, there would be a substantial sum of money available immediately to swiftly compensate the victims with a minimum of administrative and/or legal

redtape. Moreover, this assurance of financial protection for claims arising in the commercial nuclear industry has been provided at no cost to the Federal Government whatsoever.

Yet, there are those who persist in arguing that the Price-Anderson system represents some kind of special subsidy to the nuclear industry. That argument should be rejected for the following reasons:

First. First of all it should be understood that the Price-Anderson Act is not a substitute for the maximum amount of liability insurance which would be underwritten by the private insurance industry. The Price-Anderson Act does not impede the development of or in any way act as a substitute for the insurance which can be provided wholly from the resources of the private insurance industry. Utilities are required by the act to purchase the maximum amount of insurance available, for which they pay substantial premiums averaging around $20 million or more per year.

Second. The utilities' investment in the reactor, some one-half to three-fourths of a billion dollars, is not covered by the Price-Anderson insurance system but is covered only by property insurance underwritten by the private insurance industries. At the present time, $175 million of insurance is provided for each reactor site—a fraction of the total value of the plant—and each utility pays up to $2 million per year in premiums for this protection.

Third. The Government indemnity which is provided under the present Price-Anderson Act is needed simply because the amount of liability insurance from the private insurance industry is not sufficient to provide the amount of coverage up to the limitation of liability level. This indemnity is provided by the Government at an annual fee. It bears repeating that over the years not one cent of money has ever been paid from the Federal Treasury for claims arising in the commercial nuclear industry. At the same time, the Government has collected and brought into the U.S. Treasury over $10½ million in indemnity fees.

Fourth. Even without the Price-Anderson system, the private insurance industry would not provide any additional amount of liability insurance. In view of the foregoing, Price-Anderson does not constitute a subsidy in any commonly accepted sense of that term. It could be properly viewed as a subsidy only by those who do not agree with either or both of its two objectives: public protection and giving assurance to those who are engaged in the nuclear energy industry that their assets would not be completely wiped out by unlimited liability in the highly unlikely event of a catastrophic accident having consequences of great magnitude. In this regard, the following excerpt from the Joint Committee on Atomic Energy's report—House Report 883, August 26, 1975, at page 8—on the bill which extended the Price-Anderson Act to its present expiration date is pertinent:

"Although the committee regards the Price-Anderson legislation as a necessary building block for a healthy, progressive nuclear industry, the committee does not consider the legislation to be a subsidy for that industry, as this term is commonly understood. To date, no Government money has ever been expended under a Price-Anderson indemnity agreement with an AEC licensee. The costs of administration of this program have been nominal, and have been more than repaid through indemnity fees paid by AEC licensees. In fact through June 30, 1965, the AEC has already received almost $343,000 in indemnity fees and these fees are expected to increase substantially in the future." This legislation is also consistent with the basic principles underlying other Federal programs such as, for example, reclamation projects and improvement of the inland waterways of our Nation. In determining the value of these programs, the costs to the Federal Government of the improvements must be measured against the savings to the American people which the improvements must produce. As has already been stated, the savings to the American taxpayer resulting from the nuclear power program have been estimated at $1 billion per year, and the Price-Anderson indemnity legislation has thus far cost the Government nothing. It is true that the Government's indemnity is valuable and is provided at a charge which is presumably much lower than the charge which would be assessed for "commercial" insurance if such insurance were available. However, the fundamental reason why the indemnity is necessary is that there is yet not enough experience on which to base a firm judgment on the likelihood of the indemnity ever being utilized. Expert opinion holds this indemnity almost certainly will never be utilized. If this opinion eventually is proven correct, then there surely is no Government subsidy involved here, and in fact power reactor operators would have been paying for protection above that which is necessary.

Moreover, the basic financial protection for which these reactor operators are paying—nuclear liability insurance—involves no Government subsidy. Under the Price-Anderson Act, operators of large power reactors must carry the maximum amount of such insurance from private sources. The premiums for this insurance are currently much higher than for conventional liability insurance. For example, according to testimony presented to the committee the annual liability insurance premiums plus indemnity fee for a 450,000-electrical kilowatt nuclear plant amount to over $361,000, versus about $6,500 for a conventional plant of the same capacity, without taking into consideration the partial refund of premiums for nuclear liability insurance which is expected to be made under the nuclear insurance pool's industry credit rating plant.

Fifth. Even if the Price-Anderson Act were viewed as some kind of subsidy for the nuclear energy industry, it does not follow that it should be abandoned. As in the case of any legislation which either does or could involve the expenditure of Government funds, the benefits of the legislation have to be considered along with the cost to the American public. As has been stated, to date no Government money has ever been spent under a Price-Anderson indemnity agreement with an AEC licensee. Over $10 million has been received by the U.S. Treasury. On the other hand, at the same time, the American public has been assured that in the event a catastrophic accident does occur, their interests would be protected by the Price-Anderson system which assures a readily available source of funds and arrangements for the prompt payment of legitimate public liability claims. Moreover, those who are involved in the nuclear energy industry, including anyone involved in the construction of the nuclear plant, the suppliers of materials for that plant and the banks which finance a large part of the money needed to construct the plant, would be assured that they would not be forced into bankruptcy in the event of a catastrophic nuclear accident.

Sixth. Finally, I want to stress that one of the principal purposes of the bill now before the Senate is to phase out the need for governmental indemnity of licensees in the commercial nuclear power industry. The bill provides for the gradual replacement of governmental indemnity by a workable system of self insurance on the part of the electric utility companies. Through this orderly phaseout of governmental indemnity, private industry will gradually assume full responsibility for providing the compensation required under the act and the dual purpose of the Price-Anderson system will continue to be met. I urge passage of the bill as reported.

Mr. HATHAWAY. Mr. President, after careful consideration of the debate today and weighing the arguments regarding this act over the past several weeks, I have concluded that I am going to vote against this 10-year extension of Price-Anderson. My reasons for this are several. First, the most convincing argument I have heard in support of an extension is that without it, several smaller companies and utilities might decide to forego involvement in the nuclear industry. Industry spokesmen agree that the large companies, having made a large investment in the nuclear field, are going to continue regardless of the fate of Price-Anderson.

They would, of course, prefer an extension for it is clearly beneficial to them, both through the existing indemnity and the liability limitation. But the act is not necessary to insure continued nuclear development.

The act. however, subsidizes the entire industry, from the smallest valve manufacturer to the largest; it is not finely drawn to meet possibly legitimate needs of smaller companies and utilities. It seems to me if that is indeed the problem, then a much more sophisticated approach than a blanket subsidy could be devised to insure that smaller companies can continue to participate in the industry.

This subsidy to nuclear power additionally makes valid comparisons with the costs of alternative sources of energy more difficult. It stacks the deck, so to speak, in favor of nuclear, and at the expense of solar, tidal, hydroelectric, wind and all the other alternatives which might be more economically competitive if this subsidy to nuclear were ended. If ending the subsidy would not, as many in the industry agree, increase the price of nuclear power, then at least we would have a realistic basis for evaluating the existing technologies and developing more rational energy priorities.

I am not opposed to safe nuclear development, per se. Rather, I have become convinced that this particular form of subsidy—a subsidy which is really at the expense of the members of the public

who may be injured by a nuclear accident—is inappropriate. The industry largely admits that they do not need Price-Anderson in order to continue, the Rasmussen report confirms this, and the public does not need Price-Anderson.

Finally many amendments have been offered on the floor which I feel would have improved the act. But they have not prevailed, including my own which would have permitted rapid adjudication as to the constitutionality of the liability limitation. Such a determination, prior to the time of any major accident, would protect the industry really more than the public; such suits will surely follow rapidly on the heels of any accident. Even without the amendment, however, I hope of course that the courts will in fact, make a decision on the merits as to the validity of these provisions prior to the time when many people may have suffered irreparable harm. If we wait for such a decision until after an accident, then we may find to our dismay that we have not succeeded in protecting anyone at all.

My doubts about the adequacy and constitutionality of this liability limitation, the unnecessary blanket subsidy which the act continues for all of the industry, and the difficulty this type of hidden subsidy presents for making rational energy choices have led me to decide finally to vote against this 10-year extension.

Mr. PASTORE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 504, H.R. 8631.

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

The legislative clerk read as follows:

An act (H.R. 8631) to amend the Atomic Energy Act of 1954, as amended, to provide for the phaseout of governmental indemnity as a source of funds for public remuneration in the event of a nuclear incident, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

Mr. PASTORE. I move that all after the enacting clause of H.R. 8631 be stricken, and that the text of S. 2568, as amended, be substituted therefor.

The motion was agreed to.

Mr. PASTORE. I ask for the yeas and nays on passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. PASTORE. I now yield to the Senator from California.

Mr. TUNNEY. I thank the distinguished chairman of the Joint Committee for yielding. I shall take only about a minute and a half of the Senate's time.

Mr. President, I shall vote against the extension of the Price-Anderson Act, though not because I oppose atomic energy. I think we are going to need atomic energy between now and the end of this century. I think if we are going to supply our industries and our homes in this country with adequate electricity, some atomic component will be needed.

My views on that subject are fully presented in the report of the Joint Committee on Atomic Energy accompanying S. 2658, and I shall summarize them now.

The question before the Senate is simple. It is not a matter of insuring energy independence.

It is not a matter of extending routine benefits to a fledgling nuclear industry.

It is not a question of whether the Price-Anderson Act shall be phased out over the next 12 years.

The essential question is simply this: Whether the Senate will take another step toward making the extraordinary provisions of the Price-Anderson Act virtually a permanent part of our national energy policy.

As we all know, the 1957 passage of the act was accompanied by assurances that its protections were purely temporary, a response to "roadblocks" to the development of nuclear power in the private sector.

The creation of limitations on liability and massive Federal indemnity provisions was designed to give the fledgling nuclear industry time to establish a track record of safety and time to grow into an economically potent entity which could assume its own risks.

In 1965, when the Congress extended the act for another 10 years to August 1977, we were told that private operating experience was insufficient to enable us to put the burden of insuring nuclear power where it belonged, on the producers and users of that power. However, the Congress again expressed the hope that Price-Anderson could be allowed to expire at the end of its 20-year life span.

Again we are debating whether to extend this law. We are told that we will now phase out the governmental indemnity provisions through an ingenious system of "retrospective premiums." But we are not going to phase out guarantees which could make the Government liable for utilities' failures to pay those premiums. We are not going to phase out the provisions which leave the Congress of the United States morally responsible to victims of a catastrophic accident.

I say that enough is enough. The time has come to end Price-Anderson. We have fulfilled the original intent of the act. We have both a theoretical and operational basis for private insurance. Let us end the artificial subsidies to utilities, and to those who manufacture nuclear facilities, and let them do business as other enterprises do.

Our mammoth institutions of insurance are adequate to insure nuclear enterprise. A multimillion dollar report commissioned by the Atomic Energy Commission and the National Regulatory Commission and supervised by Dr. Norman Rasmussen, maintains that the theoretical chance of a major reactor accident is minimal. The chance of a serious reactor accident, according to the report, is about one in 10 million in any given year. Of course, regardless of theoretical calculations, major accidents involving nuclear reactors could happen.

Consequences could be severe. Even the Rasmussen report acknowledges that damages from a reactor accident could reach $14 billion. Others have estimated ing from $17 billion to $280 billion.

If that maximum credible accident does occur, we know what will happen if Price-Anderson is extended. First and foremost, the victims of such an accident will only be able to recover up to the liability limitations. If damages reached $14 billion, that means that each victim would recover 4 cents of each dollar of damages. As the debate on the Gravel amendment has made clear, that is simply not acceptable, at least not to me. The preservation of liability limitations, the placing of the burden of risk on victims, runs counter to every fundamental principle of fair play of our society.

Second, such an accident would mean that the Federal Government would be left holding the bag for liability in excess of private coverage. Until the total of private coverage including retrospective premiums, reaches $560 million, the Federal Government would be obligated to indemnify the victims in amounts of up to $325 million. In any case, the Government would be guarantor of the payment of retrospective premiums. More importantly, the Congress would be the agency charged with the responsibility for reimbursing victims of a catastrophe.

This means that the big guys—the utilities, the plant manufacturers—have it both ways. They get their liabilities limited, and they get the Federal Government to pick up the tab for the lion's share of damages from a major accident. The little guys—the victims and their families, the taxpayers of the United States—get socked in the neck with the bill.

Fundamentally, that is what I object to about Price-Anderson. It protects the people who need protection the least, and denies protection to those who need it the most. Without Price-Anderson, the public will be protected as it is ordinarily—by the full legal liability of nuclear operators for damages caused by their activities. That is why this bill should be defeated.

We hear a lot about the American free enterprise system in the Congress. I believe in that system, as I am sure everyone in this Chamber does. If there was ever an issue before the Congress which raised fundamental issues of free enterprise in their starkest terms, it is this one.

On the one hand, we have the basic goal of the economic system under which we live—to let the private sector provide services for a profit, and in doing so, to bear the costs of doing business. The most fundamental tenet of venture capitalism is that the person who puts up the money for an enterprise, the person who reaps the benefits of an economic activity, should also be prepared to accept the liability for his actions.

On the other hand, diametrically and unalterably opposed to that concept, we have the Price-Anderson Act. It does fundamental violence to the principles of our legal, economic, and social system, and it should not be renewed for that reason, if no other.

Let me make one thing clear. I do not oppose the development of the nuclear power industry in this country. I believe we may have to rely on nuclear power to

provide us adequate energy for the foreseeable future. And I believe that the safety record of the past two decades shows that the risks associated with nuclear power can be minimized.

What I do object to is the maintenance of a piece of legislation that symbolizes the worst in corporate welfarism, a desire to take the profits without taking the risks. It represents one further chapter in the all-too-familiar story of an alliance between big government and the big companies, an alliance which advances the interests of the private sector at the expense of the public. That is intolerable to me, and I see Price-Anderson as one of its most objectionable manifestations. It is not the free enterprise system.

Accordingly, I shall vote against extension of Price-Anderson by opposing adoption of the pending legislation, and I urge my Senate colleagues to do the same.

Mr. PASTORE. Mr. President, I am going to take only 2 minutes, because I have said this perhaps 5 or 10 times before, when some Senators were busy with other chores.

The utilities are buying $125 million worth of insurance. They have been paying the premiums on it, and the Government has been involved to the tune of $435 million.

The purpose and thrust of this bill is to get the Government out of the business. For that reason, as a new reactor comes on the line, an adjustment is made, which will eventually eat up the $435 million and go beyond the ceiling of $560 million.

The reason why this system was instituted in the beginning, in 1957, was to encourage utilities to get into the business of commercial nuclear power. While we see the time is coming when the Government should get out, if we do it abruptly, we will break this whole industry apart. That is what we are trying to avoid, and that is the reason why the committee reported this bill.

Mr. BAKER. Mr. President, will the Senator yield for 1 minute?

Mr. PASTORE. I yield.

Mr. BAKER. Before we proceed to final passage of this bill, I think we have dealt in a responsible way with an emotional subject. I think we have dealt responsibly with a variety of amendments. The debate has been meaningful and significant, and I think the passage of this measure will mark a crossroads toward further development of nuclear power. I think it will result in rededicating this country to the development of new sources of energy, not the least of which is nuclear power.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER (Mr. PERCY). The bill having been read the third time, the question, Shall it pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Arkansas (Mr. BUMPERS), the Senator from Idaho (Mr. CHURCH), and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

I also announce that the Senator from Alabama (Mr. ALLEN) and the Senator from Connecticut (Mr. RIBICOFF) are absent because of illness.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Connecticut (Mr. RIBICOFF) would each vote "yea."

The result was announced—yeas 76 nays 18, as follows:

[Rollcall Vote No. 600 Leg.]

YEAS—76

Baker	Goldwater	Muskie
Bartlett	Griffin	Nunn
Beall	Hansen	Packwood
Bellmon	Hatfield	Pastore
Bentsen	Helms	Pearson
Biden	Hollings	Pell
Brock	Hruska	Percy
Brooke	Huddleston	Randolph
Buckley	Humphrey	Roth
Burdick	Inouye	Schweiker
Byrd, Harry F., Jr.	Jackson	Scott, Hugh
	Javits	Sparkman
Cannon	Johnston	Stafford
Case	Laxalt	Stennis
Chiles	Long	Stevens
Culver	Magnuson	Stevenson
Curtis	Mansfield	Stone
Dole	Mathias	Symington
Domenici	McClellan	Taft
Eagleton	McClure	Talmadge
Eastland	McGee	Thurmond
Fannin	Metcalf	Tower
Fong	Mondale	Weicker
Ford	Montoya	Williams
Garn	Morgan	Young
Glenn	Moss	

NAYS—18

Abourezk	Hart, Philip A.	Nelson
Byrd, Robert C.	Hartke	Proxmire
Clark	Haskell	Scott, William L.
Cranston	Hathaway	
Durkin	Leahy	Tunney
Gravel	McGovern	
Hart, Gary	McIntyre	

NOT VOTING—6

Allen	Bumpers	Kennedy
Bayh	Church	Ribicoff

Mr. CLARK subsequently said: Mr. President, on final passage of the Price-Anderson bill, I inadvertently voted "aye." I ask unanimous consent that the record on the vote be changed to show that I voted "nay." It will not change the outcome. I ask unanimous consent that it be placed in the RECORD after the vote rather than in interruption of this colloquy.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none. Without objection, it is so ordered.

(The foregoing tally reflects the above order.)

So the bill (H.R. 8631), as amended, was passed, as follows:

H.R. 8631

Strike out all after the enacting clause and insert:

That section 11 of the Atomic Energy Act of 1954, as amended, is amended by amending subsections q. and t. to read as follows:

"q. The term 'nuclear incident' means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided however*, That as the term is used in subsection 170 l, it shall include any such occurrence outside the United States: *And provided further*, That as the term is used in subsection 170 d., it shall include any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material owned by, and used by or under contract with, the United States: *And provided further*, That as the term is used in subsection 170 c., it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to chapters 6, 7, 8, and 10 of this Act, which is used in connection with the operation of licensed stationary production or utilization facility or which moves outside the territorial limits of the United States in transit from one person licensed by the Commission to another person licensed by the Commission.

"t. The term 'person indemnified' means (1) with respect to a nuclear incident occurring within the United States or outside the United States as the term is used in subsection 170 c., and with respect to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person who may be liable for public liability or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Commission or any project to which indemnification under the provisions of subsection 170 d. has been extended or under any subcontract, purchase order, or other agreement, of any tier, under any such contract or project.".

SEC. 2. Subsection 170 a. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"a. Each license issued under section 103 or 104 and each construction permit issued under section 185 shall, and each license issued under section 53, 63, or 81 may, for the public purposes cited in subsection 2 i. of the Atomic Energy Act of 1954, as amended, have as a condition of the license a requirement that the licensee have and maintain financial protection of such type and in such amounts as the Commission in the exercise of its licensing and regulatory authority and responsibility shall require in accordance with subsection 170 b. to cover public liability claims. Whenever such financial protection is required, it may be a further condition of the license that the licensee execute and maintain an indemnification agreement in accordance with subsection 170 c. The Commission may require, as a further condition of issuing a license, that an applicant waive any immunity from public liability conferred by Federal or State law.".

SEC. 3. Subsection 170 b. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"b. The amount of financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such

factors as the following: (1) the cost and terms of private insurance, (2) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (3) the nature and purpose of the licensed activity: *Provided*, That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources. Such financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such measures and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. In prescribing such terms and conditions for licensees required to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources, the Commission shall, by rule initially prescribed not later than twelve months from the date of enactment of this Act, include in, in determining such maximum amount, private liability insurance available under an industry retrospect rating plan providing for premium charges deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident: *Provided*, That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such financial protection: *And provided further*, That the standard deferred premium which may be charged following any nuclear incident under such a plan shall be not less than $2,000,000 nor more than $5,000,000 for each facility required to maintain the maximum amount of financial protection: *And provided further*, That the amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and costs arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission. The Commission is authorized to establish a maximum amount which the aggregate deferred premiums charged for each facility within one calendar year may not exceed. The Commission may establish amounts less than the standard premium for individual facilities taking into account such factors as the facility's size, location, and other factors pertaining to the hazard. The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums in the event it appears that the amount of such premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection including without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee to secure such reimbursement and consent to the automatic revocation of any license.".

SEC. 4. (a) Subsection 170 c. of the Atomic Energy Act of 1954, as amended, is amended by deleting the phrase "and August 1, 1977, for which it requires financial protection," in the first sentence and substituting therefor the phrase "and August 1, 1987, for which it requires financial protection of less than $560,000,000," and by deleting the date "August 1, 1977" in the last sentence wherever it appears and substituting therefor the date "August 1, 1987".

(b) Such subsection is further amended by striking "including the reasonable" and inserting in lieu thereof "excluding".

SEC. 5. (a) Subsection 170 d. of the Atomic Energy Act of 1954, as amended, is amended by deleting the phrase "until August 1, 1977," in the first sentence and substituting therefor the phrase "until August 1, 1987,".

(b) Such subsection is further amended by striking "including the reasonable" and inserting in lieu thereof "excluding".

SEC. 6. Subsection 170 e. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"e. The aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed (1) the sum of $500,000,000 together with the amount of financial protection required of the licensee or contractor or (2) if the amount of financial protection required of the licensee exceeds $60,000,000, such aggregate liability shall not exceed the sum of $560,000,000 or the amount of financial protection required of the licensee, whichever amount is greater: *Provided*, That in the event of a nuclear incident involving damages in excess of that amount of aggregate liability, the Congress will thoroughly review the particular incident and will take whatever action is deemed necessary and appropriate to protect the public from the consequences of a disaster of such magnitude: *And provided further*, That with respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection 170 d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000 together with the amount of financial protection required of the contractor.".

SEC. 7. Subsection 170 f. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"f. The Commission is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee shall be $30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 103: *Provided*, That the Commission is authorized to reduce the fee for such facilities in reasonable relation to increases in financial protection required above a level of $60,000,000. For facilities licensed under section 104, and for construction permits under section 185, the Commission is authorized to reduce the fee set forth above. The Commission shall establish criteria in writing for determination of the fee for facilities under section 104, taking into consideration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility. For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than $100 per year.".

SEC. 8. The last sentence of subsection 170 h. of the Atomic Energy Act of 1954, as amended, is amended by striking "may include reasonable" and inserting in lieu thereof "shall not include".

SEC. 9. Subsection 170 i. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"i. After any nuclear incident which will probably require payments by the United States under this section or which will probably result in public liability claims in excess of $560,000,000, the Commission shall make a survey of the causes and extent of damage which shall forthwith be reported to the Joint Committee, to the Congressmen of the affected districts, and to the Senators of the affected States, and, except for information which would cause serious damage to the national defense of the United States, all final findings shall be made available to the public, to the parties involved and to the courts. The Commission shall report to the Joint Committee by April 1, 1958, and every year thereafter on the operations under this section.".

SEC. 10. (a) Subsection 170 k. of the Atomic Energy Act of 1954, as amended, is amended by deleting the date "August 1, 1977" wherever it appears and substituting therefor the date "August 1, 1987".

(b) Paragraph (1) of such subsection is amended by striking "including the reasonable" and inserting in lieu thereof "excluding".

SEC. 11. Subsection 170 l. of the Atomic Energy Act of 1954, as amended, is amended by striking "including the reasonable" and inserting in lieu thereof "excluding".

SEC. 12. Section 170 n. (1) (iii) of the Atomic Energy Act of 1954 is amended by striking "ten years" and inserting in lieu thereof "twenty years".

SEC. 13. Subsection 170 o. of the Atomic Energy Act of 1954, as amended, is amended by adding at the end of the second sentence in subparagraph (3) the words "and shall include establishment of priorities between claimants and classes of claims, as necessary to insure the most equitable allocation of available funds.", and by adding a new subparagraph (4) to read as follows:

"(4) the Commission shall, within ninety days after a court shall have made such determination, deliver to the Joint Committee a supplement to the report prepared in accordance with subsection 170 i. of this Act setting forth the estimated requirements for full compensation and relief of all claimants, and recommendations as to the relief to be provided.".

SEC. 14. Section 170 of the Atomic Energy Act of 1954, as amended, is amended by adding subsection p., to read as follows:

"p. The Commission shall submit to the Congress by August 1, 1938, a detailed report concerning the need for continuation or modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.".

Mr. PASTORE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD obtained the floor.

Mr. PASTORE. Mr. President, will the Senator yield so that I can complete this?

Mr. HATFIELD. I yield, with the understanding that I will not lose my right to the floor.

Mr. PASTORE. Mr. President, I ask that S. 2568 be indefinitely postponed.

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

Mr. PASTORE. I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of Senate amendments to H.R. 8631.

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

Mr. PASTORE. Mr. President, I compliment my counterpart, the Senator from Tennessee (Mr. BAKER) for his fine cooperation.

Also, I commend the members of the staff—George Murphy, James Graham, James Asselstine, and William Parler—for the fine work they have done.

ORDER OF BUSINESS

Mr. HATFIELD. Mr. President, now that I have obtained the floor, I should like to make a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HATFIELD. First of all, Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. Nothing is pending before the Senate at the moment. Therefore, technically, speeches are not in order, either.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield to me for a unanimous-consent request?

Mr. HATFIELD. I yield, without losing my right to the floor.

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator from North Dakota for the purpose of his calling up a bill on the Consent Calendar, without the Senator losing his right to the floor.

DICKINSON DAM MODIFICATION, DICKINSON UNIT, PICK-SLOAN MISSOURI BASIN, N. DAK.

Mr. BURDICK, Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 533.

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

The legislative clerk read as follows:

A bill (S. 2089) to authorize modifications to Dickinson Dam, Dickinson Unit, Pick-Sloan Missouri Basin program, North Dakota, and for other purposes.

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

There being no objection, the Senate proceeded to consider the bill.

Mr. BURDICK. Mr. President, S. 2089 would authorize the construction of bascule gates on the existing Dickinson Dam. This would supply an additional 900 acre-feet of municipal water to help meet the city's needs. This portion of the project will cost approximately $840,000, according to recent Bureau of Reclamation estimates. If S. 2089 is promptly passed and if funds are appropriated for the work, the city of Dickinson will be able to meet its water supply needs only for the next 10 years or so. As vital as this project is, it is only a partial solution.

The long-range solution to the city's needs is dependent, to some extent, upon the findings of the feasibility investigation of the proposed Versippi project. But, whatever the long-range solution, it will surely be an extraordinarily expensive one. Therefore, it is imperative the cost to the city of the project, to be authorized by S. 2089 be minimized. Accordingly, the language of S. 2089 provides that the city not be required to assume the costs attributable to a safety of dams component recommended by the Bureau to be undertaken at the same time as the bascule gates are installed.

This safety component involves an auxiliary spillway that will cost nearly $3 million. The municipal water supply benefits attributable to the vastly enlarged spillway are minimal.

I urge the passage of the bill.

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

S. 2089

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is authorized to modify the spillway of Dickinson Dam on the Heart River in the State of North Dakota, to increase conservation storage by installing gates on the existing spillway. The Secretary is also authorized to construct a new spillway to assure the safety of Dickinson Dam from floods currently estimated to be capable of occurrence.

SEC. 2. The Secretary is authorized to enter into an amendatory repayment contract with the city of Dickinson, North Dakota, to accomplish the repayment of that portion of the cost of the work authorized herein properly allocable to municipal and industrial water supplies in not to exceed forty years from completion of construction: *Provided,* That the total cost of the new spillway and related works incurred for the safety of the structure shall be nonreimbursable and nonreturnable.

SEC. 3. The interest rate used for purposes of computing interest during construction and interest on the unpaid balance of the capital costs allocated to interest-bearing features of the works authorized herein shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due nor callable for redemption for fifteen years from date of issue.

SEC. 4. There is hereby authorized to be appropriated for construction of works authorized herein the sum of $4,000,000 (January 1975 price levels) plus or minus such amounts as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved herein.

Mr. YOUNG. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. JACKSON addressed the Chair.

Mr. HATFIELD. I have the floor.

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

Mr. HATFIELD. For what purpose?

Mr. JACKSON. For the purpose of calling up a conference report.

Mr. HATFIELD. Mr. President, I am sorry that I cannot yield.

Mr. ROBERT C. BYRD. Mr. President, there has to be some measure before the Senate or the Senator would be out of order. There has to be some business before the Senate before the Senator can proceed.

The PRESIDING OFFICER. The Senator from West Virginia is correct.

Mr. HATFIELD. Mr. President——

Mr. JACKSON. Mr. President——

Mr. HATFIELD. Mr. President, since I have the floor——

The PRESIDING OFFICER. The Senator from Oregon has the floor.

MOTION TO RECESS

Mr. HATFIELD. I move that we recess.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. HATFIELD. Mr. President, is the motion debatable?

The PRESIDING OFFICER. Is there a sufficient second?

Mr. MANSFIELD. Call the roll.

Mr. HATFIELD. A parliamentary inquiry, Mr. President.

Mr. MANSFIELD. Mr. President, the question is not debatable.

Mr. HATFIELD. A parliamentary inquiry.

The PRESIDING OFFICER. The question is not debatable.

Mr. HATFIELD. A parliamentary inquiry.

Mr. MANSFIELD. Call the roll. I asked 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 Oregon. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Arkansas (Mr. BUMPERS), the Senator from Idaho (Mr. CHURCH), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Vermont (Mr. LEAHY), the Senator from Louisiana (Mr. LONG), and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

I also announce that the Senator from Alabama (Mr. ALLEN), and the Senator from Connecticut (Mr. RIBICOFF) are absent because of illness.

Mr. GRIFFIN. I announce that the Senator from Nevada (Mr. LAXALT) is necessarily absent.

The result was announced—yeas 29, nays 61—as follows:

[Rollcall Vote No. 601]

YEAS—29

Bartlett	Domenici	Hatfield
Bellmon	Fannin	Helms
Brock	Fong	Hruska
Case	Garn	Javits
Curtis	Goldwater	Mathias
Dole	Hansen	McClure

Packwood	Scott, William L.	Taft
Pearson	Stafford	Thurmond
Roth	Stevens	Tower
Scott, Hugh		Young

NAYS—61

Abourezk	Gravel	Morgan
Baker	Griffin	Moss
Beall	Hart, Gary	Muskie
Bentsen	Hart, Philip A.	Nelson
Biden	Hartke	Nunn
Brooke	Haskell	Pastore
Buckley	Hathaway	Pell
Burdick	Hollings	Percy
Byrd, Harry F., Jr.	Huddleston	Proxmire
	Humphrey	Randolph
Byrd, Robert C.	Inouye	Schweiker
Cannon	Jackson	Sparkman
Chiles	Johnston	Stennis
Clark	Magnuson	Stevenson
Cranston	Mansfield	Stone
Culver	McClellan	Symington
Durkin	McGee	Talmadge
Eagleton	McIntyre	Tunney
Eastland	Metcalf	Weicker
Ford	Mondale	Williams
Glenn	Montoya	

NOT VOTING—10

Allen	Kennedy	McGovern
Bayh	Laxalt	Ribicoff
Bumpers	Leahy	
Church	Long	

So the motion was rejected.

Mr. MANSFIELD. Mr. President, before the vote on the motion to recess was taken, I was under the impression that what the distinguished Senator from Oregon (Mr. HATFIELD) was attempting to do was to delay consideration of the conference report on energy which, of course, is a privilege matter.

I am happy to acknowledge that I was mistaken and, therefore, I hope there will be no delay on consideration of the conference report on energy.

ENERGY POLICY AND CONSERVATION ACT

Mr. MANSFIELD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 622, the Energy Policy and Conservation Act.

The PRESIDING OFFICER. The Chair lays before the Senate a message from the House which the clerk will state.

The legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate to the amendments of the House to the bill (S. 622) entitled "An Act to provide standby authority to assure that the essential energy needs of the United States are met," and so forth, and concur therein with an amendment.

(The amendment of the House of Representatives is printed in the RECORD of December 15, 1975, beginning at page 40681.)

UNANIMOUS-CONSENT REQUEST

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the distinguished Senator from Washington (Mr. JACKSON), the manager on the part of the Senate conferees, be recognized, and he be allowed to yield for not to exceed 2 minutes to the distinguished Senator from West Virginia (Mr. RANDOLPH) and the distinguished Senator from Tennessee (Mr. BAKER) for the purpose of calling up and disposing of the conference report on Appalachia; and that at the conclusion of that the distinguished Senator from Oregon (Mr. HATFIELD) be recognized for not to exceed 1 hour to discuss a matter extraneous to the pending business; and at the conclusion of the remarks of the Senator from Oregon, the Senator from Washington be recognized and that, in the meantime, despite these interpolations, he not lose his right to the floor.

The PRESIDING OFFICER. Is there objection?

Mr. McCLURE. Reserving the right to object, Mr. President, I would like to state a parliamentary inquiry, if I may.

The PRESIDING OFFICER. The Senator will state it.

Mr. McCLURE. The inquiry I have is this: If I understand, what we are dealing with on the energy conference report is not really a conference report, it is a message from the House and not a conference report; am I correct?

Mr. MANSFIELD. That is correct.

The PRESIDING OFFICER. That is correct. It is a message from the House.

Mr. McCLURE. If I may inquire further, Mr. President, the effect of the message from the House is to lay before us a House bill with Senate amendments, as amended by the House; is that correct?

Mr. JACKSON. It is a Senate bill, S. 622, and the House sent it over with an amendment in the nature of a substitute which amended—

The PRESIDING OFFICER. It is a House message apprising the Senate——

Mr. JACKSON. They amended it last night.

The PRESIDING OFFICER (continuing). That the House amended the Senate amendment to the House amendments to the Senate bill.

Mr. McCLURE. Do the rules of the Senate require that the amendment of the House be read to the Senate?

The PRESIDING OFFICER. There is no rule or precedent so requiring.

Mr. McCLURE. Might I ask the majority leader if it is the intention of the majority leader to have the message laid before the Senate under a rule or under a request for the waiving of the reading of the amendment?

Mr. MANSFIELD. That question has never arisen.

The PRESIDING OFFICER. The message has already been laid before the Senate, and there was no request that it be read.

Mr. McCLURE. There was no point at which a request that it be read could be made because the message was all that was laid before the Senate; is that not correct?

The PRESIDING OFFICER. That is correct. But the amendment is a part of that message and the request could have been made.

Mr. McCLURE. Well, the Senator was on his feet seeking recognition at the time the unanimous-consent agreement was stated. I do not wish to press this point on that basis, but I do think the Senate is confronted with a difficult parliamentary situation on which very little precedent exists because of the manner in which the House treated a conference report. Instead of trying to send the matter back to conference they aborted that by just agreeing to the conference report and then seeking to amend directly an action which had been taken by the Senate at a previous time. This is a unique proceeding, one in which the Senate has not indulged very often in the past, and I am very much concerned that under the circumstances the matter may be laid before the Senate without the opportunity of the Senate to have the matter read as is usually the case under the consideration of a bill, under the consideration of an amendment to a bill, under the consideration of a conference report. Am I not correct, Mr. President, that in each of those instances any Member has the right to ask that the amendment, the bill or the conference report be read?

The PRESIDING OFFICER. That is correct.

Mr. McCLURE. If indeed this is not subject to that requirement, it is unlike any other procedure which is used in the Senate.

The PRESIDING OFFICER. The Chair will reserve judgment on this matter.

Mr. McCLURE. Mr. President, I do not wish to delay the matter with respect to the pending request of the majority leader for unanimous consent, but I would like to reserve my right to ask for the reading of the amendment. If I may do so, without having to make that request at this time, I would like to reserve that right.

The PRESIDING OFFICER. Is there objection to the Senator's reserving that right?

Mr. JACKSON. Mr. President, point of order. Does not the request or whatever it is come too late? It has already been laid before the Senate.

The PRESIDING OFFICER. When the Chair stated that the Chair lays before the Senate a message from the House which the clerk will report, and the clerk reported it without reading the whole amendment. The demand should have been made then.

Mr. McCLURE. Mr. President, may I state the request or question in this fashion: if, as a matter of fact, I had the right at that time to demand the reading, do I understand the Chair to have made that ruling that I had the right to demand a reading?

The PRESIDING OFFICER. Not that he had the right but that he could have made the request.

Mr. McCLURE. How would a Member of the Senate make that request when he does not have the floor?

The PRESIDING OFFICER. He simply asks that the whole message be read. Nobody had the floor at that time.

Mr. MANSFIELD. Mr. President, if I may interpolate, I was on my feet, I was recognized, both before and after the message was read. The usual procedure is to allow either the majority or the minority leader prior recognition. I do not doubt that the Senator from Idaho was on the floor at the time, but I was, and I achieved recognition. The proper request was made and the proper procedures followed.

Mr. McCLURE. Reserving the right to object—and I do not question that the Senator followed the proper procedure—it is just the question I am seeking to lay before the Senate at this time is the procedural matter whether or not this and

this alone, this procedure and this procedure alone, waives the requirement for the reading of the material laid before the Senate.

The PRESIDING OFFICER. There is no requirement for a total reading.

Mr. McCLURE. In this instance or other instances.

Mr. MANSFIELD. Mr. President, if the Senator will yield, it is my understanding there is no rule covering that procedure, and had that request been made at that time, it is now too late, the Chair would not be in a position to rule, but it would have been up to the Senate to render a verdict; is that correct?

The PRESIDING OFFICER. There is no rule, and the Chair cannot find a precedent right on that point. If the question had been raised, the Chair would have submitted it to the Senate.

Mr. McCLURE. If I may—reserving the right to object, Mr. President—the question is simply this: that in the normal course of events the majority leader was recognized to ask that a message from the House be presented to the Senate, the message was read and the Senator from Idaho had no opportunity to ask for the reading of the material sent from the House because the majority leader again, very properly, being on his feet, was recognized and then asked the pending unanimous-consent request.

I do not question that there was any breach of the procedures, but is this not the only instance in which a matter can thus be laid before the Senate without an opportunity of the Members to determine whether or not that matter should be read to the full Senate so that the Senate may know what is pending before the Senate?

The PRESIDING OFFICER. Matters are laid before the Senate all the time without being read.

Mr. ROBERT C. BYRD. Mr. President, I ask for the regular order.

The PRESIDING OFFICER. Is there objection?

Mr. McCLURE. Mr. President, I object.

Mr. JACKSON addressed the Chair.

The PRESIDING OFFICER. Objection is heard.

Mr. MANSFIELD. Will the Senator yield without losing his right to the floor?

Mr. JACKSON. For that purpose only.

Mr. MANSFIELD. Mr. President, may I say, the leadership thought it was accommodating certain Senators who have other pressing needs at the moment and I must express my apologies to the Senator from West Virginia (Mr. RANDOLPH) and the Senator from Tennessee (Mr. BAKER) and to the Senator from Oregon (Mr. HATFIELD). I am sorry that it did not turn out the way we though it would.

Mr. JACKSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. RANDOLPH addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington has the floor.

Mr. RANDOLPH addressed the Chair.

Mr. BAKER. Will the Senator yield without losing his right to the floor?

Mr. MANSFIELD. Mr. President, let me try again. First, I ask unanimous consent—if I may have the attention of the Senator from Idaho—that the distinguished Senator from West Virginia and the distinguished Senator from Tennessee be recognized for not to exceed 2 minutes for the purpose of calling up a conference report on Appalachia without the Senator from Washington losing his right to the floor.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from West Virginia.

REGIONAL DEVELOPMENT ACT AMENDMENTS OF 1975—CONFERENCE REPORT

Mr. RANDOLPH. Mr. President, I submit a report of the committee of conference on H.R. 4073, and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. PERCY). The report will be stated by title.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4073) to extend the Appalachian Regional Development Act of 1965 for an additional two-fiscal-year period, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of December 15, 1975, at page 40649.)

Mr. RANDOLPH. Mr. President, the Senate and House conferees have reached agreement on differences and have concluded the conference on legislation to extend the Appalachian Region Development Act of 1965.

Our colleagues worked diligently throughout the conference to reach the best possible recommendations with respect to the Appalachian Commission. I believe we have been successful.

With minor exceptions, the conference report retains the substantive amendments of the Senate in the Appalachian Commission and the title V regional commissions.

The Senate agreed to the 4-year extension provided in the House bill rather than the Senate's 2-year extension.

The House conferees agreed to retain the Senate amendment providing a 1-year extension of the title V regional action planning commissions.

With respect to the Appalachian program, the legislation authorizes a total of $640 million to support nonhighway programs during the transition quarter next year and 4 full fiscal years—1976–79. The highway program is extended for 2 additional years, through fiscal year 1980, and authorizations are increased by $840 million. The developmental highway system is enlarged by 200 miles, primarily to meet needs in areas that were not part of the designated Appalachian region when the highway program was started. There is a corresponding reduction of 200 miles in the access roads program.

The conference report contains provisions from the Senate bill intended to strengthen the role of the States in the conduct of commission affairs. These provisions were perhaps the most controversial aspect of this legislation. I have on other occasions, and again emphasize, the importance of participation by high-level State officials to the success of this program.

The partnership of the State and Federal Governments is a key ingredient of the Appalachian program. The provisions of this measure will enhance this relationship by assuring a strong voice by the States.

The growing importance of coal to meet the Nation's energy needs is recognized in this legislation. The States of the region produce vast amounts of coal, and their reserves of this vital resource can contribute immeasurably to improving economic strength in Appalachia.

This conference report, therefore, includes language outlining the Appalachian Regional Commission's role in energy production. We envision the Commission as becoming a coordinating body for Federal, State, and local efforts toward anticipating the effects on the region of alternative national energy policies and practices. Authorized is a limited demonstration in the area of energy-related enterprise development.

As a clearinghouse for the proper management and utilization of Appalachia's coal reserves, the Commission can occupy an important position in the effort to find solutions to important energy and environmental questions.

Mr. President, I express appreciation to my Senate colleagues for their strong support and active participation in achieving a successful resolution to the issues which were before the conference. The distinguished Senator from Tennessee (Mr. BAKER), the ranking minority Member of the Senate Public Works Committee, and Senators McCLURE, BUCKLEY, MONTOYA, MORGAN, and MUSKIE are commended for their patience and contributions in five conference sessions. Their participation makes it possible for this report to come before the Senate.

The Senate prevailed in every substantive issue before the conference. The report is a strong one and on behalf of my colleagues in conference I recommend that the Senate agree to our report.

This legislation will mean much for the people of Appalachia and other regions of the country with similar problems.

The Appalachian experiment is now 10 years old. The passage of this extension will launch the second decade of this unique and successful effort.

For 10 years the Appalachian program has been a major force in the 13 States that comprise the region. Its mission was a simple one: To transform Appalachia from a "pocket of poverty" into a full participant in the general prosperity of America.

These 10 years have produced their share of frustration for those of us who are particularly concerned with life in Appalachia. Because we knew the magnitude of the problems and their impact on the people, we wanted to see them over-

come as quickly as possible. As realists, however, we knew that this goal would take time to achieve.

Solid advances have been made in improving the quality of life, diversifying the economy and providing the basic facilities for future improvements. In the process, we have seen the establishment of intergovernmental relationships more innovative than any developed in this country for many years.

While improving the quality of inadequate human services remains a first priority, it is also time to approach the new challenges and problems faced by Appalachia in a changing world. This legislation will give them our mandate. Energy supply, for example, has become a high national priority. Appalachian coal is now widely recognized as a major national asset. As the most important producer of our largest domestic source of energy, Appalachia now faces the future in the context of this new relationship to the Nation.

Crucial energy needs of our country present Appalachia with a new opportunity to assist the Nation, but there may also be a new responsibility to assist the region so as to assure that accelerated coal production will lead to sound development, conservation, and self-sustaining economic growth. I believe that the Congress has made the necessary adjustments to provide the Appalachian Regional Commission with the resources to meet these new responsibilities.

Mr. President, I ask unanimous consent that the "Joint Explanatory Statement of the Committee of Conference" be printed in its entirety in the RECORD.

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

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 amendments of the Senate to the bill (H.R. 4073) to extend the Appalachian Regional Development Act of 1965 for an additional two-fiscal-year period, 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:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I

SHORT TITLE

House bill

The short title of the House bill provides the legislation may be cited as the "Appalachian Regional Development Act Amendments of 1975."

Senate amendment

Provides the Act may be cited as the "Regional Development Act of 1975".

Section 101 provides title I may be cited as the "Appalachian Regional Development Act Amendments of 1975."

Conference substitute

Identical to Senate amendment as to the Act and to both House and Senate provisions as to the title.

EXTENSION OF COMMISSION EXPENSE AUTHORIZATION

House bill

Section 2 extends the authorization for expenses of the Appalachian Regional Commission not to exceed $4 million for the period beginning July 1, 1975 and ending September 30, 1977. No more than $750,000 of this amount is to be available for expenses of Federal Cochairman, his alternate and his staff. In addition, $4 million is authorized for the two-fiscal-year period ending September 30, 1979. Of this amount, not more than $750,000 is to be available for expenses of the Federal Cochairman, his alternate, and his staff.

Senate amendment

Section 106 of the bill increases to $4,600,000 the authorizations for the period July 1, 1975, to September 1, 1977, for the Commission's administrative expenses, sufficient to cover pay and other cost increases, and would include a limitation of $800,000 for expenses of the Federal Cochairman, his alternate, and staff.

Conference substitute

Extends these authorizations for four years with $4,600,000 for the period July 1, 1975 through September 30, 1977 and $5,000,000 for the next two-fiscal-year period. Not more than $800,000 in the first period is available for the expenses of the Federal Cochairman, his alternate, and his staff and not more than $900,000 for that purpose in the second period.

OFFICE SPACE RENTAL

House bill

Extends the authority of the Commission to rent office space through September 30, 1979.

Senate amendment

Extends the authority of the Commission to rent office space through September 30, 1977.

Conference substitute

Same as the House provision.

HIGHWAY SYSTEM AUTHORIZATION EXTENSION

House bill

Increases highway authorizations from $185,000,000 for fiscal year 1977 and $180,000,000 for fiscal year 1978 to $300,000,000 for the period beginning July 1, 1976, and ending September 30, 1977, and $300,000,000 per year for fiscal years 1978, 1979, and 1980.

Senate amendment

Increases highway authorizations from $180,000,000 for fiscal year 1978 to $250,000,000 for that fiscal year and $30,000,000 for fiscal year 1979, $300,000,000 for fiscal year 1980, and $170,000,000 for fiscal year 1981.

Conference substitute

Same as the Senate amendment.

EXTENSION OF AUTHORIZATIONS FOR OTHER PROGRAMS

House bill

Authorizes $340,000,000 for the period July 1, 1975 through September 30, 1977, and $300,000,000 for the two-fiscal-year period ending September 30, 1979 for programs other than the highway program.

Senate amendment

Authorizes $267,000,000 for the two-fiscal-year period ending September 30, 1977 for programs other than the highway program.

Conference substitute

Same as the House provision.

TERMINATION DATE

House bill

Extends the termination date of the Act (other than the highway program) to October 1, 1979.

Senate amendment

Extends the termination date of the Act (other than the highway program) to October 1, 1977.

Conference substitute

Same as the House provision, except that the Appalachian Regional Commission is directed to submit to the Congress by July 1, 1977, a report on the progress being made in implementing section 2(b) of the Appalachian Regional Development Act, the energy-related enterprise development demonstration authority in section 302 of such Act, and other amendments made by this title.

STATEMENT OF PURPOSE

House bill

No comparable provision.

Senate amendment

Amends the statement of purpose of the Act recognizing current problems, particularly changes occurring in national energy requirements and production which affect the region, to establish the purpose of coordinating Federal, State, and local efforts toward (1) anticipating the effects on the region of alternative national energy policies and practices, (2) planning for the growth and change generated through the accelerated coal development so that it will further the social and environmental well-being of the region, and (3) implementing the activities of Federal, State and local governments in the region to better meet the special problems generated in the region through national energy policies.

Conference substitute

Same as the Senate amendment.

COMMISSION STRUCTURE AND OPERATION

House bill

No comparable provision.

Senate amendment

Makes the following amendments dealing with Commission membership, voting, and administrative powers: (1) Only the Governor may be a State member of the Commission; (2) Each State member may have a single alternate appointed by the Governor from among the members of his cabinet or his personal staff; (3) No decision involving Commission policy, approval of State, Regional or subregional Development Plans or implementing investment programs, any modification or revision of the Appalachian Regional Commission Code, or any allocation of funds among the States, may be made without a quorum of State members present; (4) A State alternate shall not be counted toward the establishment of a quorum of the Commission in any instance in which a quorum of the State members is required to be present; (5) The approval of project and grant proposals shall be a responsibility of the Commission exercised in accordance with section 303. No Commission powers or responsibilities, nor the vote of any Commission member, may be delegated to any person not a Commission member or who is not entitled to vote in Commission meetings; and (6) The term of the State Cochairman shall be at least one year.

Conference substitute

Same as the Senate amendment.

COMPENSATION

House bill

No comparable provision.

Senate amendment

The amendment increases the rating of the Federal Cochairman from level IV to level III of the Executive Schedule and the Alternate

Federal Cochairman from GS–18 to level V on the Executive Schedule.

Conference substitute

Same as the Senate amendment.

COMMISSION FUNCTIONS

House bill

No comparable provision.

Senate amendment

The amendment specifies that the identification of subregional characteristics, needs and goals should be undertaken by the Commission.

Conference substitute

Same as the Senate amendment.

EXECUTIVE DIRECTOR

House bill

No comparable provision.

Senate amendment

The amendment reaffirms that the executive director is the chief administrative officer of the Commission staff.

Conference substitute

Same as the Senate amendment.

PUBLIC PARTICIPATION

House bill

No comparable provision.

Senate amendment

Section 107 of the Act is amended to require that public participation be provided for, encouraged, and assisted by the Commission, States, and local development districts.

Conference substitute

Same as the Senate amendment.

HIGHWAY MILEAGE REVISION

House bill

No comparable provision.

Senate amendment

The Senate amendment would authorize a 200-mile increase in developmental highway mileage, with a corresponding 200-mile decrease in local access roads, to provide corridors for a sector of the region which was not part of the Appalachian program when the original corridors were established.

Conference substitute

Same as the Senate amendment.

DEMONSTRATION HEALTH PROJECTS

House bill

No comparable provision.

Senate amendment

Makes the following amendments to section 202: (1) To allow acquisition of facilities previously operated for profit where that is the most cost-effective way of providing increased health services, (2) to clarify that Commission determination on need for a project is controlling once HEW establishes compatibility with basic HEW legislative authority, and (3) to add reference to title XX of the Social Security Act, enacted since the 1971 Appalachian Act amendments.

Conference substitute

Same as the Senate amendment with the additional requirement that acquisition of facilities previously operated for profit requires a finding by the Commission that but for this acquisition the health services would not otherwise be provided in the area served by the facility.

MINING AREA RESTORATION

House bill

No comparable provision.

Senate amendment

Amends section 205 of the Act relating to mine area restoration to allow separate grants for planning or engineering projects; to make cover materials eligible project costs; to allow waivers wherever a State, local government or other nonprofit applicant agrees to indemnify the Federal Government, for all claims of loss or damage resulting from the use and occupation of lands for projects assisted under section 205.

It also amends section 205 to allow reclamation on lands owned by private nonprofit entities for public recreation, conservation, community facilities and public housing.

Conference substitute

Same as the Senate amendment.

HOUSING

House bill

No comparable provision.

Senate amendment

Amends section 207 of the Act to expand the types of housing programs which may be assisted with "seed money" grants or loans to include any Federal or State low- or moderate-income housing assistance program; to include limited dividend or cooperative organizations as eligible for assistance; to allow up to 10 percent of the value of rehabilitated housing for off-site improvements for housing rehabilitation projects; and to authorize funds for States to make similar assistance to that under section 207.

Conference substitute

Same as the Senate amendment.

VOCATIONAL AND TECHNICAL EDUCATION PROJECTS

House bill

No comparable provision.

Senate amendment

Amends section 211 of the Act to broaden the scope of areawide demonstration projects from strictly vocational and technical education projects to include projects for career education, cooperative and recurrent education, and guidance and counseling.

A second amendment makes clear that the present requirement for public ownership does not preclude training and on-the-job employment activities away from facilities of a demonstration project if the project is administered by a public body.

Conference substitute

Same as the Senate amendment.

SUPPLEMENTARY GRANTS

House bill

No comparable provision.

Senate amendment

Amendes section 214 of the Act to include additional Federal grant-in-aid programs as eligible for supplementation. These include titles I and IX of the Public Works and Economic Development Act of 1965, as amended.

Conference substitute

Same as the Senate amendment.

PROGRAM IMPLEMENTATION

House bill

No comparable provision.

Senate amendment

Amends section 223 of the Act to require a determination that the program or project authorized under the title has been determined to be not incompatible with the provisions and objectives of Federal laws before implementation of that program or project and to require the Commission to determine it meets the requirements of sections 224 and 225 of the Act, which determination is to be controlling and accepted by Federal agencies.

Conference substitute

Same as the provisions of the Senate amendment.

The Congress designed the Appalachian Regional Development Act of 1965 so that in many of the programs under the Act (such as those authorized in sections 202, 204, 205, 207, 211, and 214), the supplemental or special basic grant assistance approval by the Commission is subsequently extended to the grantee through the framework of Federal grant-in-aid programs administered by Federal departments and agencies. Section 116 of the Conference Report provides further clarification that the responsible Federal official shall review such grants only to determine that they are not incompatible with the provisions and objectives of the framework laws which he administers. In making this modification, however, it is intended that the Federal official administering the framework program through which the Appalachian Act assistance is provided, shall continue to discharge responsibility for assuring that such grants are not incompatible with other Federal laws such as, for example, the National Environmental Policy Act. Thus, the conferees intend, in such cases, that the department or agency responsible for the basic program would make such reviews and assessments as might be required by the National Environmental Policy Act.

PROGRAM CRITERIA

House bill

No comparable provision.

Senate amendment

Amends section 224 of the Act by adding a new subsection which reemphasizes that programs and projects may be funded under this Act only if the Commission has determined that the funds will not diminish the level of effort by the State in its Appalachian counties in order to substitute funds authorized by this Act.

Conference substitute

Same as the Senate amendment.

PLANNING PROCESS

House bill

No comparable provision.

Senate amendment

Amends the Act to add a new section 225 requiring a State Development Plan. These Plans are to (a) describe the State organization for Appalachian development planning, including the procedures established for the participation of local development districts in the process and the means for relating the process to State planning and budgeting and coordinating it with other Federal, State and local programs; (b) set forth the goals, objectives, and priorities of the State for the region; and (c) describe the development program for achieving the goals and objectives, including funding sources and recommendations for specific projects. Plans would be revised annually, and an implementing investment program would be submitted by each State.

Conference substitute

Same as the Senate amendment.

ADMINISTRATIVE EXPENSE GRANTS AND RESEARCH AND DEMONSTRATIONS

House bill

No comparable provision.

Senate amendment

Amends section 302 of the Act to provide assistance in preparing State development plans as well as specifying that grants for administrative expenses of local development districts may include costs for development of areawide plans or action programs and technical assistance activities.

It also authorizes a new, limited demonstration program in the area of energy-related enterprise development in subsection (b) of section 302. For purposes of the new demonstration authority, the restrictions in section 224(b)(2), (3) and (4) are waived which preclude the use of Commission funds for financing industrial facilities or working capital, or the cost of facilities for the generation, transmission, or distribution of electric energy or gas.

Another provision directs the Commission to conduct a study and report on the status of Appalachian migrants in the destinations to which they have migrated, current migra-

tion patterns and implications, and the impact which the Commission program has had, and the potential for such impact, on out-migration and the welfare of Appalachian migrants. In carrying out this study, the Commission may undertake pilot projects and demonstrations within the region. A third provision also directs a study of physical hazards which are constraints on land use (with strong emphasis on mudslides, landslides, sink holes and subsidence) and the risks associated with these hazards. The study is to provide identification of high-risk hazard areas throughout the Appalachian Region.

Conference substitute

Same as the Senate amendment with the additional authorization to the Commission to carry out demonstration projects, at not to exceed $2,500,000 per fiscal year, for development and stimulation of the indigenous arts and crafts of the region.

APPROVAL OF DEVELOPMENT PLAN, INVESTMENT PROGRAM, AND PROJECTS

House bill

No comparable provision.

Senate amendment

The amendment rewrites section 303 of the Act to provide that State Development Plans, the Regional Development Plan, and implementing investment programs must be approved by the Commission as in accordance with the Regional Development Planning Process. Once a State Development Plan is approved, the submission and approval of a project by a State, when joined by an affirmative vote of the Federal Cochairman for such project, shall be deemed to satisfy the requirements for affirmative votes for decisions in section 101(b).

Conference substitute

Same as the Senate amendment.

REPEAL

House bill

No comparable provision.

Senate amendment

The amendment repeals section 104 of the Public Works and Economic Development Act of 1965, which now prevents cooperative funding of Appalachian Regional Commission and Economic Development Administration projects.

Conference substitute

Same as the Senate amendment.

LIMITATIONS

Conference substitute

Contains a provision limiting new or increased authority to enter into contracts under section 201 of the Appalachian Regional Development Act to only such amounts as are provided in appropriation Acts.

TITLE II

SHORT TITLE

House bill

No comparable provision.

Senate amendment

Provides Title II may be cited as the "Regional Action Planning Commission Improvement Act of 1975."

Conference substitute

Same as the Senate amendment.

AUTHORIZATIONS FOR COMMISSIONS

House bill

No comparable provision.

Senate amendment

Amends Section 509(d) of the Public Works and Economic Development Act (hereinafter stated as Act) to increase the authorization to carry out the Title for the fiscal year 1976 from 150 to 200 million dollars and 50 million dollars for the transition quarter ending September 30, 1976. It authorizes 250 million dollars for the fiscal year 1977. After deducting the amounts required by the Secretary to carry out the administration and technical assistance, the Secretary is to apportion the remainder of sums appropriated to the existing seven Commissions based on the following formula:

14 percent on the basis of equality of the Seven Regional Commissions.

14 percent on land area.

28 percent on the basis of population.

44 percent on the basis of per capita income (weighted inversely).

All funds are to be apportioned prior to the end of the fiscal year.

Conference substitute

Same as the Senate amendment except the formula for allocating appropriated funds to the regions is deleted. Funds authorized by the Senate amendment are to be allocated to the regional commissions which have been established for more than two fiscal years. An additional $5,000,000 for fiscal year 1976, $1,250,000 for the transition period, and $5,000,000 for fiscal year 1977 is authorized for the management and authorized activities of new commissions that may be established by the Secretary, for their first two fiscal years.

For fiscal year 1976 funds were allocated to the regional commissions in accordance with the formula which was contained in the Senate amendment. It is the intent of the conferees that the Secretary of Commerce utilize the same formula for fiscal year 1977 for the existing regional commissions. The Senate Committee on Public Works and the House Committee on Public Works and Transportation will evaluate the formula with the goal of devising a permanent formula for future fiscal years.

REGIONAL TRANSPORTATION DEMONSTRATION PROJECTS

House bill

No comparable provision.

Senate amendment

Amends Section 513 of the Act to authorize each Commission to conduct studies and investigations of the transportation needs of the region. Each Commission can make grants for planning, construction, purchase of equipment and operation for transportation demonstration projects. Planning grants may be up to 100% of costs. Grants for construction, equipment and operation are authorized for up to 80% of costs. Not more than 5 million dollars of the funds apportioned to each region can be expended in any one fiscal year to carry out this section.

Conference substitute

Same as the Senate amendment.

The new authorities contained in sections 513, 515, 516, and 517 of the Conference substitute are intended to provide each commission additional tools to carry out its mission of economic development.

ENERGY DEMONSTRATION PROJECTS AND PROGRAMS

House bill

No comparable provision.

Adds a new section 515 to the Act to authorize grants for energy related demonstration projects and programs. Not more than 5 million dollars of the apportioned funds to each Regional Commission may be expended in any fiscal year for the purpose of carrying out this section.

Conference substitute

Same as Senate amendment except that, in addition, it authorizes each Commission to carry out demonstration projects, not to exceed $2,500,000 per Commission per fiscal year, for the development and stimulation of the indigenous arts and crafts of the region.

HEALTH AND NUTRITION DEMONSTRATION PROJECTS

House bill

No comparable provision.

Senate amendment

Adds a new Section 516 to the Act which authorizes grants for multicounty demonstration health projects. Grants may be used for planning, construction, equipment, and operation or projects similar to those authorized by the Appalachian Regional Development Act. Construction and equipment grants may not exceed 80% of cost. Grants for the operation may be up to 100% of cost for the first two years and 75% of cost for the next three years of operation.

Conference substitute

Same as the Senate amendment.

EDUCATION DEMONSTRATION PROJECTS

House bill

No comparable provision.

Senate amendment

Adds a new section 517 to the Act to authorize grants for planning, construction, equipping and operating vocational and technical education projects which will serve to demonstrate area-wide educational planning services and programs. Construction and equipment projects may not exceed 80% of cost. Grants for operation may be up to 100% of cost for the first two years and 75% of cost for the next three years. A planning grant for the development of a demonstration project may not exceed 75% of such expenses. All projects must be for publicly owned facilities. Funds for projects under this section may be combined with the funds available under other Federal grant-in-aid programs.

Conference substitute

Same as the Senate amendment.

REVIEW OF REGIONAL DEVELOPMENT PLANS

House bill

No comparable provision.

Senate amendment

Each Regional Commission must submit to each Committee on Public Works within 120 days after enactment of this Act their regional development plan. The Committee must study and review the plans to determine their conformity to the purposes of the Act.

Conference substitute

Same as the Senate amendment except that the last sentence of the section requiring Committee study and review of plans was deleted. A review of such plans by the Committees will form the basis for additional legislative changes tailored to the needs of particular regions.

STRUCTURE AND OPERATION OF COMMISSIONS

Conference substitute

The conferees agreed to amend section 502 of the Act to make applicable similar changes in the commission structure and operation of the Title V Regional Commissions as we were made to the Appalachian Commission by amendments to the Appalachian Regional Development Act. The amendment makes the following changes dealing with commission membership, voting, and administrative powers: (1) Only the Governor may be a State member of the Commission; (2) Each State member may have a single alternate appointed by the Governor from among the members of his cabinet or his personal staff; (3) No decision involving Commission policy, approval of the Regional Development Plan or implementing investment programs, or any allocation of funds among the States, may be made without a quorum of State members present, (4) A State alternate shall not be counted toward the establishment of a quorum of the Commission in any instance in

which a quorum of the State members is required to be present; (5) No Commission powers or responsibilities, nor the vote of any Commission member, may be delegated to any person not a Commission member who is not entitled to vote in Commission meetings; and (6) The term of the State Cochairman shall be at least one year.

DESIGNATION OF REGIONAL COMMISSIONS

Conference substitute

The conferees agreed to amend section 501 of the Act to add California, Texas, the Commonwealth of Puerto Rico and the Virgin Islands as exceptions to the requirement that a region must be within contiguous States to be designed as an "economic development region".

Section 502 is amended to permit the Secretary to designate single State Commissions for the State of California or the State of Texas if they otherwise meet the requirements for an economic development region. Congressional intent is also expressed that the Secretary encourage formation of a regional commission along the Mexican border in the States of Texas, New Mexico, Arizona and California.

These border areas in both the United States and Mexico historically have suffered severe economic depression. By most statistical accountings, all indices of economic deprivation—unemployment—illiteracy—low median family income—fully qualify this region as being more economically depressed than other areas where regional commissions have been established.

PRESIDENTIAL REVIEW

House bill

No comparable provision.

Conference substitute

Requires the President to review the structure and authorities of Title V Regional Planning Commissions and then report to Congress his recommendations concerning the Commissions not later than six months after the enactment of this Act.

Conference substitute

Since both Committees will be considering further extensions and amendments to the Act within the next few months, the conferees agreed to delete this provision and reconsider it at a later time.

TITLE OF THE BILL

Conference substitute

The conference substitute adopts the amendment of the Senate to the title of the bill since it more accurately reflects the text as proposed in the conference substitute.

JENNINGS RANDOLPH,
EDMUND S. MUSKIE,
JOSEPH M. MONTOYA,
ROBERT MORGAN,
HOWARD BAKER,
ROBERT T. STAFFORD,
JAMES A. MCCLURE,
Managers on the Part of the Senate.

ROBERT E. JONES,
JIM WRIGHT,
HAROLD T. JOHNSON,
ROBERT A. ROE,
WILLIAM H. HARSHA,
JOHN PAUL HAMMERSCHMIDT,
Managers on the Part of the House.

Mr. BAKER. Mr. President, I recommend to my colleagues the conference report on the Regional Development Act of 1975. I hope it will be approved promptly and I strongly urge the President to sign the bill into law.

It has been my pleasure to work with my distinguished chairman (Mr. RANDOLPH)—who was the original sponsor of the Appalachian Regional Development Act in 1965. I also want to acknowledge the work of the chairman of the Subcommittee on Economic Development (Mr. MONTOYA)—who especially provided leadership for title II of the bill—the ranking member of the subcommittee (Mr. MCCLURE) and the other Senate members of the conference, the senior Senator from Vermont (Mr. STAFFORD), the senior Senator from Maine (Mr. MUSKIE), and the junior Senator from North Carolina (Mr. MORGAN). The conferees on the part of the House under the able leadership of the chairman of the Public Works and Transportation Committee, Congressman JONES; the ranking member, Congressman HARSHA; and the chairman of the conference, Congressman WRIGHT should also be acknowledged for their interest and cooperation.

I would like to mention briefly a few of the major changes adopted by the conference. The conferees accepted the House provision to extend the Appalachian Regional Development Act for 4 years—to September 30, 1979, as recommended in the administration's bill—in lieu of a 2-year extension provided by the Senate bill.

While a 4-year extension is provided, I believe it is important to point out the intention of the conferees, as specified in the statement of managers, that the Appalachian Regional Commission reports to the Congress by June 1977, regarding implementation of the program. The conferees believe it is important to provide an opportunity for oversight of the structural improvements contained in the bill and the substantial new authority in energy-related areas.

The conference report retains the House authorization figures for nonhighway authorities—including health, education, and housing—of $340 million for the 2-fiscal-year period ending September 30, 1977, and $300 million for fiscal years 1978 and 1979. From these sums, $3 million annually is earmarked for the energy-related demonstration program, and by an amendment added by the House conferees, no more than $2.5 million is earmarked for development of indigenous arts and crafts in the region.

Regarding the Appalachian Regional Development program, the House conferees agreed to accept the Senate authorizations, which extend the program for 1 year beyond the House bill. The total authorization of $840 million for fiscal years 1978 through 1981 includes an increase from $180 million to $250 million in fiscal year 1978, additional amounts of $300 million for each fiscal year 1979 and 1980, and $170 million for 1981.

The Senate bill contained a new subsection to the existing statement of purpose of the act, directing the Appalachian Regional Commission to pay attention to new problems in the region, especially in the energy-related area. This new purpose—which I introduced in the Senate committee—outlines the Commission's role in the energy development area and will enable it to provide a framework for coordinating Federal, State, and local efforts toward these ends. I am glad that this Senate provision was retained in conference. It is crucial, I believe, that the region's energy potential be developed wisely and to the benefit of the social, environmental and economic well-being of the region as well as to the benefit of the national interest.

I am also glad that the House conferees retained the Senate provision contained in subsection (b) of section 302 which authorizes a new, limited demonstration program in energy-related enterprise development.

Finally, I would like to point out that the Senate changes to the Appalachian Regional Commission's structure and organization were adopted fully by the House conferees. These provisions were discussed in the Senate committee very carefully and represent the considered judgment of the appropriate steps required in order to assure the continued success of the program. These structural and organizational changes are designed to strengthen and enhance the Federal-State partnership.

Mr. President, current authority for the Appalachian Regional Commission expired on June 30, 1975. The program is now operating under Public Law 94–41, the interim funding resolution for fiscal year 1976. I believe it is imperative that new authority be enacted. I urge the adoption of the conference report and further strongly urge the President to sign this most important bill into law.

Mr. President, I also call attention to title II of the bill that would expand the program authority of the regional action planning commissions authorized under title V of the Public Works and Economic Development Act of 1965. It would extend the authorizations of the commissions for an additional year, increase their monetary authorization, and provide new and broad program authorities in four areas: energy, transportation, vocation education, and health.

In addition, the conferees agreed to amend section 502 of the act to make applicable similar changes in the commission structure and operation of the title V regional commissions as were made to the Appalachian Commission by amendments to the Appalachian Regional Development Act. For example, the conference substitute would require that only the Governor may be a State member of the Commission.

The conferees agreed to amend section 502 to permit the Secretary to designate single State commissions. They also agreed to amend section 501 to add Puerto Rico and the Virgin Islands as exceptions to the requirement that a region must be within contiguous States to be designated as an "economic development region."

The conference substitute also added to the Economic Development Act the provision added to the Appalachian Regional Development Act which authorizes $2.5 million per fiscal year, for the development and stimulation of the indigenous arts and crafts of the region.

Mr. President, this new authority will give the title V commissions the tools in carrying out economic development in their lagging regions. I recommend adoption of the conference report.

Mr. FORD. Mr. President, will the Senator from West Virginia yield me 15 seconds?

Mr. RANDOLPH. Yes, I will yield to the able Senator from Kentucky.

Mr. FORD. Mr. President, I want to compliment the Senator from West Virginia and the Senator from Tennessee for their effort here.

I am still concerned that we have given too much authority to the bureaucrats and we have placed too much responsibility with the Governor for attendance at meetings.

I think the intent is right. I am concerned about it and I hope they will have some oversight.

Mr. RANDOLPH. Mr. President, I assure the Senator from Kentucky (Mr. FORD) that the committee will continue to conduct oversight on the Appalachian Regional Development Act and closely observe implementation of this legislation. Additional oversight hearings will be necessary within the next 2 years. The July 1, 1977, report of the Appalachian Commission required by section 122(b) of this legislation will be most useful to the committee in those hearings on the amendments contained in this measure. We will continue to hold informal meetings with Commission participants to determine that the programs and procedures are functioning as this legislation intends.

Mr. President, I am appreciative of the concern of the able Senator for the Appalachian program. Although he is not a member of the Committee on Public Works, he has diligently followed the development of this legislation. We have had the benefit of his counsel. The Senator is a citizen of Appalachia, and as a former Governor his knowledge and experience have been valuable to us in understanding the problems of the area.

SEVERAL SENATORS addressed the Chair.

Vote! Vote!

Mr. RANDOLPH. Mr. President, I move the adoption of the conference report.

The PRESIDING OFFICER. Does the Senator from Tennessee yield back his time?

Mr. BAKER. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. MANSFIELD. Will the Senator from Washington yield to me without losing his right to the floor?

Mr. JACKSON. I yield.

Mr. MANSFIELD. For the purpose of proposing another unanimous-consent request.

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

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the distinguished Senator from New Mexico (Mr. MONTOYA) be recognized for not to exceed 1 minute to present a conference report which has been cleared all around, and again with the proviso that the distinguished Senator from Washington be allowed to maintain the floor; that after that is disposed of the distinguished Senator from Oregon be recognized for not to exceed 1 hour for the purpose of discussing a matter of extreme importance to him and the Republican Party, at which time the floor would revert, never having been lost, to the Senator from Washington.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MONTOYA. Does the Senator from Washington yield to me?

Mr. JACKSON. Yes, for that purpose and with the stipulation.

Mr. FORD. Mr. President, while the clerk is getting the legislation may I ask the Senator to yield for a unanimous-consent agreement without losing his right to the floor?

Mr. JACKSON. For how long?

Mr. FORD. Just for a unanimous-consent agreement for a couple of staff members.

Mr. JACKSON. We will get to that in just a moment.

LOCAL PUBLIC WORKS CAPITAL DEVELOPMENT AND INVESTMENT ACT OF 1975—CONFERENCE REPORT

Mr. MONTOYA. Mr. President, I submit a report of the committee of conference on H.R. 5247, and ask for its immediate consideration.

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

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5247) to authorize a local public works capital development and investment program, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of December 15, 1975.)

Mr. MONTOYA. Mr. President, I would just like to say briefly, this is the culmination of a lot of hard work for 6 months on the part of the Public Works Committee of the Senate and the Public Works Committee of the House. The conferees took quite a few days. We ironed out all the divergent views expressed in the legislation by the respective houses.

This is an authorization of $6,125 million for public works programs in different categories under the Public Works and Development Act of 1975.

I am submitting an amplifying statement analyzing the different provisions of the bill.

In the interest of time, I would like to have a vote on this, unless somebody has any questions.

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, I wish to reserve a point of order against one of the sections in this conference report. Not having been advised of the fact that this matter was coming up at this time, I do not even have my copy of the bill before me.

The PRESIDING OFFICER. The 1 minute of the Senator has expired.

Mr. MANSFIELD. Mr. President, I ask unanimous consent, under these same circumstances, that 1 more minute be allowed.

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

Mr. McCLURE. Mr. President, there is one section of this conference report that exceeded the authority of the conferees on the part of the Senate and on the part of the House, a section which was never considered nor voted upon by the House committee or by the Senate committee, and which was injected into the conference without being in the bill of either the House or the Senate.

In my opinion, it is subject to a point of order.

I would suggest, Mr. President, that rather than try to prolong it at this time, if we can just have a moment to identify it in the print——

The PRESIDING OFFICER. A point of order would have to be made against the conference report.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the distinguished Senators get together to see what they can work out concerning the conference report, and, in the meantime, the distinguished Senator from Oregon be recognized under the same situation, that the Senator from Washington will not, under any circumstances, lose his right to the floor.

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

Mr. FORD. Will the Senator yield for a unanimous-consent request?

Mr. JACKSON. I yield.

PRIVILEGE OF THE FLOOR—S. 622

Mr. FORD. I would like to ask unanimous consent that the following staff members be granted the privilege of the floor during the consideration of the pending legislation: John Cevette and Tom Langlin.

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

Mr. JACKSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon has the floor.

Mr. JACKSON. Will the Senator yield?

Mr. HATFIELD. I yield.

Mr. JACKSON. Mr. President, I ask unanimous consent that the following Senate staff be allowed the privileges of the floor during the consideration of S. 622, the Energy Policy and Conservation Act of 1975; William J. VanNess, Thomas Platt, Ben Cooper, Gren Garside, Mike Harvey, Pat Berry, Patti Ladner, Marjorie Gordner, Lyn Sutcliff, Les Goldman, Mike Brownlee, Allen Hoffman, Dan Jaffe, Rip Forbes, Lucille Langlois, Arlon

Tussing, Dan Dreyfus, Mary Chuman, Romano Romani, Len Bickwit, and Dave Hofemeister.

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

Mr. FANNIN. Will the Senator yield?

Mr. HATFIELD. Mr. President, on this time——

Mr. MANSFIELD. Mr. President, the time will not be taken from the Senator from Oregon.

Mr. FANNIN. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. HATFIELD. I yield.

Mr. FANNIN. Mr. President, I ask unanimous consent that during the consideration of S. 622, the legislation now under consideration, the following individuals be granted the privileges of the floor: Harrison Loesch, David P. Stang, Gaye Vaughan, Faye Widenmann, Nolan McKean, Tom Imeson, Mike Hathaway, Tom Biery, Jim Range, Dave Clanton, Lyle Roshton, Phil Grill, Bob Dotchin, Pam Turner, Len Bickwitt, and Daune Hafemeister.

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

The Senator from Oregon has the floor.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. HATFIELD. I yield.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that John Brooks, a member of my staff, be granted the privilege of the floor during the consideration of the pending legislation.

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

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

Mr. HATFIELD. I yield.

Mr. JOHNSTON. Will the Chair add the name of Paul Haygood to that request?

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

Mr. JACKSON. Mr. President, will the Senator yield to me for a motion so this matter is properly before the Senate, without losing his right to the floor?

Mr. HATFIELD. I am happy to yield to the Senator from Washington for that purpose.

ENERGY POLICY AND CONSERVATION ACT

The Senate continued with the consideration of the motion to concur in the amendment of the House to the amendment of the Senate to the amendments of the House to the bill (S. 622) to provide standby authority to assure that the essential energy needs of the United States are met, to reduce reliance on oil imported from insecure sources at high prices, to implement U.S. obligations under international agreements to deal with shortage conditions, and to authorize and direct the implementation of Federal and State conservation programs consistent with economic recovery.

Mr. JACKSON. Mr. President, I move that the Senate concur in the House amendment to the amendment of the Senate to the amendments of the House to Senate bill S. 622, the Energy Policy and Conservation Act.

Mr. FANNIN. Reserving the right to object, Mr. President——

Mr. MANSFIELD. Will the Senator yield to me?

Mr. HATFIELD. I yield.

The PRESIDING OFFICER (Mr. HUDDLESTON). Will the Senator from Washington repeat his motion?

ORDER FOR VOTE ON NOMINATION OF JUDGE JOHN PAUL STEVENS ON WEDNESDAY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the vote on the nomination of Judge John Paul Stevens occur at the hour of approximately 1 p.m. tomorrow afternoon. I do so with this proviso: A vote on the conference report on the defense appropriations bill occurs at the hour of 12:30. I ask unanimous consent that at the conclusion of that vote the time be equally divided, between the end of that vote and the hour of 1 p.m., between the chairman of the Committee on the Judiciary and the ranking Republican.

The PRESIDING OFFICER. Is there objection? The Chair hears none and it is so ordered.

ORDER FOR YEAS AND NAYS ON NOMINATION OF JUDGE JOHN PAUL STEVENS

Mr. MANSFIELD. Mr. President, I ask that it be in order at this time to ask for the yeas and nays on the Stevens nomination.

The PRESIDING OFFICER. As in executive session, is there objection to ordering the yeas and nays at this time?

The Chair hears no objection.

Mr. MANSFIELD. I ask for the yeas and nays on the nomination.

The PRESIDING OFFICER. There is a sufficient second.

The yeas and nays were ordered.

ENERGY POLICY AND CONSERVATION ACT

The Senate continued with the consideration of the motion to concur in the amendment of the House to the amendment of the Senate to the amendments of the House to the bill (S. 622) to provide standby authority to assure that the essential energy needs of the United States are met, to reduce reliance on oil imported from insecure sources at high prices, to implement U.S. obligations under international agreements to deal with shortage conditions, and to authorize and direct the implementation of Federal and State conservation programs consistent with economic recovery.

Mr. JACKSON. Will the Senator yield so we can clarify a matter?

Mr. HATFIELD. I yield.

Mr. JACKSON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JACKSON. As I understand it, the motion calling up the conference report is the pending business.

The PRESIDING OFFICER. The Chair will advise there is no conference report to call up.

Mr. JACKSON. I mean the motion that I made to concur in the House amendment to the Senate amendment to the House amendments to the Senate bill S. 622.

The PRESIDING OFFICER. That is the pending question.

Mr. JACKSON. Mr. President, I ask unanimous consent that, in connection with the previous unanimous consent request, wherever my name appears, that it be "or my designee", in case I am not in the Chamber.

The PRESIDING OFFICER. Is there objection? Without objection it is so ordered.

The Senator from Oregon has the floor.

Mr. HATFIELD. Mr. President, I yield to the Senator from Ohio.

Mr. TAFT. Mr. President, I ask unanimous consent that Steve Entin, of my staff, have the privileges of the floor during the consideration of the pending legislation.

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

Mr. HATFIELD. Mr. President, I would like to ask how much of my 1 hour remains.

The PRESIDING OFFICER. By unanimous consent none of the Senator's 1 hour has been taken.

THE OKLAHOMA SENATORIAL CONTEST

Mr. HATFIELD. I thank the Chair, and I want to thank the distinguished majority leader (Mr. MANSFIELD) for his request for unanimous consent for this particular hour to be yielded in the Senate today for me to make this presentation.

I cannot help but observe, Mr. President, in the last few minutes, especially——

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate be in order, and that Senate attachés take their seats. The Senator from Oregon is entitled to be heard.

The PRESIDING OFFICER (Mr. STONE). The Senate will be in order. Senators and staff members will kindly take their seats.

The Senator from Oregon.

Mr. HATFIELD. Mr. President, I cannot help but observe, particularly in the last few minutes, how vital the unanimous-consent procedure is to make this body function. I only want to call attention to that because I rise at this time to discuss a question which I think relates to the rights of a minority, rights which I feel are possibly in the process of being jeopardized and violated, not in any illegal or unconstitutional manner, but merely in an example of what can be called the tyranny of the majority.

I refer specifically to the action of the Committee on Rules and Administration of the Senate of the United States, which on yesterday took the following action by a straight party line of 5 to 3, and one abstaining:

This is a result of a question concerning the Oklahoma senatorial contest which has been pending before this committee now for approximately a year. But to distinguish it, as it is to be distinguished in many ways from the contest from New Hampshire, in this case the Senator, Senator HENRY BELLMON, was seated by the U.S. Senate contingent on the findings of the Rules Comimttee. So Senator BELLMON has been functioning as the duly-elected and certified Senator from Oklahoma for this period of time.

Mr. President, there are many fronts to this case, and I only wanted to introduce it today because I want to put the Senate on notice that we are going to have much discussion on this question. I want to say, because of my feeling that there has been indication that the majority party on the Rules Committee has shown little interest in the law of the State of Oklahoma and the findings of the trial court judge and of the Oklahoma Supreme Court, and because, in the action of the Rules Committee, they in effect, overturned the precedent so well-established by previous cases that have been heard before the Rules Committee, and in place of the sound foundation of law and the sound foundation of precedent the committee saw fit to substitute a base of conjecture as represented by a national study on voting habits conducted by a political science professor.

I do not feel that is a very good substitution for a solid rock foundation of court cases and precedents from the Senate itself. Therefore, it has all the earmarks of a political steamroller in the making.

I do not make these observations lightly, because I am sure that the Senate will have many opportunities to hear them in the future, and to have a great deal of consideration given to these questions. I am only disappointed that there was so little evidence that the Rules Committee wished to really give serious attention to the hearings as they related to the law of the case, and chose instead to take a political action which results in this resolution from the Rules Committee that will be reported to the Senate, I assume, sometime after the Christmas recess, which in effect calls for a new election in the State of Oklahoma.

First of all, I think it ought to be recalled that there are certain vital statistics that sometimes slip out of the memory of people as time goes on. I recall that on November 5, 1974, the certified and official statewide results in the Oklahoma U.S. Senate race were as follows:

HENRY BELLMON, the Republican candidate, 390,997 votes.

Ed Edmondson, the Democratic candidate, 387,162 votes.

Paul Trent, the Independent candidate, 13,650 votes.

HENRY BELLMON received a 3,835-vote plurality of the votes cast in this statewide election. No recount was requested nor conducted.

On November 7, 2 days following the election, Mr. Edmondson filed a lawsuit in Tulsa County district court, alleging certain violations of Oklahoma's election laws in the operation of the voting machines in Tulsa County—primarily the absence of a single straight-party voting lever. I might note that there were no allegations of fraud or of willful misconduct in the elections. Mr. Edmondson requested the court to order a new statewide election, or declare the Tulsa County results void and Edmondson the statewide winner on that basis.

Let me inject here the Tulsa County results in that election:

HENRY BELLMON, the Republican, 72,-145.

Ed Edmondson, the Democrat, 49,775.

Paul Trent, the Independent, 1,798.

HENRY BELLMON received a 22,370-vote plurality in Tulsa County.

I think it is very interesting to note at this point that this voting pattern in Tulsa County is a rather predictable one, because if you go back through 1972, when Mr. Edmondson was the Democratic candidate for the U.S. Senate against Mr. DEWEY BARTLETT, the winner, we find that in Tulsa County Mr. Edmondson received 40.4 percent of the votes, Mr. BARTLETT received 59 percent of the votes, and the third candidate 0.6 percent of the votes.

In the 1974 election, in the Senate Tulsa County results, Mr. Edmondson, running again for the U.S. Senate, received 40.2 percent of the votes—0.2 percent less than he had in 1972—Mr. BELLMON received 58.3 percent, and the Independent candidate 1.5 percent of the votes.

Now, Mr. President, let us go back and look at another election year, because again it illustrates that Tulsa County has maintained a fairly level voting pattern, particularly in the U.S. Senate race.

In 1968, the Republican candidate was Mr. HENRY BELLMON, who ran against Mr. Monroney. At that time, Senator BELLMON received 56.3 percent of the votes; Senator Monroney, the Democrat, 41.3 percent of the votes; and the third candidate, 2.4 percent of the votes.

Senators will note, Mr. President, that the Democratic candidate and the Republican candidate for the U.S. Senate, running in three separate elections, varied within 1 percent of the vote that they received in any one of the three elections.

On November 13, 1974, 8 days following the election, after a 2-day hearing in district court, J. Knox Byrum, a retired judge who was a Democrat specifically appointed by the Oklahoma Supreme Court to hear the case, rendered his judgment in favor of HENRY BELLMON. Judge Byrum, in that hearing and in that ruling, said the following:

There was no testimony or evidence that any party was denied the right to vote a mixed split or straight-party vote by reason of the machines used or the format or presentation thereon. There is no evidence that any voter was disfranchised or misled or deprived of their right to vote for the party or candidate of their choice. It is possible to determine with mathematical certainty that HENRY BELLMON received the greatest number of votes. There was no irregularities of such nature as to invalidate or render illegal the votes cast in Tulsa County.

Following the trial court decision, a motion for new trial was filed by Mr. Edmondson, fully heard and overruled by Judge Byrum. Mr. Edmondson appealed the decision to the Oklahoma Supreme Court. On December 19, 1974, the Oklahoma Supreme Court—composed, by the way, of nine members, eight of whom are Democrats and only one a Republican—by a unanimous 9 to 0 decision, upheld the lower court and ordered a certificate of election issued to HENRY BELLMON.

In reviewing the facts and in pointing out Oklahoma's election laws, the court declared the following:

All the votes cast in Tulsa County were properly recorded, and the exact number of votes cast can be determined with mathematical certainty.

The record will not support a finding that any voter was deprived of his right to vote in the U.S. Senate race or failed to vote in the race because he could not vote a straight party ticket—by a single lever.

We hold the Tulsa County votes cast by use of the voting machines are not illegal or void.

This has been identified as the case 45 Oklahoma L.J. 2983.

Then, following the Supreme Court's unanimous decisions, Mr. Edmondson filed a petition for rehearing before the Oklahoma Supreme Court, and the petition was fully considered and denied by the court on January 2, 1975.

On January 3, 1975, the Oklahoma State Election Board, by the way made up of two Democrats and one Republican, issued a certificate of election to HENRY BELLMON.

On January 9, 1975, Mr. Edmondson filed a petition with the U.S. Senate making the same allegations found to be without merit by Oklahoma courts. Mr. BELLMON filed an answer to the petition along with a motion to dismiss.

On January 14, 1975, the Senate on recommendation of the Committee on Rules and Administration seated Mr. BELLMON without prejudice to Edmondson's complaint.

On August 1, 1975, the Committee on Rules and Administration authorized a field investigation of Mr. Edmondson's complaint and sent a team of investigators to Tulsa. The team, consisting of Mr. James H. Duffy, the minority counsel of the Subcommittee on Privilege and Elections, Mr. James F. Schoener, the minority counsel of the Subcommittee on Privileges and Elections, and Mr. Richard D. Casad, from the permanent Subcommittee on Investigations. The team conducted 3 days of hearings, and returning on October 13 for further investigation.

In testimony presented in open public hearings these points of the investigating committee were brought out:

No. 1, a single lever to permit straight party voting in Tulsa County has not been used in a statewide race since 1968.

Is it not interesting that we should have this race contested in 1974 and yet this is the way the Tulsa ballots and the machines have been operating since 1968 as it relates to the single lever?

No. 2, at least 4 days before the election, Mr. Edmondson's Tulsa County campaign manager contacted the county election board and requested the secretary of the board to advise all voters on how to vote a straight party ticket, since "We no longer use a single party lever." That was from the instructions of Mr. Edmondson's county campaign manager.

The board secretary, Mr. Danny McDonald, notified voters through the news

media that voting machines would not be programed to permit straight party voting by use of a single lever.

No. 3, Mr. Danny McDonald, a full-time secretary of the three-member board, made up, as I said before, of two Democrats and one Republican, repeatedly asserted that he is an active Democrat and campaigned for Mr. Edmondson in both his 1972 and his 1974 Senate races.

Mr. McDonald testified that the voting machines were programed in what he thought to be a legal and proper manner.

I emphasize that Mr. McDonald conducted his campaign activity on behalf of Mr. Edmondson after working hours so they did not impinge upon his duties and responsibilities as a secretary to the board.

No. 4, although there was not a single lever on the congressional ballot, Senate and House race, party symbols were placed by each candidate's name. A straight party ticket could be voted by moving two selectors instead of one lever. In order to vote for HENRY BELLMON, the senatorial selector on the voting machine had to move past Mr. Edmondson's name.

I emphasize this point because not all the voting machines are alike in Oklahoma, nor do they necessarily represent the same kind of machine that may be used in other States. In order for a voter to cast a vote for HENRY BELLMON, he had to move his selector down the voting machine past Mr. Edmondson's name.

This, I think, is a very significant action that was required of the voters so that one can very easily see the voter had a very deliberate choice on his way to Mr. BELLMON by leaving the lever or stopping the selector at Mr. Edmondson's name if he had chosen to do so.

No. 5, no candidate, nor any other citizen, protested before the election, nor did any one of the 123,709 persons who voted in Tulsa County complain on election day about the absence of a single lever for straight party voting. This is, however, the major basis of Mr. Edmondson's complaint and his petition.

Mr. President, I emphasize the fact that these voting machines were used by Democrats, Republicans, Independents, and any other person who went to vote that day in Oklahoma. Whatever impingement was upon one person or one party person was certainly upon all people if they wanted to vote a straight party ticket. I think that Mr. Edmondson is really in some ways raising a question of the intelligence of the Democratic voters in Tulsa County—that somehow they do not understand how to vote only but a straight party ticket, and if they cannot vote a straight party ticket then they get confused. This is certainly, I think, a very unkind and perhaps, I would judge, not being an authority, but I would say an unmerited comment upon the voters' intelligence of Tulsa County. I would say that if one took an IQ test he probably would not find any difference between a Republican and a Democratic voter in Tulsa County. I do not think the Republicans are that much smarter in Tulsa County or the Democrats that much dumber that they cannot understand how to operate a straight party vote or a split party ballot, but the implication is very clear that somehow Mr. Edmondson would have won the election if the Democrats, going to vote on election day, could have turned only one lever and voted a straight party ticket.

Again let me emphasize the record will not show that this is necessarily true, because I did cite the statistics from three past senatorial elections in other elections that could be used to support the contention that Tulsa has had a long history of splitting their ballot.

Mr. President, I think there are many things that could be said, but I think that there are at least four reasons why Mr. Edmondson is not entitled to a new election.

No. 1, Mr. Edmondson should be estopped on the argument that ballot placement was an irregularity. He contends that this was one of the reasons why he was denied the victory that otherwise would have been his. It was that the ballot placement of his name constituted an irregularity.

Let me point out, No. 1, that the general election ballot placement was the same as it was in the primary, no different.

No. 2, that general election ballot placement was the same as it was in the runoff; no different.

Therefore, Mr. Edmondson knew well in advance of the general election what the ballot position was going to be and could have gone to court to compel the election officials to place the congressional ballot before the two State offices columns if in fact the congressional ballot was in the wrong position on the face of the machine. Let me also point out that the sample ballots were sent to each candidate's campaign headquarters well before the day of election, and that Mr. Harmon Moore, who was the chief clerk of the Elections Board who laid out the ballot position, was an active campaign worker for Mr. Edmondson after his working hours.

However, remember the Supreme Court of Oklahoma specifically did not hold that the ballot placement was irregular, but whether the Oklahoma Supreme Court assumed for the sake of argument that even if it had been an improper placement, it did not affect the outcome of the election. This, one might say, is a gratuitous observation by the court, because they not only rejected Mr. Edmondson's contention that the placement of his name on the ballot was an irregularity but also said, in effect, assuming, for the sake of argument, that it was an irregularity, it was not of sufficient consequence to affect the outcome of the election.

Let me stop here, Mr. President, because I think one has to recognize the fact that in every election there probably are irregularities. If there were a way in which we could go back and reconstruct and review and analyze the election of every Member of the Senate, I believe we would find that there were irregularities of some kind, and we usually refer to those as administerial irregularities.

Most elections are run by lay people who may only have the experience of every 2 years or every 4 years. The courts have long made the assumption that in every election there are certain irregularities; but the courts have said—

> Were the irregularities of such consequence that they would substantially affect the outcome of the election? Were the irregularities of a fraudulent or criminal nature? Were the irregularities of such character that they denied the people the right to vote?

If they were not, if such irregularities were not ascribed to the contestant who was determined to be the winner, then there should not be a new election and it should not be the basis upon which to call for a new election. That is not my opinion or the opinion of the Rules Committee. That is established by the courts of the Nation, and I shall refer to the court citation of those cases a little later. If not today, I will have ample opportunity from now until Christmas of next year.

However, I think we also should remember that we must compare the requirements of ballot placement on a voting machine to the paper ballots and that in Oklahoma there are not voting machines in every county. There is a mix in this State, where there are paper ballots in 76 counties and machines in only two counties.

Remember that the placement of the names of the candidates for the Senate on the voting machine and the paper ballots would have been compared in this way: In Oklahoma, when a voter goes to a paper ballot voting precinct, he does not receive his separate ballots in any certain order. So if this had been such a vital part of the election results in Tulsa County, how would you then explain the results in the rest of the State?

Point No. 2 of the four points I would like to present today as to why Mr. Edmondson's petition should have been denied by the Rules Committee and Mr. BELLMON seated, is that Mr. Edmondson should be stopped on the basis that the lack of straight party levers is an irregularity.

Let us look at this for a moment, because when Mr. Edmondson claims this in his petition, the evidence clearly demonstrates that he or his agents knew beforehand of the lack of levers on at least Thursday before the election. But let me go back and say that the levers were the same as they were in the 1972 election as well. These levers were not in any different operating order than they had been when Mr. Edmondson lost his election to Senator BARTLETT. Even in this year's election, the 1974 election, Mr. Edmondson's people—his agents, his campaign organization—knew this at least 5 days before the election. This is not an allegation or an opinion but, rather, a statement of fact, because Mr. Edmondson admitted this before the Rules Committee.

He even said to the Rules Committee that they held a council of war, as he called it, which included his attorneys. I point out that Mr. Edmondson is an attorney, practicing law in Oklahoma.

I should like to substantiate that statement further by the investigation of the Rules Committee, which included the interviews with various officials in Oklahoma, including Mr. Danny Lee McDonald. This is the statement:

Congressman Edmondson's campaign manager in this county called me on Thursday prior to the election, and his opening statement to me was that "since we no longer use straight party voting levers in Tulsa County, would you be sure and remind people of that," which I did, both in the newspapers and on the radio, as I recall.

So here is the testimony again affirming the fact that Mr. Edmondson's agents and his representatives in Tulsa County were fully aware of the lever configuration on these machines before the election.

The third reason why Mr. Edmondson should be estopped from his argument on the vote totals in certain precincts is this. Here, again, Mr. Edmondson could have filed for a recount pursuant to Oklahoma law, which he did not choose to do. It should be fully understood that it would be impossible to conduct a recount at this time, either by the Senate or by Oklahoma officials, because Mr. Edmondson did not exercise the Oklahoma recount statute as he had the right to do.

Another reason is that there is no allegation calling for a recount in Mr. Edmondson's petition to the Senate. Also, Mr. Edmondson stipulated at the trial court, before Judge Byron, that the vote totals were accurate.

Perhaps I am again emphasizing the role of evidence in a case of this kind. I do not happen to be a lawyer, but I would like to think that even an intelligent, fair-minded nonlawyer would want to have some kind of evidence or criteria upon which to make a decision when he is called upon to act as a judge; and we, in effect, are acting in a quasi-judicial role when we are reviewing elections under the Constitution of the United States. Obviously, when one looks back at the record of the Rules Committee, the evidence factor was not terribly important. However, when one recognizes that evidence does play a role in these determinations, one must recognize that there is no evidence that the vote totals were not accurate, no evidence of any kind.

Mr. Harmon Moore explained away many of Mr. Edmondson's contentions. Mr. Moore, after all, has indicated his sympathies to Mr. Edmondson's political thoughts and philosophies of the past. In addition, if the Senate investigative panel would have asked Mr. Moore in Tulsa, he not only could have explained but also could have put the investigators in contact with precinct workers.

Thus, there are valid reasons for the time limitation for conducting recounts, and Mr. Edmondson should be bound by Oklahoma law and not be allowed to assert something now by inference which is not even conclusive and has not been explained fully.

One further reason why Mr. Edmondson is not entitled to a new election as now determined by the majority party of the Rules Committee, considering the first three points, notwithstanding any or all of them, is that for Mr. Edmondson to have a new election would be a futile thing. When one considers Mr. Edmondson's allegations of irregularities, the so-called effect of the irregularities by testimony of experts, and thus his desire to hold a new election, it will be seen, even if one takes Mr. Edmondson's arguments at face value, that the Senate would be doing a futile thing if a new election were held. I submit this proposition on the following basis of evidence and logic.

First of all, a new election will require filing of candidates for the office of U.S. Senator, which will further require a primary and possibly a runoff election before a general election is held. Thus, if a member of the American Independent Party files, there will be more than two political parties on the ballot and the Tulsa County machines would not have the straight party levers, notwithstanding the 1974 statutory amendment, effective January 1, 1975, for statewide elections. What I am saying here, in effect, is that it is impossible to reconstruct the situation as it occurred in 1974; among other reasons, because there is a new election law. That election law was passed in 1974 to take effect on January 1, 1975.

I point out that this new election law, which was an amendment to the Election Code of Oklahoma, was sponsored by Finis Smith, Democratic senator from Tulsa; John D. Luton, Democratic senator, Muskogee; Charles Elder, Democratic representative, Purcell; Ross Ducett, Democratic representative, Mustang, and David L. Boren, Democratic representative, Seminole, presently Democratic Governor of Oklahom .

The bill passed the house of representatives, April 16, 1974, passed the senate April 23, 1974, and was signed by the Democratic Governor, David Hall running for reelection, on May 4, 1974.

There is no question, and witnesses could have been called if the committee had any question to testify, that this bill was passed so that straight party levers would never have to be on the voting machines in Tulsa County in any election after January 1, 1975.

So the very crux of Mr. Edmondson's whole contention is totally wiped out, completely wiped out, by the action of the Democratic legislature of Oklahoma saying, in effect, "You don't have to have straight party levers on the Tulsa voting machines this fall."

So the very contention was that if he had had straight party levers on the voting machines, he could have won the election. Now he wants a new election. You do not have to have, under the new law, straight party voting levers. So obviously, Mr. Edmondson's whole case falls apart.

I think also the 1974 amendment, even if a third party candidate does not run, will not require straight party levers on the voting machines in Tulsa County, for this reason, and I quote specifically from the law. This is 26 OS 9–107. It says:

Said voting machines must be programmed so as to permit straight party voting, as well as split or mixed tickets, unless existing machines are so constructed as to make straight party voting impossible without substantial modification of the machines.

Thus, let me emphasize again, Mr. Edmondson's experts claim that the major reason he did not win the 1974 election was due to the lack of straight party levers. Ballot placement should not be an issue for the Senate to consider because of the estoppel discussion that I have already made on point No. 1, and we cannot rerun the entire 1974 slate of offices.

If we take their speculations as absolutes, then the converse must also be true: That is, if this irregularity is as important as Mr. Edmondson claims, since there will not be levers on the machines in Tulsa County if a new election is held, then he cannot possibly win.

I think we have to recognize that to give further evidence on this matter, there are two kinds of voting machines in Tulsa County: what they call the Amarillo machines and the Tulsa machines. When one looks at these machines—and the Senate Committee on Rules had samples of both of these machines before our committee and any Member of the Senate who would like to see them can go down there to the committee, room 301 of the Russell Senate Office Building, and see those machines. The Amarillo machine does not require levers and there is some question as to the Tulsa machine requiring levers, because of "substantial modification of the machine," irrespective of whether there are more than two political parties, the same as in the 1974 elections generally. It is evident that the Oklahoma legislature was receptive to the historical problems of Tulsa County and its continued use of the Tulsa machines when this above provision was enacted, because the Amarillo machine purchase was not approved—I want to underscore this with great emphasis—by the Tulsa County commissioners until June 14, 1974.

That is significant, because the legislature passed the above amendment and the Governor signed it on May 4, before the county made the determination to buy the Amarillo type of machine.

Also, even if the purchase of the Amarillo machines was contemplated by the legislature it is clear that the legislature didn't intend for only some of the machines in Tulsa County to never require levers but rather that all machines to be programed substantially the same; that is, "Tulsa machines" would require substantial modification to adopt to levers and therefore levers will not be required in statewide elections held in Tulsa County regardless of whether there are more than two political parties or not.

Here again, Mr. President, we are back to a basic question of what are the criteria that the Senate should use for making this determination? I think they are the same criteria that the Committee on Rules should have used. I suppose this is, of course, the only place now that we have to appeal to the fairmindedness of people and appeal, on the basis of equity in this case, to the full Senate. Because, again, I think the Senate is interested in having some kind of base and criteria other than a partisan political basis.

I cannot really believe that Democrats can only think in terms of awarding contested elections to Democrats and Republicans can only think in terms of awarding contested elections to Republicans. I say to the Democrats that they have 62 people here. They can make that decision any day of the week; but one of these days—maybe some of us are still engaged in wishful thinking—the shoe might be on the other foot. I want to say that if I am here at that time, I doubt very much if any kind of party discipline could bring me into line on that basis, because I feel very strongly that the whole reputation and stature of the United States Senate is at stake here.

The distinguished majority leader, Mr. MANSFIELD, said that I had a matter of great importance to the Republicans to take up. I have a matter of great importance to the entire American electorate to take up, because I think the basic attitude of the electorate is that they want these decisions based upon the equity, fairness, and precedent of the law and not just upon a cloud of majority authority that has 62 votes and can say, "Start up the railroad, we are now going down the track." I do not think that is what the American people expect.

Mr. LONG. Mr. President, will the Senator yield at that point?

Mr. HATFIELD. I will be very happy to yield for a question, but not for anything other than a question. Since I am under a limitation of time, I can only yield for a question.

Mr. LONG. Is the Senator of the opinion that the Democrats hewed unanimously to a party line vote when we had the New Hampshire contest before us?

Mr. HATFIELD. I shall say to the Senator that whenever there is a lack of opportunity for the minority to really have its case heard in the court of the U.S. Senate—the Senator from Louisiana, who is probably one of the greatest experts in this field of anyone, knows very well that there are rules of procedure that only a minority can raise as a weapon in its defense. I would say that was the case in the New Hampshire case.

I also wish to say to the Senator from Louisiana that I have now been speaking and addressing myself to the courts of law, to the courts of evidence, to the case as it has been tried and retried, and not to any kind of precedent on the New Hampshire case as it relates to the role of the Senate. The Senate is not engaged here in determining an election that was determined in a State by a two-vote margin, in which ballot machines were broken down, in which there were ballots lost, in which it was impossible to determine the outcome.

I am talking about a case that is now coming to the floor of the U.S. Senate in which the highest court of the State, made up of eight Democrats out of nine Supreme Court Justices, said there is no evidence, no evidence, that because there was not a straight party lever on the Tulsa County machines, that anybody had been denied the right to vote and that therefore, Mr. BELLMON should be denied the right to be seated. If that is a case, it is a case of law, a case of precedent. It is not a political decision.

Yet, let me say to the Senator from Louisiana that it is very seldom that the full Committee on Rules even sat for the hearings. A small part of that committee sat for the hearings. At that time, when the decision was made by the Committee on Rules, there was not one statement made, a verbal statement, by the majority party. They sat there in utter silence, like a Quaker meeting. Finally, the chairman said, "Well, this is the quietest this committee has been," waiting for the minority to take the initiative to see what kind of action should be taken.

Finally, on the first vote by the Rules Committee, may I say to the distinguished Senator from Louisiana, who is the chairman of the Finance Committee, the only question that was resolved on the first day was never made in the form of a motion. It was laid before the committee because there was a lack of anybody to make a motion of the disposal. The chairman laid the question and called for a vote on that question.

So, all I am saying is because of this factor I am appealing to the fairness of the judicial mind of the Senate to look at this case not on the basis of the resolution of the Rules Committee but on what the Rules Committee failed to do, and to go back and establish a criterion other than political superiority of numbers.

Mr. LONG. The point I had in mind is simply a matter of inquiring if, in the Senator's opinion, it is not true there was a considerable number of Democrats in the New Hampshire contest who declined to vote with the majority of their party and voted to protect the rights of the minority, and look upon the contest as made and, based upon the experience the Senator has had in this session of Congress, why would the Senator assume the Democrats are going to vote a straight party line vote on a matter that he is discussing? Why would he not assume that he would have an experience similar to what he had in the New Hampshire contest where a substantial number of Senators who were not willing to agree with the majority of their party about the matter, insisted on thinking independently for themselves in connection with that matter?

Mr. HATFIELD. I respond to the Senator's question by saying the reason I am raising this question and am concerned about the possibility of straight party voting is on this basis: in the New Hampshire case the Rules Committee brought to the floor of the Senate a number of tie votes cast by four Democrats on one side, three Republicans and one Democrat on the other side, so it was not straight party voting on the part of the Democrats.

In this instance, this resolution that is coming now before the Senate of the United States is a line of five Democrats on one side, three Republicans on the other side, and one abstention.

So here we have, unlike the New Hampshire case, a straight party line vote, which causes me great concern because in that there was no argumentation made at the time this resolution was passed by the majority party. They sat mute.

Mr. LONG. Is the Senator familiar with what happened in the Dennis Chavez contest some years ago when Eisenhower was President?

Mr. HATFIELD. Yes. In answer to the Senator's question I would like to read from that case because that is where the majority party was on this side, and I would like to read from that. I am glad he asked me that question, and I had that in mind.

I read from the Senate Election, Expulsion and Censure cases from 1789 to 1972 document 92–72, the case of Patrick J. Hurley versus Dennis Chavez of New Mexico. This was the statement of the case:

Statement of the Case: In the 1952 Senate election in New Mexico, Senator Dennis Chavez, the incumbent, received 122,543 votes to 117,168 for Maj. Gen. Patrick J. Hurley. Hurley requested an investigation, contending that the election laws had been violated.

As in the case of Mr. Edmondson.

Before its canvass of ballots was completed, the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration recommended that some votes be thrown out on grounds that the constitutional right to a secret ballot had been violated. Voting with Subcommittee Chairman Barrett to throw out the votes was Senator Charles E. Potter (R., Mich.). Senator Thomas C. Hennings, Jr. (D., Mo.), third subcommittee member, dissented, saying the Senate should not "disfranchise voters because of failure of election officials to fully comply" with "technical election statutes."

May 27, 1953, the committee heard arguments of counsel for the contestants on the motion of Senator Chavez to dismiss contestant's petition and for a bill of particulars. The committee denied both motions.

On the basis of its preliminary investigation, the Rules Committee decided to hold a full-scale investigation and asked for funds to finance the probe.

June 8, 1953, Senate Resolution 106, to obtain funds for the subcommittee, was presented to the Senate for consideration. This resolution asked that the limit of expenditures of Senate Resolution 333, 82d Congress, for the Committee on Rules and Administration, be increased to $100,000. After the resolution was amended to $75,000 it was passed without objection.

August 3, 1953, the subcommittee, by Senate Resolution 137, again requested additional funds and asked that the limit of expenditures referred to above be increased to $160,000. However, this resolution was amended to $37,500 before passage by a voice vote.

In addition to investigating the violation of the right to a secret ballot, the committee concerned itself with alleged fraud and criminal conduct against the rights of voters——

Not so contested here in Oklahoma.

assistance to illiterate and physically handicapped voters, the New Mexico registration system, the qualifications of voters on United States Government installations in the State of New Mexico, alien voting, violations by election officials, the recount, and the premature destruction of the ballots in Dona Ana, Lincoln, and Otero Counties.

You see the seriousness of these violations. Here is what the decision of the Senate was:

Decision of the Senate: On January 3, 1953, Senator Taft requested that Senator Chavez

should be permitted to take the oath and be seated without prejudice, and this was done. At no time was any charge or suggestion of election fraud or irregularity made against the Senator.

Any more than against Senator BELLMON.

The Subcommittee on Privileges and Elections filed with the Committee on Rules and Administration on March 11, 1954, a report relative to the contested election of November 4, 1952, pointing out certain irregularities in New Mexico's election procedures and recommending a determination that no Member of the Senate was elected from the State of New Mexico in the 1952 general election.

The Committee on Rules and Administration considered and adopted the report of its subcommittee on March 16, 1954, and, on March 16, Senator Jenner, from the committee, reported a resolution (S. Res. 220) to the effect and declaring that a vacancy existed in the representation of that State in the Senate.

Senator Cordon proposed an amendment adding: "and that it is the sense of the Senate that said vacancy should be filled only by election held pursuant to the laws of the State of New Mexico."

After debate the amendment and the resolution were rejected March 23, 1954, by votes of 36 yeas to 53 nays, with 7 not voting.

What I want to point out is that in these elections you have had in the past, wherever no irregularity has been charged to the contestant who has been duly certified by the State election procedures of his own State, he has been seated without prejudice, and in this case similarly you have no irregularities charged as against Senator BELLMON by Mr. Edmondson.

The point I am making is that at no time, to my knowledge, have you had any other than a careful review of the State's laws in effect, the procedures, the practices, the methods by which they conduct elections.

When I asked the chairman in this particular case, and I think the Senator from Louisiana will be interested in knowing this, when we listened to, had the court case introduced, and we used that as discussion, when we used the precedents set before the committee by the minority of preceding cases of the Senate, and when we had these various other pieces of evidence provided, I said, "Does the chairman reject the Oklahoma Supreme Court ruling out of hand and all the evidence and law in that State and, if he does—" and he said, "Yes, I reject its rulings."

I said, "Then what does the chairman ask us to substitute as the base, the criterion, to make a judgment?"

The chairman said, "The new evidence presented by the expert witness on Mr. Edmondson's staff."

Let me ask this Senator who was this so-called expert witness? He was a professor of political science who had conducted a national survey of voting habits and patterns of the Nation's voters, and out of this national survey he came to the conclusion that where people had an opportunity to vote a straight party ticket, their voting habits were different from those who had to vote a split party ticket.

May I say to the Senator from Louisiana, the interesting thing is that if we take any national study and try to apply it to my State, as far as the specifics are concerned, we would not find it fit entirely.

I am sure such is the case in Louisiana. I do not think we can take a national study and draw these great conclusions upon which we are going to reject a Supreme Court ruling and take in lieu of that a national projection of studies and evaluations and conjectures and speculations.

That is all the professor of political science offered the committee. That is all.

Then we have found—and the distinguished Senator is a lawyer—that the committee did not even have the evidence of the study before it. It took only a verbal synopsis from the so-called expert and for 3 weeks a request has been pending on receiving from that expert the full study to make an analysis of that evidence.

So even without that evidence in hand, as I raised that question before the committee, what was the response? Silence. Or, "Well, if you had wanted that, you could have asked me and I could have gotten it for you," because we had asked for it other than going through the chairman.

My point is simply this. When the committee is willing to substitute a conjectural type of study, a speculative study, that if there had been a State voting machine lever, we would have had a different outcome.

Let me say, Tulsa County has always split its votes in modern history. Mr. Edmondson did not get that much different vote in 1972 when he ran against Mr. BARTLETT, and when Mr. BELLMON ran against Mulroney in 1968. The Democrats and Republicans have split about the same percentage, within 1 percent difference in those three Senatorial elections.

But this time, the Rules Committee sits there with all its dignity and says in effect, we are not going to listen to the court cases of Oklahoma, including the Supreme Court, we are not going to look to the precedents of the U.S. Senate, but some theoretician from the classroom who tells about some great study he made about national voting habits.

Does the Senator from Louisiana think we should apply that as a base or criteria?

This is what causes my concern.

When the majority sat there silently and voted one, two, three, four, five; voted one, two, three, four, five; hup, two, three, four; lock step on an issue, that should be a serious, "semi"-quasi-judicial process which, to me, raised some very serious questions in my mind.

That is why I wanted to raise this before Christmas, so we would have the holy days to think about it and perhaps give a lot more serious consideration to it than the Senate Rules Committee gave it.

I do not implicitly or explicitly in any way infer that the group sitting over there on that side of the Senate are going to lock step down on the rollcall, when it finally comes to the vote. But in the Rules Committee, hup, two, three, four, down to number five.

I was deeply concerned because I just could not see how even a lawyer, or a nonlawyer, either—and our chairman is a lawyer—could say, "Yes, I reject a Supreme Court ruling and am going to take in its place a theoretical, speculative study of a political science professor."

This is why I raise these questions.

Mr. LONG. The point I want to make to the Senator is that while in these very types of contests, I suppose, invariably are a very large number of Senators who vote their party position, the outcome in my judgment usually goes with those independent-minded Senators who do not vote the party line.

I was thinking of the Chavez contest because at the high water mark of the challenge, my recollection is that all Republican Senators save two voted against Senator Chavez, even though in my judgment the Chavez case was clearly one that should have been decided in Senator Chavez' favor.

As I recall it, Margaret Chase Smith and John Sherman Cooper were the only two Republicans to break rank in what I thought was a very clear case that Senator Chavez should have been permitted to keep his seat.

There is a tendency to follow a party line in situations like that. But it has been my experience while I have served here that the outcome of those contests invariably goes where the independent votes go.

I do not think the Senator need worry about enough independent votes in this Senate to assure that there will be a fair decision on the matter, even though I can understand his concern when his party is in the minority and they have seen a measure of this sort go down in the committee.

Mr. HATFIELD. I thank the Senator for his observations.

I want to say that I welcome the Senator's comments, his objectivity, and independence, as he looks at this case.

I am sure the evidence will be so overwhelming that this will not be a straight party line. Obviously, if it is a straight party line, I think that perhaps our side will have failed to present the evidence sufficiently, or the mentality of the other side is so completely conformed and regimented that it is impossible to get through to them, and I do not choose to think that of any Members of the other side.

But I did want to raise this because of the fact that when I saw this kind of procedure occur, to me, it had all the earmarks, it had every indication that we had the steamroller all oiled up, we had it all fueled up and all ready to go. If there had been a long discussion or if there had been a long give and take debate, that would be one thing, but when it was raised as the issue and it went through with the kind of procedure that was followed in that committee, I felt the obligation to bring this to the full attention of the Senate to prepare them

for what amounts to conduct, as one person on this side representing the minority, a full disclosure, a full exposition, a full review of every aspect of this election because I do not think elections of this kind should be determined by how many votes the party has on the side of a petition.

If we do that, as the Senator knows, we invite every election in the future to be determined by this body rather than letting the States determine it, especially where the States have had their voting machines, and those people that have expressed their views and pursued their case clear through.

We have a constitutional right and responsibility and we cannot discard all those State proceedings. We have no constrictions upon the Senate to make any decision it wants.

All I am saying is that I do not think it should be a political base upon which we make that decision, but it should be some evidence, some base of law and precedent and background of that case, and cases similar to them that the Senate considered in the past and what the courts have ruled.

I thank the Chair.

ENERGY POLICY AND CONSERVATION ACT

The Senate continued with the consideration of the motion to concur in the amendment of the House to the amendment of the Senate to the amendments of the House to the bill (S. 622) to provide standby authority to assure that the essential energy needs of the Untied States are met, to reduce reliance on oil imported from insecure sources at high prices, to implement U.S. obligations under international agreements to deal with shortage conditions, and to authorize and direct the implementation of Federal and State conservation programs consistent with economic recovery.

The ACTING PRESIDENT pro tempore. Recognition is due to the Senator from Washington or his designee on the energy bill, the managers of the bill.

The Senator from Illinois.

Mr. STEVENSON. Mr. President, for the last 9 months four committees of the House and Senate have labored to produce a comprehensive energy program, and they have succeeded.

The energy policy of the Conservation Act establishes a 1 billion barrel national strategic oil reserve and standby rationing on emergency conservation authorities.

It sets automobile fuel economy standards and mandates energy efficiency labeling for major home appliances. It gives the President the authority to bargain with nations on government-to-government basis for the purchase of foreign oil. It provides FEA with authority to order conversion of major fuel installations to coal; it authorizes assistance for new coal mines and provides for GAO audits of oil company energy conservation programs.

It promotes the use of recycled oil, and puts in place a flexible, 40-month incentive-based price control formula for domestic oil that is fair to producers and consumers alike.

This bill will not make everyone happy. But it is a sound compromise on a complicated subjected; it deserves the approval of both the Congress and the President.

Considering the complexity of the issue and the pressures of the special pleaders, this product of many months of effort in the Congress and administration is no mean achievement. If approved by the Senate and signed by the President, we can get on with the business of rounding out an energy policy for the Nation.

If disapproved, the result will be more inflation, recession and unemployment with no significant increase in energy supplies—and energy consumption decreased only as a result of declining economic activity.

Approval could mean a $12 billion increase in GNP, a 1-percent drop in the Consumer Price Index, and jobs for 500,000 more workers by 1977—as opposed to conditions with continued controls under the Emergency Allocation Act. Disaproval of the act, and consequent immediate decontrol, would mean a $20 billion loss in GNP, a 1.5 percent increase in the Consumer Price Index and an increase in unemployment of almost 1 million workers by 1977. That is the choice we face.

The oil industry would have us believe that inadequacies in the pricing provision are enough to dismiss the bill. But the industry claims are self-serving and contradicted by studies the industry itself has furnished Congress and the administration.

The House and Senate conferees adopted a national weighted average price of $7.66 per barrel. That price gives the administration authority to establish sufficient incentives for optimal domestic production.

There is no reason for the price of all domestic oil to rise to the price necessary to produce small volumes of high-cost oil.

The conference had to strike a balance between requirements for increased production and decreased consumption on the one hand and the requirements of the economy on the other. The initial $7.66 per barrel average price for domestic oil would mean a "new" oil price of $11.28 per barrel. If the administration rescinds the $2 per barrel tariff on oil imports, as it proposes, the "new" oil price would fall to about $11.70 without any controls. So the act does not roll back the price of "new" oil significantly. Two years ago, the price of domestic oil was about $3.40. This "new" oil price of $11.28 is adequate, to say the least.

Balancing the need to restore economic growth and employment against the need for energy investment and price certainty, the conferees developed a pricing formula which may result in a modest near-term rollback in the average price of oil. It also establishes a 40-month period of price stability. And the average price of $7.66 would be increased by 10 percent per year and, in practice, by higher costs for exempt Alaska oil, more than enough to cover inflation and higher prices for special categories of high cost oil production.

The concern that any rollback will encourage wasteful consumption is not convincing. The rollback, if any, will be modest and temporary. The increase of 20 cents in the price of gasoline over the last 2 years has had a negligible impact on gasoline consumption. The conversion provisions of this act offer a more effective means of conserving energy than another wave of OPEC controlled oil prices.

The President's energy advisers have recommended that he approve the act. The Congress and the administration have labored for almost a year to produce this bill.

Mr. President, I urge the Senate to complete this process, to do its duty, and to enact this bill without still more delay. There has been too much delay already.

Mr. JACKSON. Mr. President, I commend the distinguished Senator from Illinois for his excellent remarks. I especially thank him for the major role that he played in putting the conference report together.

As many of my colleagues know, we were in conference for 5 weeks and we had three committees involved: the Commerce Committee, the Public Works Committee, and the Interior Committee. The ability of all three committees to work together, I believe, was a major factor in reaching an agreement.

I would hope that the Senate would recognize the tremendous effort that has gone into the particular matter that is now pending before the Senate and act favorably.

Mr. President, the Senate today faces one of the most significant decisions of the year in its consideration of S. 622, the Energy Policy and Conservation Act, as amended by the House yesterday. The House amendment consists of the text of the conference report on S. 622 with two changes. The first change deletes a definition in section 102. The second change strikes part B, application of advanced automotive technology, from section 301 of title III of the conference report.

Since January the President and the Congress have been deadlocked over national energy policy. This deadlock—characterized by the President's unbending commitment to an energy program based almost exclusively on taxes, tariffs and higher prices—has resulted in a dangerous game of "economic brinksmanship." For the third time in 4 months, as of midnight last night, all petroleum price control and allocation authority has expired. For the third time in 4 months the Nation's economy is threatened by a sharp and sudden surge in energy prices and all goods and services in which energy is a component.

Mr. President, the debate on energy policy can continue; the deadlock cannot.

Unless the Congress approves, and the President signs, the Energy Policy and Conservation Act, we will see the Nation's difficult energy and economic problems grow steadily worse: a return to double-digit inflation, continued vulnerability to the oil weapon from

abroad, and continued squandering of valuable energy resources at home.

Repeatedly in the past year the Congress has rejected the administration's program of "conservation by price and conservation by inflation." Despite enormous pressure to acquiesce to an energy policy which would have unfairly penalized the average American family and unjustly enriched the major oil companies, Congress held its own. Both Houses went about the task of developing comprehensive energy programs that did not ignore the economic realities of high unemployment and inflation. This task is now completed.

The Energy Policy and Conservation Act sets automobile fuel economy standards and mandates energy efficiency labeling for all major home appliances. It provides the Federal Energy Administration with authority to order conversion of powerplants to coal, authorizes loan guarantees for the opening of new coal mines, establishes federally-funded State energy conservation programs, sets industrial energy efficiency targets, and provides for the creation of a 1-billion barrel national strategic petroleum reserve to protect the country from future embargoes.

These and other energy policies embodied in S. 622 will serve the Nation far better than the policies endorsed by President Ford last January, which called for immediate decontrol and a combination of taxes and tariffs to raise energy prices to unprecedented and economically hazardous levels. But these measures to curb demand and increase supply have received little attention, when compared to the pricing provisions of S. 622.

Mr. President, I am not surprised that Mr. Ford and the oil industry find these pricing provisions less than perfect. I am not surprised because S. 622 explicitly rejects the contention that only exorbitant world oil prices—artificially maintained by a foreign cartel and inflated further by a tariff of doubtful legality—will solve the Nation's energy problems. We should remember that the price of a new—uncontrolled—barrel of oil has jumped from about $3.40 to well over $13 in a little more than 2 years. The rollback provided for in S. 622 must be viewed against this background.

The reduction in crude oil prices required by S. 622 consists of two major elements. First, there is the requirement that the actual national weighted average price for domestic crude oil not exceed $7.66 a barrel. Second, the President is committed to remove the $2 oil import tariff when he signs the bill.

Mr. President, the reduction in crude oil prices required by S. 622—estimated by the FEA and committee staff to exceed 3 cents per gallon—2.5 cents per gallon when spread over all products—will help spur our still sluggish economic recovery. It is not as deep a rollback as I would have liked to see, but it is significant. This is the most that can be done for the American consumer so long as President Ford occupies the Oval Office.

The alternative to the pricing policy proposed under the Energy Policy and Conservation Act is clear.

It is immediate decontrol.

This would mean higher consumer prices and oil company profits.

This would mean reduced consumer purchasing power and economic activity.

This would mean more inflation and still more unemployment.

Decontrol is not, in fact, a responsible alternative.

The choice confronting us today is fundamentally different from that which we faced earlier in the year. The Congress is no longer fighting a rear-guard action to prevent implementation of the administration's rationing by price program. The Congress has developed, and S. 622 embodies, a comprehensive energy program. As important as continuing petroleum price controls is, the issue is no longer confined to the question of price controls. We are deciding whether or not the country can be permitted to drift without a national energy policy—without protection from oil embargoes, without building energy conservation into the fabric of our society and economy, and without utilizing domestic energy resources in a responsible manner.

Mr. President, a great deal of valuable time has been lost since January—time during which reasonable approaches to our energy problems could have been developed by an administration sincerely interested in cooperation with the Congress. A true atmosphere of cooperation may be developing. The conference committee worked closely with representatives of the President in developing the Energy Policy and Conservation Act. Indeed, Mr. Ford's energy advisers have urged him to sign S. 622.

I believe the apparent evolution of the administration's position since January is a result of an increasing awareness in the White House of the realities of the energy situation.

These realities are:

First, steep, artificial increases in energy prices and in oil company profits do not constitute a solution to U.S. energy problems.

Second, while we must alter the structure of the domestic economy to greatly increase the efficiency with which energy is used, this is an enormously difficult task which will require ingenuity, diligence and, most of all, time. It is foolish to maintain that energy efficiency will substantially increase solely because of tariffs and high energy prices. More importantly, sharp increases in these costs are very dangerous for the economy in the short run.

Third, it is now—and will continue to be—necessary for the Federal Government to play an active role in the domestic economy to insure that the inequities and imbalances created by the actions of the OPEC cartel are dealt with in as efficient and equitable a manner as possible.

Finally, continued involvement of the public sector will be necessary to see that the kind of energy conservation and energy resource development which is necessary to increase our energy self-sufficiency actually takes place. Reliance on the major oil companies to do it all is simply not a responsible exercise of the authority of the Federal Government.

I am hopeful that the President will sign the Energy Policy and Conservation Act. I strongly urge him to do so.

The Congress has provided the President with an opportunity to end the deadlock. For the good of the country, I hope this opportunity is not lost.

Mr. RANDOLPH. Mr. President, precisely because the welfare of the American people is closely tied to national petroleum policies, the need for thoughtful actions is imperative.

I have emphasized on numerous occasions, since the inception of Project Independence, that the United States has become more, not less, dependent on imported oil. We are now the largest importer of OPEC supplies.

I stress the fact that in 1974 Russia became the world's leading oil-producing nation at 3.4 billion barrels of crude oil annually. The United States is in second place in domestic oil production at 3.2 billion barrels.

OIL PRICE CONTROLS

When the Emergency Petroleum Allocation Act was enacted in November 1973, our country was faced with a severe shortage of crude oil and petroleum products caused by an oil embargo. The United States was threatened by a substantial dislocation in the availability of petroleum as well as severe economic pressures. The principal purpose of that act was to assure that we met our country's priority needs for petroleum. However, the measure also undertook to allocate, on an equitable basis, available petroleum supplies among consumers at equitable prices.

This was intended to preserve the competitive viability of the independent sectors of the oil industry.

Under the act the Federal Energy Administration was able to respond to shortages with minimum adverse impact on our economy. In addition, the market position of the independent segments of the industry was preserved. The result, however, was establishment of an intricate, but known, Federal structure of allocations and entitlements which eventually must be phased out.

OIL PRICE DECONTROL

Mr. President, every day the present deadlock on oil price decontrol is allowed to continue, the American consumer suffers. Domestic oil production continues to go down and down, to be replaced by higher cost imports. Meanwhile, balance of payments deficits increase, as do consumer prices.

Unfortunately, however, the elimination of oil price controls will not return us to a free market. Rather, we will turn the establishment of the U.S. oil prices over to an international producers cartel—the Organization of Petroleum Exporting Countries.

As domestic oil production continues to decline, oil imports continue to rise and the case for oil price decontrol becomes steadily stronger. We are unrealistic if we assume that we can indefinitely maintain the United States as an island of low-cost energy in a world of escalating oil prices. When decontrol comes it

will be painful, however, if we achieve the dual goal of reduced energy consumption and increased domestic production it will be well worth the costs.

The approach taken by the conferees on S. 622 represents their best judgment for a phased program of oil price decontrol. In my judgment there is room for further refinement to reflect broader national interests than short-term price concerns. Nevertheless, there is a consensus of the conferees. Provision also is made for the President to determine that additional price increases are warranted to foster new energy supplies.

For almost a year the Congress and the Ford administration have been negotiating a plan for oil price decontrol. Several attempts have been unsuccessful. This proposal represents the most recent negotiations and should be approved as reasonable, although there is a need for a future amendment to reflect greater concern for the promotion of energy self-sufficiency.

The principal objective of oil price decontrol should be to spur greater development of domestic oil supplies. In addition, we must be concerned for establishment of a ceiling price, other than the OPEC international price, which also recognizes the aggregate investment requirements of industry for the exploration and development of new domestic energy supplies. We also must minimize the possibility for price increases greater than necessary to meet national reinvestment requirements. And we must provide as simple a Federal regulated price structure as feasible.

Unfortunately, the principal objections to the decontrol of oil prices have focused on concern that such a move would aggravate inflation and dampen economic recovery from the recession. Conversely, concern has not been directed toward the establishment of oil prices which foster greater energy self-sufficiency.

The agreement proposes to initially roll back domestic oil prices by about $1.38 per barrel, or 3.3 cents per gallon, before allowing phased decontrol of domestic oil prices to continue, beginning at an average domestic oil price of $7.66 per barrel. During the period of the 40-month decontrol plan, while domestic prices are held down, international oil prices are not affected.

Should domestic production decline and be replaced by higher cost oil imports, consumer prices will actually increase despite controls on domestic production. The price rollback provision may well tend to discourage both conservation and new domestic supplies. To the extent that this action promotes increased oil imports it may well promote the interests of OPEC as well as actually result in increased consumer prices. As imports are increased OPEC's present problem of surplus production capacity will be relieved; this could well strengthen OPEC's position to demand future price increases, rather than weaken the solidarity of OPEC. For the benefit of an immediate rollback in oil prices, the American consumer may become increasingly dependent on foreign oil supplies.

Years of Federal control over natural gas have demonstrated that by holding down prices below market levels we foster excessive demand and shortages, as well as inefficient use of these energy resources which are nonrenewable. It is imperative that we do not allow this to now occur for petroleum so vital to our economy.

Our national interest requires that we continue to take positive steps to reduce dependence on imported energy supplies through the conservation and development of alternative domestic supplies. To the extent that this objective is accomplished under the conference agreement, it is consistent with our national interest.

Over the next 40 months it is proposed to decontrol domestic oil prices.

However, domestic oil prices must rise faster than international oil prices if this is to be achieved. Otherwise the gap between domestic and international oil prices may increase. This very likely could result in the imposition of permanent domestic oil price controls.

DOMESTIC SUPPLY AVAILABILITY

Mr. President, the Energy Policy and Conservation Act deals with several matters affecting domestic energy supply availability in general. Some provisions of S. 622 address leasing practices on the Outer Continental Shelf and other Federal lands, as well as the availability of energy supplies and equipment for the production of domestic energy supplies. For example, authority is provided to assure that roof bolts are available for use in the underground production of coal—a significant constraint on coal production during the oil embargo in the winter of 1973.

Provision is also made for the establishment of a system of national strategic energy reserves, in the event of future energy supply interruptions. Mandatory for petroleum, similar reserves are to be evaluated by the Federal Energy Administrator for other energy supplies such as coal for utility and industrial uses. This measue provides other authorities necessary to implement the International Energy Agreement. This agreement was signed between the United States and other industrialized nations who are faced with potential energy supply interruptions. These authorities also extend to the formulation of energy conservation and rationing contingency plans.

In addition, special provisions are made for coal conversion, for loan guarantees for new underground coal production, for industrial energy conservation, and for Federal initiatives on energy conservation.

COAL CONVERSION

Mr. President, this bill provides a 2-year extension of the coal conversion program provided for in the Energy Supply and Environmental Coordination Act of 1974. This extension has been approved by the Senate and the House several times this year.

The Emergency Petroleum Allocation Extension Act of 1975, S. 1849, contained a 6-month extension of ESECA which I authored. However, this legislation was vetoed by President Ford. A similar extension was approved by the Senate as S. 2337, the Coal Conversion Energy Supply and Environmental Coordination Act Amendments of 1975. In addition, I authored a floor amendment to S. 622, the Standby Energy Authorities Act, the measure now under consideration.

At the time ESECA was passed Mr. President, it was an emergency program. Mandatory coal conversion was untried; its economic and environmental consequences were unknown. The Congress limited FEA's authority to existing plants or installations that had the necessary equipment to burn coal on June 22, 1974. The 1974 act authorized the FEA Administrator to prohibit certain powerplants and "major fuel burning installations" from burning oil or gas as their primary energy sources, and to order certain powerplants in the "early planning process" to be built with coal burning capability.

Since enactment of ESECA, the Federal Energy Administration had identified numerous powerplants and major industrial installations which are currently burning oil and gas but have the capability to burn coal.

On June 30, 1975, the last day before their authority expired, FEA ordered 32 electric powerplants to cease the use of oil and gas and convert to coal. Before these orders can take effect, the EPA must certify that each plant can burn coal and meet air quality requirements. However, the EPA has yet to complete its review and certifications for any of these facilities.

The FEA also identified and issued orders to 47 electric powerplants in the early planning process being designed for oil firing and capable of being modified to include the capability of burning coal without impairing either the reliability or adequacy of service.

Under ESECA and section 119 of the Clean Air Act, we attempted to, in a well-reasoned way, make coal a usable fossil fuel.

On September 23, 1975, I sent a letter to EPA Administrator Russell Train. I requested a report on the status of the finalization of the FEA's construction and prohibition orders under the Energy Supply and Environmental Coordination Act.

Mr. Train indicated that the EPA has a role in the finalization of these FEA coal conversion orders. Under ESECA the EPA is directed to notify the FEA within 90 days of the issuance of an FEA order prohibiting the use of oil or natural gas if the facility can immediately burn coal and comply with applicable air pollution requirements. If not, the EPA must certify to the FEA the earliest date the prohibition order can become effective.

After almost 6 months, Mr. President, the EPA has not acted. I do not mean to be critical, but the EPA has indicated it has this role under ESECA.

Yes we have had problems along the way. We must have this partnership and combined efforts, so we can have a successful implementation of ESECA. If this cooperative energy and environmental effort could be made to work, we would have the means to achieve important fuels savings.

Mr. Train, in his reply to me, said that he was confident that EPAs' responsibilities under ESECA are being discharged in a reasonable and expeditious way.

We do begin to wonder, after 6 months, whether the intention to work with the FEA and us is reflected in the implementation of this program.

Both the EPA and the FEA have asked for an extension of the ESECA authority. Mr. Train indicates that this would allow the present program to proceed with greater success. It would provide both agencies with an opportunity to expand the program to cover additional facilities that convert to coal consistent with national policies to protect and enhance the quality of the environment. I agree with this dual objective.

This ESECA program is extended by the Energy Policy and Energy Conservation Act, S. 622, as approved by the House and Senate conferees. There is an extension for 2 years, until June 30, 1977, of the FEA's present authority to issue coal conversion orders for facilities with the capability to use coal: First, by prohibiting the use of natural gas or petroleum products; second, by requiring new installations to be constructed with a coal-burning capacity; and, third, by requiring the allocation of available coal supplies.

Mr. President, expanded authority is provided to the FEA to enforce coal conversion rules and orders through December 31, 1984, rather than the present December 31, 1978. In addition, the omnibus energy bill provides new authority for the FEA to order the use of coal by installations which acquire a coal-burning capability after the date of enactment of ESECA. There would also be a significant expansion of the scope of FEA's authority so that orders can be issued to major fuel-burning installations, as well as electric powerplants, in the early planning process requiring them to be constructed with a coal-burning capability.

COAL LOAN GUARANTEES

To foster new coal supplies and to enhance competition, the conference agreement authorizes loan guarantees for new underground coal mines. Such new production must be either low-sulfur coal or coal which can be used in compliance with Federal or State requirements pursuant to the Clean Air Act, as amended.

The total outstanding indebtedness by the Federal Energy Administration for this program is limited to $750 million; however, any one person, including affiliates, would be restricted to a maximum loan guarantee of $30 million, or 80 percent of the principal balance of the loan to develop the new underground production.

Since a purpose of the provision is to stimulate competition and encourage new market entry, the loan guarantees are restricted to producers: First, who did not in the year preceding application produce more than 1 million tons of coal; second, who did not produce more than 300 thousand barrels of crude oil or own a refinery in the previous calendar year; and, third, who did not have gross annual revenues in excess of $50 million.

To protect the Federal investment, any person receiving a loan guarantee must demonstrate the capability to develop and operate the new mine, in compliance with the Federal Coal Mine Health and Safety Act. In addition, evidence of enough coal reserves and long-term supply contracts to assure repayment of the loan must be furnished the FEA Administrator.

Mr. President, this loan guarantee provision passed the House. I sponsored it in the Senate, and it can serve to stimulate significant new underground coal supplies. Between 20 and 30 million tons of new annual production of coal can be brought on line as an alternative to oil imports. This is of vital value as we work for energy sufficiency in our country.

INDUSTRIAL ENERGY CONSERVATION

Mr. President, there are provisions on energy conservation in the conference agreement. These rightly reflect the significant savings that are potentially achievable in the industrial sector. I emphasize that industry in the United States consumes at least 40 percent more energy in relation to output as does West Germany. Moreover, from the standpoint of national income the U.S. total energy use is approximately 50 percent greater than in West Germany. This large disparity in energy use between the two countries, in a recent report by the Stanford Research Institute, suggests that continued economic growth and improvement in the standard of living in our country should be possible without a proportionate increase in energy consumption.

The SRI's "Comparison of Energy Consumption Between West Germany and the United States," examines six energy intensive industries: Food, paper, chemicals, petroleum, and coal products, primary metals, and stone, clay, glass, and concrete products.

Data by the Stanford Research Institute indicate that energy use in the United States in relation to industrial output is higher, whether measured on the basis of monetary value or weight of the product. This result is reflected in two tables which I ask unanimous consent be printed in the RECORD at this point in my remarks.

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

COMPARISON OF INDUSTRIAL ENERGY CONSUMPTION IN RELATION TO VALUE OF SHIPMENTS FOR THE UNITED STATES AND WEST GERMANY, 1972

Industrial sector	10^3 Btu per dollar of shipments		West Germany as percent of United States
	United States	West Germany	
Food	11.9	8.3	70
Paper	104.0	38.6	37
Chemicals	71.8	40.8	57
Petroleum and coal products	112.0	56.0	50
Stone, clay, glass, and concrete products	75.3	54.8	73
Primary metals	97.0	77.6	80
Total for 6 energy-intensive industries	61.2	42.4	69
Other manufacturing	9.4	7.1	76
Industry total	34.8	25.1	72

ENERGY USE PER TON OF PETROLEUM PRODUCTS, STEEL, AND PAPER FOR THE UNITED STATES AND WEST GERMANY, 1972

	10^6 Btu per ton		West Germany as percent of United States
	United States	West Germany	
Petroleum products	4.9	3.3	67
Steel	27.3	18.6	68
Paper	46.6	26.6	57

Mr. RANDOLPH. Mr. President, part D of title V of the conference agreement provides for a voluntary industrial energy conservation program. After considerable deliberation by the conferees, the Senate passed measure was modified to eliminate mandatory industrial energy consumption standards. Recognizing the energy conservation efforts that industry has instituted, on its own initiative, the conference agreement emphasizes a voluntary program with reports being required from energy intensive industries. The conference report also states:

The program, including the reporting requirements, is not intended to preclude continuation of current FEA industrial energy conservation programs, nor does it preclude any other voluntary energy conservation programs involving industries which are not required to participate in this program.

The conferees recognized that considerable progress has been made by industry under a voluntary approach to energy conservation; it was felt that its continuation and expansion is essential.

I stress that energy conservation is a national goal of the highest priority. It requires a continuing effort by both the public and private sectors. The industrial sector of our economy consumes 40 percent of the Nation's energy, and the conference committee rightly determined that an organized program to increase industrial efficiency is essential. The conference agreement is designed to encourage and foster improvements in present industrial energy conservation efforts, which are voluntary in character. In the long term, the proposed program, along with market forces, will lead to even greater energy conservation on the part of our industrial sector.

FEDERAL ENERGY CONSERVATION PROGRAMS

Mr. President, section 381 requires the President to develop and implement a 10-year energy conservation plan for buildings owned or leased by any Federal agency.

The Senate Public Works Committee, Mr. President, has convened hearings on the subject. The Buildings and Grounds Subcommitttee, under the able chairmanship of the Senator from North Carolina (Mr. MORGAN), recently initiated an investigation into the activities of the executive agencies in developing energy conservation techniques for application to Federal buildings.

At the forefront of Federal efforts to utilize and develop such techniques is the General Services Administration. As early as fiscal year 1974, the GSA through an aggressive conservation program realized a savings of 20 percent in the consumption of energy in Federal buildings over the previous year. Complete figures are not available for fiscal year

1975, but it is estimated that there was a 30-percent savings.

The General Services Administration, to facilitate further reductions in energy consumption, and in cooperation with other Government agencies and the private sector, developed two energy conservation guidelines. The first, "Energy Conservation Design Guidelines for New Office Buildings," establishes performance specifications for the construction of new Federal office buildings. The second, "Energy Conservation Guidelines for Existing Office Buildings," sets guidelines for use in retrofitting existing structures.

Later this month, Mr. President, the third conservation document developed by the General Services Administration, "Energy Conservation Guidelines for Building Operations," will be released.

The GSA's program also recognizes the importance of demonstrating new energy-saving techniques in actual building design and construction. The proposed Federal building in Manchester, N.H., was selected as an energy conservation demonstration facility. It is anticipated that a 50- to 70-percent savings in energy consumption will be realized through the use of solar collectors and other advanced building design features. Data compiled at this demonstration facility will be used in future Federal construction.

Mr. President, in light of its leadership in Federal energy conservation efforts, the President on October 18, 1974, asked the GSA to recommend to the Energy Resources Council a multiyear program to increase energy efficiency in all Federal facilities and operations. In response, the Agency has submitted such a plan. The President's selection in 1974 of GSA to formulate an overall Federal energy conservation plan has proven to be a wise one.

As chairman of the Senate Committee on Public Works and personally I encourage the President to again designate the GSA as the lead Agency to coordinate and develop the 10-year energy plan for Federal facilities required by section 381 of this bill.

NEEDS OF HANDICAPPED PERSONS

Mr. President, as chairman of the Senate Subcommittee on the Handicapped, I am sensitive to the special needs of handicapped Americans. My colleagues know—and have demonstrated many times in their votes for bills to aid this population—handicapped individuals have rights to a free appropriate public education, to medical treatment, and to equal opportunity employment. More than any other segment of our population, disabled persons are dependent on others for transportation to enjoy these rights.

A mentally retarded child often must travel outside his immediate school district in order to participate in an appropriate educational program; an individual confined to a wheelchair frequently is unable to use mass transit services; citizens who have lost their sight often must travel in order to receive vocational rehabilitation services which will enable them once more to become an employed and productive member of society. In essence, adequate transportation is absolutely essential for these persons if they are to take their rightful place in society.

The President should be directed to take into consideration the mobility needs of the handicapped when he prescribes energy conservation contingency plans pursuant to section 202. This priority is in section 203 which provide for a program for the rationing and ordering of priorities among classes of end-users of gasoline and diesel fuel. The conferees are stating that they understand the importance of transportation to disabled persons. The conferees intended that when a rationing system is instituted appropriate arrangements should be made for handicapped individuals unable to personally apply for, or receive, coupons or proof of their rights. The conferees intended that when consideration is given to the needs of handicapped individuals this consideration should extend to the needs of the parent or guardian of a handicapped person who must transport that person to or from special services or place of employment.

Mr. MOSS. Mr. President, will the Senator from Washington yield?

Mr. JACKSON. I yield to the Senator from Utah.

Mr. MOSS. Mr. President, I wish to commend the chairman of the Committee on Interior and Insular Affairs, the Senator from Washington (Mr. JACKSON), for the long and intensive work he has done and the leadership he has demonstrated in bringing now before this body the bill which we are considering. It has been a long and frustrating job, and it has stretched back over a matter of years.

I recall well that in service under the chairman of the Committee on Interior and Insular Affairs, we were working on energy problems long before we could get the White House to acknowledge that there was any energy problem, either immediate or showing on the horizon. Since we came into the energy shortage and the embargo, and it finally dawned on everyone, including the White House, that there was an energy problem, the chairman and the members of his committee have been deeply involved in trying to solve this difficult situation, which certainly is not solved as yet. But this bill does permit us now to proceed in an orderly way without delivering a tremendous economic shock to our economy, and enabling us to start to rebuild our economic system at the same time that we reach out and begin to provide different forms of energy, and more of the petroleum energy of which we are so short.

I had just one small matter that I wanted to call to the attention of the manager of the bill, and make sure that we made some legislative history on it.

What we have before us, of course, is the House amendment to S. 622. S. 622 takes note of the glaring need for reform of FEA's regulations. Earlier the Senate Committee on the Judiciary pointed out, in their report, that those regulations were inequitable. Particularly I want to call attention to the new section 11.

THE HOUSE AMENDMENT TO S. 622 ON THE ENERGY POLICY AND CONSERVATION ACT ORDERS A NEEDED REFORM IN THE FEA REGULATIONS

The House amendment on the Energy Policy and Conservation Act (S. 622, H.R. 7014) takes note of the glaring need for reforms in FEA's regulations. As the Senate Judiciary Committee pointed out in a report earlier this year:

Under the Emergency Petroleum Allocation Act, the FEA is directed, as a "priority need," to "restore and foster competition in the producing, refining, distribution, marketing, and petrochemical sectors . . . and to preserve the competitive viability of independent refiners, small refiners. . . . and . . . independent marketers." The Federal Energy Administration Act directs the agency to "promote free and open competition in all aspects of the energy field."

Testimony by FEA officials, however, indicated that FEA's regulatory program in its current form can only have exactly the opposite effect. Instead of fostering competition and preserving the competitive position of independent firms, FEA regulation tends to increase concentration in the petroleum industry.

The report, page 94, calls attention to a new section 11 to be added to the Emergency Petroleum Act of 1973. It deals with the regulation which section 4(a) of the 1973 act directed the President to promulgate. The new section 11 directs the President, after giving interested persons an opportunity to comment on the operation of the existing regulation as related to "the attainment of the objectives specified in section 4(b)(1) of section 4, "to" promulgate, pursuant to the limitations and authority under section 12, such amendment, or amendments, to the regulation promulgated under section 4(a) as he determines are necessary or appropriate—

(A) to modify any provisions of such regulation in a manner which is consistent with the attainment, to the maximum extent practicable, of objectives specified in section 4(b)(1); or

(B) to eliminate any provisions of such regulation no longer necessary to provide for the attainment of such objectives.

I know that does not sound very clear, but what I am trying to get at is the fact that the FEA has issued regulations which have the effect, really, of excluding competition in the field of those who deliver petroleum from small producers to the refineries by settling on certain times when the amount delivered, in effect, becomes frozen in, and no new competition may come into the field.

Reform is badly needed. The existing regulation locks out competition in many respects, whereas the law requires FEA to "restore and foster competition. The law—section 4(b)(1) of the 1973 act—says that—

The regulation under subsection (a), to the maximum extent practicable, shall provide, *inter alia*, for:

* * * * *

(D) preservation of an economically sound and competitive petroleum industry; including the priority needs to restore and foster competition in the producing, refining, distribution, marketing, and petrochemical sectors of such industry, and to preserve the competitive viability of independent refiners, small refiners, nonbranded independent mar-

keters, and branded independent marketers; . . .

At least one section of the regulation, section 211.63, does precisely the opposite, perpetuating a monopoly of wholesale marketers and excluding all new competitors. Until last month—November 24—the regulation said:

All supplier/purchaser relationships in effect under contracts for sales, purchases and exchanges of domestic crude oil on December 1, 1973, shall remain in effect for the duration of this program, . . .

The November 24 amendment is discussed later on.

All producers selling to crude oil marketers December 1, 1973, are thus required to continue sales to those same marketers. Crude oil marketers buy oil from small independent producers and resell it to refiners. The regulation prohibits purchases by new crude oil marketers which would disturb any supplier/purchaser relationship in existence on that date. Yet the regulation provides no mechanism by which new crude oil marketing companies may obtain supply sources.

The regulation thus froze, protected, and perpetuated a monopoly enjoyed by a handful of big companies against all competition from newcomers. A large quantity of domestic production is thus monopolized, about 1 million barrels daily. Data filed by one of these privileged companies—Permian Corp., wholly owned by Occidental Petroleum Co.—with the Securities and Exchange Commission reveal a skyrocketing of profits after the regulation was promulgated, from $19 million in 1973 to $59 million in 1974, notwithstanding that the volume of oil moved was not substantially larger.

The U.S. District Court for the Western District of Texas, San Antonio Division, in a decision October 6, 1975, captioned *Basin, Inc.* v. *Federal Energy Administration*, Civil Action No. 75–CA 250, issued a preliminary injunction against FEA. It ruled:

There is a substantial question as to whether section 211.63 of the regulations, insofar as it denies plaintiff as a crude oil marketing company the right to purchase crude oil and makes no provision for allocation of supply purchased by the crude oil marketing industry on a fair and equitable basis among the members of that industry is in compliance with the Congressional mandate of the Emergency Petroleum Allocation Act of 1973 to restore, foster, and preserve competition in all segments of the petroleum industry. . . .

The court found that, as a result, "the plaintiff will in all likelihood be forced to discontinue its business."

FEA appealed that decision to the temporary emergency court of appeals, and it then hastily prepared an amendment to its regulations.

On November 24, 1975, on the eve of argument in the court of appeals, after 22 months of travail, hearings, conferences, and so forth, in which FEA repeatedly admitted the inequity of the existing regulation, FEA published in the Federal Register (40 Fed. Reg. 54422) its revised regulation. FEA's announcement claims that "the purpose of the proposed amendment was to allow for new entry into the business of marketing crude oil," thus conceding the inequity that the district court had put its finger on. But, having done this, FEA's new regulation incomprehensibly requires—as a condition to the establishment of a new supplier-purchaser relationship—that the new wholesale marketer obtain from the refiner "their written consent to the proposed supplier substitution," thus undoing everything the announced reform would accomplish.

The refiner, of course, has no reason at all to consent to the substitution; he has existing trade relationships with the entrenched big crude oil marketer who has been fattening on his FEA-protected monopoly, and the refiner has no reason to imperil that relationship by telling that marketer to stop selling to the refiner, and move over and give up part of the business to a little competitor. All that is needed, in order to continue the freeze-out of this competition, is a phone call from the big locked-in monopolist wholesale marketer to the refiner, suggesting, subtly or otherwise, that he should refuse to give his consent, even though the terms of sale to the refiner are exactly the same. The new regulation is an invitation to collusion, and is squarely in the teeth of the statutory mandate in favor of competition. The little producer who would like to change marketers, in order to get better service, is at the mercy of an arbitrary veto by the big refiner who buys his oil, just as is the new wholesale marketer who is locked out by the refiner's refusal to do business with him.

One would think that the antitrust laws had never been enacted. FEA has apparently never heard of them, or the "priority needs to foster and preserve competition" that Congress wrote into FEA's Organic Act.

The joint explanatory statement of the conference committee on the bill which became the Emergency Petroleum Allocation Act of 1973, said of section 4(b):

It is imperative that the Federal Government now accept its responsibility to intervene in this marketplace to preserve competition and to assure an equitable distribution of critically short supplies. Toward this end, the conference substitute requires the President to promptly implement a mandatory allocation program which must be drafted so as to accomplish Congressionally defined objectives. These are set out principally in section 4(b) of the conference substitute. Very generally stated they establish guidelines for the priority uses of fuels covered by this Act and set forth standards of action concerning the competitive structure of the industry and general economic policy to be followed in the establishment of the fuel allocation program.

The district court, in enjoining enforcement of section 211.63 of the regulation, was conservative in characterizing that regulation as "questionable." This regulation, both before and after the amendment of November 24, 1975, is plainly in conflict with the intent and will of Congress.

There are doubtless other examples of provisions of the FEA regulation "which are inconsistent with the objectives specified in section 4(b)."

The new section 11 is designed to force the reexamination and elimination or revision of all such provisions of the regulation.

Mr. President, I also ask unanimous consent to have printed in the RECORD a small document that sets out a case history in which this has happened.

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

A PLEA FOR EQUAL JUSTICE UNDER LAW

This is a cry for help.

The reaction of most people who have heard our story is that it simply could never happen in America. But it is happening. And it will continue—unless someone who cares enough does something about it.

In this deliberately brief document we condense the tragedy of the imminent destruction of a young and aggressive American business enterprise by a single regulation of the Federal Energy Administration.[1] With no explanation of its purpose, and without even so much as an advance warning of its consideration, the regulation complained of was issued. It completely forbade all competition within a significant industry, and—incredible as it may seem—this all occurred under an act of Congress which specifically required the regulations to provide for the "preservation of an economically sound and competitive petroleum industry, including the priority needs to restore and foster competition" within that industry.

With deference to the heavy schedules of the important officials to whom this plea is addressed—and even at the risk of being overly concise—we implore your evaluation of this abbreviated narrative.

WHY BASIN, INC. EXISTS

1. My name is W. R. Davis. I live in Midland, Texas. I am president of Basin, Inc.

2. In April, 1952, I organized The Permian Corporation and was its principal owner. It was created to engage in the purchasing and marketing of crude oil and is now the largest independent company in this business in the United States.

3. In 1966 Permian was sold to Occidental Petroleum Corporation and I became Executive Vice-President and a Director of Occidental. Some years later I left full-time employment with Occidental but continued under a contractual relationship in the capacity of a consultant.

4. My contract with Occidental prohibited my competing with Permian and from working for any company which competes with Permian.

5. Before long I tired of the inactivity. Naturally I wanted to return to the crude oil marketing business in which I had spent most of my adult life. But this meant competition with Permian. I asked Occidental for a release from the contractual restraints on my right to compete. The price for that release, I was told, would be approximately $600,000 to be paid to Occidental by my surrender of earned deferred compensation in pension rights. On September 1, 1973, I accepted the sacrifice and purchased my freedom.

6. I organized Basin, Inc. We were chartered in Texas on October 2, 1973, and by the end of November, 1973, were licensed to engage in the crude oil marketing business in six other states as well.

7. Basin, Inc. assembled a competent team of experienced and knowledgeable men and women. All of us were eager to bring some additional, much needed, competition to an

[1] A more complete presentation—available for those with time to consider the supporting detail—appears in our formal Petition for Special Redress or Other Relief also dated January 6, 1975, and filed with the Federal Energy Administration.

industry in which there is a great public interest on the part of consumers. We invested large sums of money acquiring a headquarters building in Midland, Texas, purchasing petroleum transport trucks and trailers, LACT units (metering systems), storage tanks, IBM data processing systems and other equipment required in this business. Our capital commitments have passed $1,800,000 and are expected to double with plans already on the drawing board. Basin, Inc. has established a $5,000,000 line of credit with two Texas banks which I have personally guaranteed.

HOW BASIN, INC. WAS ORDERED NOT TO COMPETE

The following sequence of rapid-fire events summarizes how the jobs and the large capital investments provided by Basin, Inc.—indeed the *entire future* of a promising company—are being jeopardized by the FEA.

8. On *November 27, 1973,* shortly after our company was well launched, the President signed into law the Emergency Petroleum Allocation Act of 1973. In this statute, § 4(a), Congress directed the President to "promulgate a regulation for the mandatory allocation of crude oil" but *expressly required,* § 4(b), that the regulation provide for—

"preservation of an economically sound and competitive industry; including the priority needs to restore and foster competition in the producing, refining, distribution, marketing, and petrochemical sectors of such industry, and to preserve the competitive viability of independent refiners, small refiners, nonbranded independent marketers, and branded independent marketers."

9. *On December 13, 1973,* FEO, acting by delegation from the President, made public certain *proposed* regulations. Section 200.29 (b) assured Basin, Inc.—and of course all others who wished to enter the business—*the right to compete* in the purchase of crude oil, by providing—

"Notwithstanding any provision to the contrary contained herein, upon written notice given to the then purchaser of crude at least 30 days prior to the commencement of any allocation quarter this program is in effect, *a producer may sell all or any portion of his crude oil to another purchaser* for that allocation quarter . . ."

10. *On January 2, 1974,* FEO's original regulations were issued by publication in the Federal Register (39 FR 744), the proposed regulation 200.29(b) quoted above being redesignated 200.29(1). Thus, as late as January 2, 1974, Basin's right to compete in the crude oil marketing industry was preserved and confirmed.

11. Then it happened. *On January 15, 1974,* there appeared in the Federal Register (39 FR 1924) *revised* FEO regulations. They totally *eliminated* section 200.29(1) and *substituted* a completely *new and revolutionary section 211.64(a)* which commanded—

"All contracts for sales, purchases, and exchanges of domestic crude oil in effect on December 1, 1973, shall remain in effect for the duration of this program except purchases and sales made to comply with this program . . ."

Later FEO made clarifying changes so that the section, renumbered as 211.63, now reads—

"All supplier/purchaser relationships in effect under contracts for sales, purchases, and exchanges of domestic crude oil on December 1, 1973, shall remain in effect for the duration of this program."

12. The effect of this revolutionary change in the regulations—made, as it was, without notice or explanation—was to *freeze out all new competition* in the crude oil marketing business retroactively to December 1, 1973, and thereby to deny Basin, Inc. and all others who might wish to enter the business the right to *compete* against the *entrenched crude oil marketers.* We do not know who sponsored this "lock out" regulation—although it is obvious who are its direct beneficiaries—or what silent rationale motivated this sudden mandate against competition. If the door is to remain closed, certainly Congress, having directed a policy to restore, foster and preserve competition, is entitled to ask those questions.

13. Surely, we thought, this lock out would be of quite limited duration. In the meantime Basin, Inc., decided to tough it out—sustaining itself, despite heavy losses, by restricting its purchases and marketing to "new", "released" and "stripper" crude oil which it was permitted by the regulations to purchase—if, but only if, the entrenched competitor elected not to meet Basin, Inc.'s bid. It soon became clear that even this nebulous right to continue in business proved so circumscribed as to be virtually *nullified* by the italicized language in subsection (3) of regulation 211.63(a)—

"the provisions of this paragraph shall not apply to the seller of any new crude petroleum or released crude petroleum, as defined in Part 212, *if the present purchaser of such crude petroleum refuses, after notice by the seller, to meet any bona fide offer made by another purchaser* to buy such crude petroleum at a lawful price above the price paid by the present purchaser."

CONCLUSION AND REQUEST FOR ACTION

14. It thus becomes obvious that this is what happened:

A. *First,* FEO began by respecting the Congressional mandate to restore, foster and preserve competition. It proposed and issued regulations which permitted newcomers in the industry to compete on reasonably equal terms with the long-established and entrenched marketers.

B. *Second,* for unknown reasons—and it is impossible to understand why it was done—FEA suddenly reversed its field, summarily *forbidding* Basin, Inc. and all other newcomers to compete. The protected position of the marketers with a "supplier/purchaser relationship" on December 1, 1973, was secured as though frozen in concrete.

C. *Third,* the revised FEO regulations made the position of the favored few even more secure by conferring upon them the right of *first refusal* for the "new" crude that would become available.

15. These actions by the FEO (now the FEA)—for whatever reasons they were taken—do violence to the Constitutional right of an American company to engage in a lawful business without governmental *discrimination* in favor of its competitors. Even worse, if that is possible, they completely ignore the expressed mandate from Congress.

16. There is nothing right, just or fair about this situation. It should not be perpetuated. The FEA should be urged—or, if necessary, required—to repeal section 211.63 in the interest of returning the right to compete once more to the American scene.

Respectfully submitted,

W. R. DAVIS,
President, Basin, Inc.
CECIL E. MUNN,
NORTHCUTT ELY,
Attorneys for Basin, Inc.

Mr. MOSS. I ask the manager of the bill if he could assure me that section 11 of the bill will accomplish what I have set out I think its purpose should be and that FEA will be required to reexamine its regulations. Will the Senator from Washington be able to respond to that?

Mr. JACKSON. Mr. President, let me respond in this way: I am generally familiar with the class of problem the Senator from Utah refers to. The purpose of section 454 is to reexamine the regulations under the Allocation Act and to conform those regulations to the purposes of the act. This review should include cases such as the Senator from Utah has described.

I think that effectively responds to the question and points made by the Senator from Utah.

Mr. MOSS. I appreciate that. I think it is clear, but I only wished to make certain by additional legislative history that FEA would be aware of the fact that they have an obligation to open up this competitive area.

Mr. JACKSON. I thank the Senator, and I trust that is responsive to the question that he has raised.

Mr. MOSS. I thank the Senator.

Mr. WEICKER. Mr. President, I rise in opposition to this bill, and my comments this evening are not meant to go up against the wind with a realization that this is all that we have before us prior to a recess and, therefore, it should pass.

Rather it is my hope and the hope of my colleagues on this side that we will be able to persuade sufficient of the Members to take the responsibility of passage or nonpassage on the shoulders of the Senate, not buck the problem to the President.

Mr. MOSS. I appreciate that.I think it

The basic difficulty with this bill, Mr. President, is that it gives the illusion of solution rather than the reality of failure.

It is not so that this is better than nothing. It is far worse than nothing, because when the United States Senate acts the people have a right to believe that we have addressed ourselves in a truthful and a realistic way to the energy crisis.

Nothing could be worse for the American people than to operate under that illusion. The crisis that confronts the United States today in energy is worse than that of 2 years ago. If the people in my State of Connecticut, and this would apply to the rest of the country, felt relief when the gasoline lines went away, then they have to live with the tragedy that the unemployment lincs took their place, and the unemployment lines in this Nation today are far longer than any of the lines outside of gasoline stations of 2 years ago.

The unemployment lines are there because the energy problem has not been resolved. Nothing is such a damper on the economy than our failure to address the energy crisis in a serious way.

I hope that my colleagues would not engage in this last act of deception, an act which portrays solution but in reality is retreat.

The stated purposes of this bill are threefold. To maximize production, to conserve our fuel resources, and to decrease dependence on foreign imports.

Mr. President, the bill we have before us today is a strikeout on all three counts.

Three months ago, 6 months ago, 2 years ago, this country needed an effective, long-term energy policy.

When we needed a national energy policy, we got a political energy copout. A bill has been drafted which guarantees high prices, short supply, and no protection against OPEC oil merchants.

Many Members of the Senate and House are intimately familiar with the benefits of this legislation. Unfortunately these benefits have nothing to do with energy.

The Chicago Tribune explained this sorry display in its editorial entitled "Gas Pump Politics":

In effect Congressmen seem to be saying, "Let's turn every gasoline pump into a campaign sign." And, of course, a bill like this gives our economic geniuses in Congress another chance to kick the oil companies in the shins for the large profits which followed the OPEC induced price increases two years ago. Never mind that those artificially high profit levels are down substantially this year.

Nothing categorizes the bill better than that principle which is specifically enunciated by a rollback prior to the election of 1976 and allowing the prices to rise after that date.

Yesterday I had the occasion to talk to one of our unions in the State of Connecticut. I told them at that time that they should know that their Senator was not going to hold back until after the election, rather they and the people of my State would be told the news now, that, yes, there was going to be an increase in the price of oil, and they should know that before the election and not after the election.

How I would admire the sponsors of this bill if they would stand here on the Senate floor and explain in terms of an increase and of decontrol, what this bill encompasses. But the only points they explain are price rollback and giving the image of being against decontrol.

In effect, the price is to be paid by the after-the-next-election generation of Americans. I think the time has come for this generation of leadership to stand up and explain to the American people the cost, and it is up to this generation to pay the cost.

But the U.S. Senate will not be shamed into doing its duty. We will roll prices back until after next November. We will lock in energy shortages by extending controls that had never worked. We will tighten the rope that will hang us.

Controls meant less domestic production, 8 percent less in 1975 than in 1973. The reduced prices have political appeal.

OPEC devastated us in 1973. Back then they supplied 49.7 percent of our total imports; in the second quarter of 1975, 65.8 percent. But controls is reelection.

I do not wish to shock Senators, but price controls is long-term political suicide.

Maybe it is that the Members of this Chamber feel that they have fooled the American public. Not so according to the latest Harris poll. Sixty-one percent of Americans call energy waste morally wrong. Harris concludes that Americans no longer doubt that cutbacks are needed and changes in lifestyle required.

Any politician of either party, whether in the White House, the Senate, in the House, who tries to mislead the American people into believing that there is no price to be paid not only does the national interest a disservice but also his own election chances.

Mr. President, the first goal of this bill was supposed to have been maximizing domestic production. Congress decided upon the carrot-and-the-stick approach. It decided to clobber the oil companies with the carrot, and after 1976, stick it to the unsuspecting citizen.

Rolling back the average price per barrel of oil by $1.09 will decrease domestic production by some 1.6 million barrels a day, by 1980, below what it would be with decontrol. Price controls will be reimposed on oil from new fields discovered since 1973. It will roll back the average price received for all domestic oil both old and new. Under the existing system, new oil is decontrolled. Under this bill it is forced under controls, and an artificial limit placed on price. In short, Congress has rewritten the laws of nature to say that more production will result from punishing exploration.

The rollback might save consumers, in the short term, a few cents per gallon. It will spur consumption. It will drain off the revenues needed for investment, reducing further the opportunities for exploring desperately needed new oil and gas reserves. And so, we are back to the consumer—supply shortages, increased imports, higher prices. The Washington Post summed it up:

It is silly and dangerous to hope that this country can maintain itself indefinitely as an island of cheap energy in a world where the cost is steadily rising.

Mr. President, the American people recognize that such a policy is absurd. But American politicians do not have the guts to act.

As persons in our own country look to a higher quality of life, that is the case throughout the world. The law of supply and demand, which I will get to in a domestic sense in a few minutes, means internationally that millions of people who up to this point have been satisfied without the benefits that energy can bring them are now demanding the same quality of life that is enjoyed by American citizens. There is the demand internationally that did not exist 3 years ago, 5 years ago, 10 years ago.

While that demand has been increased dramatically, the supply has diminished. No amount of finagling on the floor of the Senate is going to get around the simple fact of life of increased demand and lesser production worldwide.

The legislation drafted here is so constructed as if our destiny is entirely in our own hands, and it is not. The sponsors of this bill know it, but they are telling an entirely different story to the American people.

The second stated goal of this legislation is conservation. Again, Congress has chosen a unique method—dieting by forced feeding, and the discouragement of lower prices.

In its first annual report, the International Energy Agency stated:

The American (energy) program must overcome an extremely high per capita historical energy pattern and as such must be comprehensive and strong to be effective. At the present time, it is neither.

I wish the American people had had the opportunity to sit in on House-Senate conference and see the vacillation and the backing off when it came to demanding mandatory fuel conservation.

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

Mr. WEICKER. I yield.

Mr. JACKSON. Mr. President, I ask unanimous consent that Richard D. Grundy be granted the privilege of the floor in connection with the pending measure.

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

Mr. WEICKER. During the course of that conference, every time the words "mandatory conservation" came up, it was as though someone had thrown a pail of cold water in the face of every Senator and Representative present, each one afraid to go out of that room and demand sacrifice of the American people in order to resolve this crisis.

In the propositions which I have made informally throughout my State of Connecticut as to energy conservation, one was the closing of gas stations on Sunday. Somebody responded, "That does not fit in with my plans. What if I am going to be on the road on Sunday?"

The time has come to explain to each American that there is no system that is going to work which is not going to require sacrifice and a change in lifestyle. The alternative is to live as we have for 2 years, with high prices and short supply.

I heard someone use the term "return to double-digit inflation." The fact is that we have never left double-digit inflation. We have that artificial 50 percent that was imposed on us by the OPEC nations, and we still live with it; and because we live with it, we have no chance of climbing out of this recession.

I cited the first annual report of the International Energy Agency. In today's Wall Street Journal is an article about a Twentieth Century Fund task force:

A Twentieth Century Fund task force found that the full impact of the higher cost of imported oil is yet to be felt by the oil-importing countries.

The task force, which released a report yesterday on what it called "the international oil crisis," expressed concern about the "new complacency" over energy problems.

To date, the task force said, "less than half of the money and other claims transferred to the oil producers" by the oil-importing countries "has been redeemed for actual goods and services." As a result, the task force said, "the full cost of imported oil hasn't yet come home to the importing countries" even though the added burden on consumers of the oil cartel's quadrupling of oil prices since 1973 has contributed to both inflation and recession.

The Twentieth Century Fund is a research foundation engaged in policy-oriented studies of economic, political and social issues and institutions. The energy task force was comprised of 16 economists, bankers, oil consultants and businessmen.

The task force concluded that the best "remedy" for the problems caused by the increased price of oil would be simply to lower the price. But this remedy, the task force said, should be sought through reliance on market forces rather than through negotiation with the Organization of Petroleum Exporting Countries, or OPEC.

"Market pressures on the price set by OPEC should be strengthened primarily by enlarging the world's capacity to produce oil and alternate fuels, but also by increased conservation efforts," the task force recommended.

Whether it is that report or the report of the international energy agency, these are harsh but accurate assessments of our conservation efforts to date. The United States has set a fine example for other consuming nations. We have not taken one step to immediately curtail energy consumption. Instead, we keep prices artificially low, rewarding consumption. By a lack of a coherent conservation policy, we perpetuate the myth that the energy crisis is contrived.

What provisions of the bill that are constructive—for example, establishing mandatory auto efficiency standards and requiring energy labeling of appliances—are also easy. They are things that almost everyone agrees on.

But when the going gets tough, Congress takes a powder. This bill maintains America's place as the world's oil junkie.

Congress blew two chances to stand up to its responsibility. First, the House-passed mandatory gasoline allocation program. Although I did not agree with some of its provisions, I commend the House for taking the energy problem seriously. Gasoline consumption accounts for 39 percent of our total petroleum consumption. Total gasoline consumed by auto travel is approximately 4.9 million barrels a day. Any conservation policy worth its salt must cut this lavish consumption, immediately. Unfortunately, rather than improve upon this program, the House conferees quickly surrendered.

On another matter, the bill authorizes bloc grants-in-aid to States to assist in the development of State-administered energy conservation programs. The bill calls for each State plan to receive a reduction in energy consumption of 5 percent in 1980. During the conference, I offered an amendment to bring the target date forward to 1978. The amendment was defeated. Once again, the conferees avoided the tough but necessary steps that will get us out of the energy noose. Once again, we were content with a minimum response to a maximum need.

Goal 3 of this bill was, once upon a time, to cut our reliance on imported oil. In this, it is the biggest flop of all.

In addition to granting the cartel the leverage to raise prices, imports are likely to increase by 50 percent above present levels by 1980.

What does this mean for the American economy, for American jobs? In 1 year, 1974, U.S. expenditures on oil imports skyrocketed from $8.2 to $24.3 billion.

Such an enormous outflow of dollars could not help but have adverse consequences—and it did. We starved American industry of vitally needed capital—capital that could be invested in America. We sent abroad money to buy oil that could have been spent in America creating jobs.

This bill does nothing to lessen the devastating flow of American dollars to the Middle East. It does nothing to lessen American dependence on foreign oil. Forty percent of our oil comes from imports. Sixty-five percent of our imports come from OPEC. In short, this bill gives OPEC brass knuckles at a time when the next oil embargo could kayo America.

Faced with a serious threat to our national security, Congress has played into the hands of OPEC. We have signaled to OPEC that we are willing to take their oil at any price. In essence, OPEC will continue to call the shots—the result could prove to be economic disaster for the United States.

Mr. President, I return to my initial point, the central issue of this energy copout legislation. It is chicken-politics. But it is not just chicken-politics for a day; this legislation makes chicken-politics a matter of law. Every time a tough decision must be made, this legislation dumps it on the executive branch, or on a future generation of Americans. When there is a possibility for cheap publicity at the expense of energy responsibility, Congress grabs the ball. This legislation directs the President to raise oil and gas prices, but then says Congress can disapprove his findings or price recommendations at any time. Even the discretion given the President to raise prices in accordance with the GNP deflator of 7 percent and/or an inflationary escalator of 3 percent is subject to a congressional veto. A presidential decision to allow higher prices for Alaskan oil—which every single Member of Congress, the conferees best of all, know to be much more costly to produce—would be subject to a congressional veto by a simple majority vote.

Mr. President, one policy, although not an energy policy, is clearly established by this legislation. It is the policy that he who runs away lives to run another day.

Mr. President, I am a Senator from an oil-consuming State. In Connecticut, oil is a necessity, not a bonanza. There is no oil beneath Connecticut, only rocks. Above the ground are miles of stone walls built by generations of our farmers, fighting for a future. There are factories and businesses that employ our citizens, fighting for a future. That is why this Senator prefers fighting for a future with oil to settling for artificial prices now and a future of economic hopelessness.

Mr. President, the Senate would do well to consider the words of that old hymn, still sung in Connecticut, where all people ask of a politician is that he do the right thing:

> Once to every man and nation,
> Comes the moment to decide.
> Then it is the brave man chooses,
> While the coward stands aside,
> Till the multitude makes virtue
> Of the faith they had denied.

It is a sad day for any nation when those who are entrusted with developing the policies of its future chicken out to the pressures of the moment. Tragically, that is what this conference report really does.

It is a compromise, all right. But it is not a compromise between the legislative and the executive branches of Government. It is not a compromise between Democrat and Republican, or between liberal and conservative, or between consuming State and oil- and gas-producing State. It is a compromise of our children's future for a few months of artificial ease, for a few votes in a national election.

I am not prepared to engage in that kind of compromise and I hope a majority of my colleagues are not, either. The American people are looking for a leadership that demands sacrifice, and gives them the truth rather than politics. As I understand this business of politics, we should leave something behind better than that which was given to us. That simple criterion, applied to the measures contained in this bill, demands a "no" vote.

I yield the floor, Mr. President.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HASKELL. 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. HASKELL. Mr. President I should like to comment on the conference report that is before the Senate. I, personally, would consider it a foundation of a national energy policy. I think, taken together with the ERDA conference report that will soon be coming before the Senate, we in Congress could say we have developed at least the heart of a national energy policy.

The reason that I argue this is that this particular measure addresses a broad spectrum of national needs. First, it addresses the problem of conservation. It was 2 years ago that a bill went from Congress to the then President's desk addressing the problem of conservation, but it suffered a veto. This bill before us now, and the conference report, addresses conservation. It sets up a mandatory average fuel performance standard for automobiles—which, incidentally, consume approximately one-third of the petroleum used in this country. It authorizes grants in aid for States to assist in their development and implementation of conservation plans.

The estimate made by the Federal Energy Administration is that at least 4 percent of petroleum-based energy sources can be saved in this one area alone.

Furthermore, it sets up energy labeling standards for home appliances and other consumer products so that the individual consumer can see how much energy is consumed and can buy intelligently.

Furthermore, there is an energy information section which, in my opinion, goes in the right direction. It provides, for example, for the Comptroller General to conduct verification examinations to verify the accuracy of energy and financial information filed with Federal agencies.

It authorizes the Securities and Exchange Commission to take necessary steps to have uniform accounting standards so that the energy companies will be able to be compared and analyzed by Congress.

Furthermore, there is, of course, the provision which will encourage the Federal Power Commission, at long last, to find out what resources of natural gas we have in this country.

In addition to energy conservation, there is the strategic reserve section which sets up for the United States of America a strategic reserve in the event of a cutoff of foreign source energy supplies.

Additionally it establishes a very fruitful and proper approach to energy pricing. I think very few people in the United States would consider that the price of petroleum products is governed by the free market system, and it is for this reason that we have to indulge in price controls which none of us like, but which are necessary.

The average price is set in the bill on the basis of a $5.25 price for old oil, and $11.28 for new oil, which certainly is a sufficient incentive to encourage exploration.

Furthermore, when you consider that new oil approximately 2 years ago was selling for $3.50, the present price $11.28 is more than enough to encourage those in that business to find new petroleum sources.

Additionally, the President of the United States is permitted to allow the price of petroleum products to go up 10 percent each year, and he is given the discretion, of permitting, the price of secondary, tertiary and other high cost oil to be priced far higher than other old oil.

I would say this measure dealing with conservation, dealing with strategic reserves, dealing with sensible controls, much as we may deplore them as being necessary, is a cornerstone in an energy policy, and I compliment the chairman of the Senate Interior Committee, Mr. JACKSON, the chairman of the Commerce Committee, Mr. MAGNUSON. I commend the Senator from Illinois (Mr. STEVENSON), and the Senator from South Carolina (Mr. HOLLINGS), all of whom worked very hard to put this package together for giving us this bill.

I mentioned the ERDA budget bill as a companion measure dealing with energy in rounding out the foundation of an energy policy because that bill deals with future energy sources. I think we are all quite cognizant of the finite aspect of the fossil fuels, whether they be hydrocarbons or other sources of fossil energy, and the ERDA bill will, when adopted—as I am sure it will be by Congress and sent to the President's desk—give a large thrust of research and development into the new energy sources which, in a decade from now, have got to carry the industrial machines of the United States and the world. I speak specifically of solar and geothermal energy.

So, Mr. President, I conclude these remarks actually by congratulating Members of Congress for putting into effect in a very short time against great difficulties, I may say, a national policy.

There is one postscript to this particular bill I would like to mention. I am sure the chairman of the Interior Committee has put into the RECORD the correspondence between himself and Mr. Zarb, the Federal Energy Administrator. This correspondence shows that the figures we were working upon in conference, that is, the average price of old oil in the United States, the average price of new oil, the average price of domestic oil were, to use the best term I can describe them, very soft figures. As a matter of fact, in correspondence Mr. Zarb admitted they were policy prices, and I am not quite sure what policy prices mean, but I suggest, Mr. President, that this illustrates a need that we go much further than we have gone to date in getting really hard factual information on energy sources, on energy prices. I suggest and I intend to work in this direction in the next year so we broaden our base of information not just to energy materials but to materials generally.

Mr. President I would like to ask the distinguished chairman of the Interior Committee whether he has put in the RECORD his correspondence with Mr. Zarb.

Mr. JACKSON. Mr. President, I have not placed that correspondence in the RECORD, but I shall do so.

Mr. HASKELL. I think, I would like to say to the distinguished Senator, it would be very valuable because it would illustrate the difficulty that all of us were working under in the conference in that we did not have figures we could depend on.

Mr. JACKSON. Mr. President, I ask unanimous consent that the correspondence with Mr. Frank Zarb be printed in the RECORD at this point.

Mr. HASKELL. I would appreciate that.

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

WASHINGTON, D.C.,
November 24, 1975.

HON. FRANK ZARB,
Administrator, Federal Energy Administration, Washington, D.C.

DEAR MR. ZARB: At least two recent news articles have raised questions concerning the numerical parameters of the domestic crude oil price policy agreed to by the Conference Committee on S. 622, the "Energy Policy and Conservation Act", and in particular, about the benefits of this policy for American consumers. These questions pertain to the price levels for crude oil which currently prevail in the United States, the relationship between these prices and the policy adopted by the Conference Committee, the size of the price rollback mandated by the Committee, and the extent to which this rollback will translate into lower prices for gasoline, heating oil, and other refined products.

In order to clarify the situation with regard to these numbers, and to amplify your letter of November 18 addressed to Chairman Staggers and myself, I would appreciate your early response to the following questions.

I. INFORMATION AND DATA CURRENTLY IN POSSESSION OF FEA

With respect to crude oil prices, FEA presently publishes data series describing:

A. the percentage of domestic crude oil production sold at controlled and uncontrolled prices;

B. domestic crude oil prices at the wellhead (controlled and uncontrolled crude oil);

C. the refiner acquisition cost of crude petroleum (average cost of domestic crude petroleum, imported crude petroleum and a composite acquisition cost); and

D. the estimated landed cost of imported crude petroleum from selected countries.

(1) Please describe the source and composition of each data series, identify any assumptions, and include a description of the accuracy and method of verification of each series.

(2) Please provide a complete set of data values for each series, including the most current figures available to FEA.

(3) Committee staff has been led to understand that the $5.25 per barrel price for controlled "old" oil, published each month by FEA, is not a weighted average of actual price observations based either upon an audit or upon accepted sampling techniques, but is a number which is simply assumed from the regulation and the base period distribution of production. Please provide the best estimate of the recent and current actual average price of controlled old oil and the present distribution of this production at various prices.

II. ESTIMATES OF CURRENT PRICE LEVELS

(1) For each of the series discussed above please estimate, to the best of the ability of your agency to make such projections, the values (and, if any, the associated range of uncertainty) for the months of September, October, November and December, 1975. In each case, provide a discussion of the assumptions associated with your estimates.

(2) Assuming the current price control regime were continued, provide your best estimate of the average value at the wellhead (excluding all transportation costs, and costs associated with crude oil purchaser/resellers or other middlemen) of domestic uncontrolled oil, controlled crude oil, and the average for all domestically produced crude oil and condensate for the months of September, October, November and December, 1975. Provide a discussion of the basis for each estimate.

(3) With respect to these estimates, which numbers can be inferred in a straightforward manner from data which the FEA now collects and has in its possession and which require reference to data not routinely collected by FEA?

III. FEA ESTIMATES TRANSMITTED TO THE CONFEREES

Committee staff is aware of three documents originating in the FEA which contained assertions as to current and projected domestic crude oil price levels.

A document dated October 30, 1975, entitled "Fact Sheet on Average Price Plan" described the first oil pricing proposal drafted by FEA which was submitted to some Conferees and to the Committee staff. Tables contained in this submission placed the "average current" price for domestic crude oil at $8.75 per barrel, for domestic uncontrolled oil at $14.00 per barrel and for imported crude oil at $15.00 per barrel. In other tables, projections estimating average crude oil prices, supply and demand, and import levels in future years under alternative policies were presented.

Subsequent to that time, to preface discussions of oil price policy by the Conferees, Committee staff formally presented the figures describing "current" crude oil prices (old, new and imported) to the Conferees on specific advice from representatives of FEA that these figures were accurate.

During the course of the discussions of oil price policy, two additional documents dealing with old price levels were transmitted by FEA to Committee staff. A two-page sheet entitled "Reference" reiterated both the $14.00 per barrel and $15.00 per barrel figures for uncontrolled domestic and imported

crude oil respectively and the assertion that the current average price for all domestic oil production is $8.75 per barrel. On November 10 an Administration oil pricing proposal was forwarded to Committee staff which placed the "domestic composite price" at $8.75 per barrel on January 1, 1976.

(1) What were the assumptions associated with, and what was the basis for, the estimates of "current" prices transmitted to Members and staff of the Conference Committee by representatives of FEA during the discussions and negotiations over oil price policy between October 6 and November 12, 1975?

(2) What were the assumptions and what was the basis for the projections of future prices—over the life of the various proposed 40-month crude oil pricing plans—which the FEA supplied the Conferees during these negotiations?

IV. ADMINISTRATION OF THE ENERGY POLICY AND CONVERSATION ACT

(1) Should the Energy Policy and Conservation Act become public law, how would FEA interpret the "average domestic composite price" (or "national weighted average price") referred to in discussions of the proposed legislation with the Conferees and staff?

(2) What are the implications for administration, compliance and legal certainty of the various possible statutory specifications of the domestic average composite price: wellhead price, price at first sale (actual or imputed) or some other concept?

(3) What further specification of the domestic average composite price would FEA contemplate implementing by regulation in order to define the concept operationally? To what extent, if any, would these specifications differ from those embodied in the current regulation?

(4) What data series would FEA intend to use in the administration of the crude oil pricing policy adopted by the Conferees?

V. RECENT ESTIMATES BY "FEA SOURCES"

In prominent articles appearing in the Washington Post on November 18 and the New York Times on November 19, FEA personnel are quoted as estimating average domestic crude oil prices and prices for uncontrolled domestic crude oil production at levels differing significantly from those transmitted to the Conferees by the FEA.

An unidentified FEA "statistician" was quoted in the Post article to the effect that the current domestic "new" oil price is $13.50 per barrel and that the domestic average composite price is "somewhere around $8.50 per barrel", in contrast to the figures of $14.00 and $8.75 per barrel communicated to Members and staff of the Conference Committee on at least three occasions as described above. According to the Times article of November 19, an entirely different figure, $8.39 per barrel, should be used to describe the current domestic average crude oil price.

(1) Which, if either, of these sets of values are accurate?

(2) What, in fact, was the actual price of domestic new oil at the wellhead (excluding transportation costs and costs associated with crude oil purchase/resellers or other middlemen), based either on FEA data, on the most accurate and reliable industry pricing service or on other data available, for the months of September, October and November?

(3) Based on FEA's best estimates of the actual price of domestic new and old crude oil and the actual composition of domestic production for each of these months what, in fact, was the domestic average composite price at the wellhead for September, October and November?

(4) In FEA's internal analysis of the impact of the oil price policy approved by the Conference Committee, to what extent has FEA relied upon or used figures such as those referred to above—or to what extent were other figures or assumptions relied upon—which are different from the figures communicated to the Conference Committee?

VI. CONSUMER BENEFIT OF A ROLLBACK IN CRUDE OIL PRICES

In both newspaper articles referenced above, and in conversations with Committee staff *subsequent to the final November 12 meeting of the Conferees,* FEA representatives have made various contentions—based on differing and mutually inconsistent assumptions and rationale—that the reductions in crude oil costs to domestic refineries which are mandated by the oil price policy approved by the Conference Committee will be absorbed by refiners themselves, or by distributors, marketers and retailers of refined petroleum products and not passed on to consumers. These FEA representatives have further maintained that this transfer of the benefits of a crude oil rollback from consumers to sectors of the oil industry would occur in a manner which is entirely consistent with, not only current FEA regulations, but also the provisions of the Energy Policy and Conservation Act agreed to by the Conferees.

(1) Provide your best estimates, including a description of all assumptions and the reliability of these assumptions, of the change, if any, in the national average price of domestic crude oil run in U.S. refineries, in the price of all crude oil run in U.S. refineries, and in the price of motor gasoline, home heating oil, diesel fuel, residual fuel oil and jet fuel to final consumers which would result first, if the oil price policy adopted by the Conference Committee were put into effect, and, second, if current controls were continued. In making this estimate specifically designate:

(a) the effect of different assumptions which have been identified with respect to the value of the current national average price of crude oil;

(b) the effect of reasonably expected levels of imports of crude oil and refined petroleum products;

(c) the effect of the removal of the $2.00 per barrel supplementary fees on imported crude oil as stipulated by representatives of the Administration;

(d) the influence of current FEA regulations with respect to the disposition of banked costs held by refiners and distributors;

(e) the influence of FEA regulations with respect to the margins allowed marketeers and retailers of refined petroleum products;

(f) the effect of the expected and reasonably projected supply and demand of each principal refined product under discussion domestically and in key regions of the U.S.;

(g) the role of competition among refiners, distributors, marketers and retailers of refined petroleum products; and

(h) the role in reducing consumer prices of any relevant provisions of the Energy Policy and Conservation Act, including the amendment to the pricing policy offered by Senator Hartke which would require that FEA regulations provide for a mandatory flow-through of all reductions in crude oil prices from the producer to the retail level.

(2) Please indicate the extent to which recently publicized assertions of FEA officials about the minimal impact of reductions in crude oil prices on consumer prices of gasoline and home heating oil and other refined petroleum products are consistent with estimates provided in the White House announcement of July 25, 1975 describing the impact of the President's proposed 39-month decontrol plan. According to that announcement the impact of the initial rollback in crude oil prices embodied in that plan would have affected the "average petroleum product prices (such as gasoline)" by a cumulative amount of —0.5¢ to —1.0c per gallon by the end of 1975.

(3) Please furnish any analysis, statements or other data in which FEA has analyzed or set forth their best estimates of the impact of reduction in crude oil prices on consumer prices of refined petroleum products as a result of removing the oil import tariff:

Your prompt response to this inquiry is necessary to dispell doubts which have arisen concerning the information—supplied by FEA—which the Conferees in good faith relied upon in reaching their decision on oil pricing policy. I do not need to remind you that the potential impacts of relatively small differences in oil prices are very substantial. For example, a difference of only 36¢ per barrel in the price of domestically-produced crude oil—as between the $8.75 figure quoted to the Conferees and the $8.39 figure published in the New York Times—represents over a billion dollars in direct costs to U.S. consumers.

The FEA has a responsibility to provide the Congress with the best and most reliable available information with respect to this complex and highly important issue. If the figures which were provided to the Conference Committee were not, in fact, the best and most reliable available, the most serious questions about the operation of our public policy process are immediately raised, and a far wider examination of this issue must be undertaken.

Sincerely yours,

HENRY M. JACKSON,
Chairman.

FEDERAL ENERY ADMINISTRATION,
Washington, D.C., December 6, 1975.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter of November 24, 1975, regarding the numerical parameters of the domestic oil price policy agreed to by the Conference Committee as a part of the "Energy Policy and Conservation Act." This letter answers the questions you asked.

You state that questions have arisen concerning the price levels for crude oil which currently prevail in the United States and the relationship of those price levels to the oil pricing policy adopted by the Conference Committee. In my view, these questions have arisen because the news articles you refer to have not adequately dealt with the distinction between the price figures that have consistently been used for policy planning purposes and the various and understandably different price figures that are estimated to prevail on any given day.

The fundamental point in this regard, and one that has been well understood by all concerned with the detailed consideration of alternative oil pricing policies, is that for purposes of evaluating such alternatives a crude oil average price figure representing FEA's best judgment as to what an average crude oil price would be, assuming continuation of the present program, has been used. This approach is obviously the only rational basis upon which to base a policy decision on whether an alternative to the present program should be adopted.

The actual daily average price for domestic crude oil, on the other hand, has been in a continuous state of transition since February 1, 1975, in response to a $1.00 per barrel increase on that date in the fee applied to imported crude oil, a further $1.00 per barrel increase in that fee on June 1, 1975, and the increase in OPEC prices that was announced in October, 1975.

Thus, the projected domestic crude oil average price for purposes of policy planning has remained essentially the same throughout the period of time that alternative price

policies have been analyzed and debated, while the actual daily average price (which is not available except as an estimate), has undoubtedly been increasing from month to month. This is illustrated, for example, by the October 30, 1975 document that you refer to in your letter, which listed a domestic crude oil price of $8.75 in a table under a column headed "Average Current Price/bbl." That this was a price expressly intended to be used for policy planning purposes as the price that would obtain assuming continuation of the current program is demonstrated by the November 10, 1975 document, also referred to in your letter, which compared the projected price effects of alternative price policies and which listed the domestic composite price under "current controls" at the end of January 1, 1976 as $8.75 per barrel.

It is therefore important to note that the extent to which the oil pricing policy adopted by the Conference Committee will result in price rollbacks at the crude oil level cannot be determined exclusively by reference to what the actual daily average price was in November or is in December (if those figures were presently known), or by reference to the price used for policy planning purposes by FEA. Rather, the actual amount of any rollback under the oil pricing policy adopted by the Conference Committee would be determined by the difference between the actual crude oil average price being charged in the month prior to the month in which the requirements of the new legislation were implemented, and the average price charged pursuant to those requirements. For the reasons set forth in detail below, we are confident that the figures that have been used for policy planning purposes represent a reasonable and conservative approximation of the price levels that would obtain for domestic crude oil in the proximate future, were the present program to be continued.

Let me also respond as a preliminary matter to the general issue, raised throughout your letter, of the reliability of the data provided the Conference Committee by FEA. As this letter will set out in considerable detail, all the information provided the Conference Committee was without exception what we regarded to be the most reliable information available to FEA at the time. It was the same information in every case that FEA was using internally, with other Federal agencies and with the White House for purposes of policy evaluation.

You correctly refer to the highly complex nature of this issue. I believe that this complexity, together with some unfortunate statements made by persons apparently unaware of the complexities involved, is responsible for the apparent misunderstandings to which your letter refers.

One key element in this complexity is the possible failure to distinguish between estimates of "current" data and the latest, or "current," published series of data collected several months earlier than the date of publication. As in any similar endeavor (*e.g.*, measurement of the Gross National Product), actual measurements of recorded experience are simply not available on a real time basis. As set out in detail below, there is typically a lag of at least 90 days in most of FEA's data series between the time a particular price is charged in the marketplace and the time it is reported to FEA, processed, tabulated, and made available for use.

A second key element is that the FEA's data series were developed for the administration of existing programs and to fulfill FEA's reporting responsibilities under existing legislation. The implementation of a weighted average price concept for domestic crude oil like that adopted by the Conference Committee will require more precise data series tailored to that program.

Accordingly, any estimates of "current" prices must necessarily be just that—estimates. We attempted to make this fact clear to the Committee staff on numerous occasions, and, indeed, thought that it was obvious to everyone concerned in any event. I regret any misunderstandings that may have arisen in this regard and sincerely believe that throughout this entire process FEA has made every effort to be completely open and candid with all concerned, as it has been in all of its dealings with the Congress.

Finally, your letter refers to information supposedly supplied to the press by unnamed "FEA sources" which tends to contradict the FEA-supplied estimates on which the Committee relied. I do not know who those alleged sources were or how they arrived at their figures. They were not acting under my authority or direction. I have no idea of what data they were relying upon or how reliable that data was. I can only say that I tend to discount the reliability of those figures because they do not agree with the figures arrived at by the professionals on my staff who have access to the most recent information available and in whose judgment on such matters I have complete confidence.

Your letter posed six sets of questions, more detailed answers to which are as follows:

"I. Information and data currently in possession of FEA with respect to—

"A. The percentage of domestic crude oil production sold at controlled and uncontrolled prices;"

(See Enclosure 1 for a detailed response.)

Briefly, FEA collects information on this question from two FEA data systems, which information is supplemented by other data. As the basis for its published data series, FEA obtains data monthly from the Bureau of Mines on total crude oil production in the United States. It also collects monthly data on FEA Form 90, directly from producers of "new" and "released" oil, on the amount of oil produced by them and the prices at which it is sold. FEA also obtains annually an estimate of total stripper well production made by the Interstate Oil Compact Commission and the National Stripper Well Association.

Using these three data series, the sum of new, released, and stripper production is subtracted from the Bureau of Mines report of total production to generate an estimate of crude oil production subject to price controls.

Since November 1974 FEA has also collected from refiners, on a slightly different time sequence, similar information as part of the data collection necessary for the administration of FEA's old crude oil entitlements program. Each refiner reports monthly its crude oil receipts for the preceding month in three categories: price controlled "old" oil; new, released, and stripper crude oil (*i.e.*, domestic production not subject to price controls); and imported crude oil. This data is then tabulated during the following month for use in calculating that month's entitlement list.

The data available from these two series are shown at Enclosure 1.

An important point that emerges from an examination of Enclosure 1 is that the two FEA measurement systems generate slightly different results on a monthly basis. This is to be expected as they are measuring slightly different quantities in a differing time sequence (production at the lease vs. crude oil receipts at refineries) by different methods. Nonetheless, the two methods do generate results that correspond quite closely, lending added confidence to the validity of the data.

As indicated by both methods, the ratio of controlled to uncontrolled production varies slightly from month to month. However, it is clear from Enclosure 1 that the planning figure of 60 percent of domestic production being price controlled that has been used in *all* FEA's calculations supplied to the Conference Committee is approximately the median within this month-to-month variability. The most recent data available to the agency (i.e., the most recent four months of entitlements data) confirms this belief.

It should also be noted, based on the discussion contained in Enclosure 2, that this 60 percent figure would most likely prove to be a conservatively high estimate of what the percentage of price controlled crude oil will be in January or February of 1976, when the weighted average price program adopted by the Committee would go into effect. This is so because during the first quarter of 1972 there existed certain production constraints in major producing fields which were removed during the second quarter of that year and which resulted in significantly higher production for the balance of the year. Assuming, therefore, a continuation of our current crude oil pricing regulations, the percentage of old oil during the first quarter of the next two years can be expected to average between four to six percentage points below the percentage of old oil produced during the last quarter of the preceding years. This, combined with what appears to be a gradual downward movement in the domestic old oil ratio, resulting from natural production decline, demonstrates that the estimate of 60 percent used by FEA is a reasonable and conservative method of reflecting current domestic crude oil pricing trends and produces a weighted average price estimate that is conservatively on the high side for the purposes for which it was used by the Committee.

"B. Domestic crude oil prices at the wellhead (controlled and uncontrolled crude oil)."

First sale prices for old crude oil are fixed by regulation at the highest May 15, 1973, posted price for that grade of crude oil at that field plus $1.35 per barrel. See 10 C.F.R. § 212.73. Some low-quality price-controlled oil sells for as little as $3.50 per barrel; other high-grade crudes sell for as much as $7.00 per barrel, depending on the May 15, 1973 posted price.

The estimate of an average price of $5.25 per barrel for price controlled crude oil was made by the Cost of Living Council, which first promulgated the old oil ceiling price rule, in the manner described in Enclosure 2. Since legal maximum prices have not changed, this estimate has been carried forward and used consistently by FEA in all its estimates of average prices. FEA's published data series have shown this average price for each month since their inception.

There has never been any legal, regulatory, policy, or planning requirement to have an exact measurement of the average "wellhead price" of price-controlled crude oil. The FEA Form 90 collects data from producers of new and released oil, and, incidental to that collection, also obtains information on controlled oil prices for properties that also produce new and released oil, but the reliability of this data has never been checked, nor has it been used by FEA for any purpose.

Prices of domestic crude production not subject to price controls are collected monthly by FEA on the FEA Form 90 from producers of new and released oil. These average prices are then compared with advertised postings of major purchasers and prices reported in trade journals. Average prices ranging from $9.82 per barrel in January 1947 to a *preliminary estimate* based on incomplete reports of $12.46 per barrel in September 1974 (prior to the anouncement of the OPEC price increase, which of course influences the price of domestic uncontrolled oil) are shown at Enclosure 2.

"C. The refiner acquisition cost of crude petroleum (average cost of domestic crude petroleum, imported crude petroleum, and a composite acquisition cost);"

(See Enclosure 3 for detailed answer.)

FEA obtains a monthly report from each

refiner on the acquisition cost of both domestic and imported crude oil. This report, which is subject to FEA audits, is the basis for the refiner's allowable cost pass-through under FEA's price regulations. The latest month for which full data are available, August 1975, prior to the October OPEC price increase of ten percent, reflects a reported average cost of domestic crude oil of $8.48 per barrel, an average landed cost of imported crude oil of $14.25 per barrel, and an average composite cost of $10.81 per barrel.

"D. The estimated landed cost of crude petroleum from selected countries."

(Detailed data are shown at Enclosure 4.)

It is important to note that the data at Enclosure 4 do not include any supplemental fees ($1.00 per barrel from February 1975 through May 1975, and $2.00 per barrel from June 1975 to the present).

"II. Estimates of current price levels."

Detailed estimates are provided at Enclosure 6 together with the assumptions underlying those estimates. Estimates of "current" prices depend on two major considerations: the rate at which OPEC posted price increases are reflected in actual prices charged for imported oil and the rate at which prices for domestic crude production not subject to price controls increase to reflect increases in the cost of imported crude oil.

The key point is that under a set of entirely reasonable assumptions, prices for imported and uncontrolled domestic production could well go higher than figures used in FEA's policy planning, which were provided to the Conference Committee staff. FEA has in every instance, however, used what in its judgment was the best available estimate of the relevant price levels.

"III. FEA estimates transmitted to the Conferees."

The assumptions associated with and bases for estimates provided the Conference Committee staff are set out in detail in Enclosure 5 in answer to the previous questions. As stated above, they were in every instance the best estimates FEA was able to make given uncertainties involved. Moreover, these were the same estimates being used by FEA to evaluate the impact of different proposals and being provided by FEA to other elements of the Executive Branch of the Government.

Briefly, the estimates provided the Conference Committee staff all derive from four key parameters:

(1) Price-controlled oil represents 60 percent of domestic production.

(2) The average price of price-controlled domestic production is $5.25 per barrel.

(3) The average price of domestic production not subject to price controls would be $14.00 per barrel by January 1976.

(4) The average price of imported crude oil would be $15.00 per barrel by January 1976.

The basis for the first two parameters is set out above and in more detail in Enclosures 1 and 2.

The basis for the third parameter is the fact that uncontrolled domestic crude oil sold at an average of $11.28 per barrel in January, and although prices have been in transition since that date, they can reasonably be assumed to reflect at present, or in the proximate future, the $2.00 per barrel supplemental fees imposed since then, plus 81 cents per barrel as an estimate of the effect of the October OPEC price increase for a total of $14.09 per barrel. This estimate was then rounded down to $14.00 per barrel for use in calculating the estimates provided the Conference Committee staff. Although 81 cents per barrel was attributed to the OPEC price increase, that increase, if fully effective, would range from a low of $1.13 per barrel to a high of $1.58 per barrel, with an estimated average of about $1.25 per barrel.

Please note that a different set of assumptions could therefore have produced an entirely reasonable estimate of as much as $14.58 per barrel ($11.28 + $2.00 fees + $1.25 OPEC increase). For reasons detailed in the enclosure, we used what we believed to be a more nearly correct and lower value.

The fourth estimate was generated in the same way—to the January 1975 average price of $12.77 per barrel for imported crude was added $2.00 per barrel to account for the impact of the supplemental fees and 81 cents per barrel as an estimate of the effect of the October OPEC increase. This figure was even more conservatively rounded down to $15.00.

January 1975 values were used as the starting point for these last two calculations because these are most recent actual data values free of the influence of (1) the supplemental fees first imposed on February 1, 1975, and (2) the effect of the October 1975 OPEC price increase. We have learned that the price of uncontrolled domestic crude responds slowly—over a period of four to six months—to the price of imported crude. The landed price of imported crude also changes monthly in response primarily to changes in tanker rates and the mix of imports by quality and country of origin.

Accordingly, the price series for uncontrolled domestic production from February 1975 forward is a "moving target" that is clearly going in the direction of imported crude prices but with lags in timing that cannot be measured precisely nor estimated with any precision.

While later data were available for the landed price of imported crude (see Enclosure 4) the same methodology for estimating the $15.00 price was used for consistency and to assure that comparisons made in using the parameters would be based on truly comparable estimates. Moreover, the latest available data were checked to assure that they were not inconsistent with the approach used in generating the estimates. Since they were not, the estimating procedure outlined here was used.

"IV. Administration of the Energy Policy and Conservation Act."

FEA views the "average domestic composite price" or "national weighted average price" for crude oil as the sum of all domestic crude oil production multiplied by the first sale price of that production divided by the total amount of domestic production. In the case of inter-affiliate transfers rather than arms-length transactions, regulations would specify the method for establishing a price that would be used as the equivalent of the first sale price.

FEA recommends that the legislation specify a "first sale" price (with discretion in the President to impute, in a manner to be specified by regulation, an equivalent price for inter-affiliate transfers), rather than a "wellhead" price, because of the lack of precision in the latter term. The first sale price, which is currently the price to which FEA's current ceiling price rules apply, is the price charged in the first transfer for value by the producer or royalty owner, which transfer usually but not always occurs at or near the wellhead. The term "wellhead price," on the other hand, while sometimes loosely used as a synonym for first sale price (including in one of FEA's published data series), is not currently a precise regulatory term. The injection of this new term into the statute could result in its being construed as requiring that, for purposes of calculating the weighted average price, the President would have to impute a price at the wellhead in all instances where the actual first sale does not occur at that point. Any such requirement that a price different from that to which ceiling prices must necessarily apply be used to calculate weighted average prices would create an administrative nightmare for no apparent purpose.

It should be noted that use of an imputed "wellhead" price for purposes of making the weighted average price calculation would not result in lower product prices than would result if the first sale price were used. Indeed, the effect is likely to be the opposite. The first sale price for crude oil may in some instances include costs for transportation and other services (which presumably would be excluded from "wellhead" prices). If only imputed wellhead prices were used in arriving at the maximum weighted average price, these transportation and other costs would be added to the maximum, thus increasing the input costs to refiners and allowable product prices to consumers.

Finally, it should be noted that the estimates that were before the Conference Committee in its deliberations were all based on first sale, rather than imputed "wellhead," figures.

FEA is now considering three alternative data systems for directly measuring first sale prices for domestic production and has not yet decided which would be most appropriate. An expanded discussion of the alternatives now being evaluated is at Enclosure 7.

"V. Recent estimates by 'FEA sources.'"

As set out above, I have no way of knowing the basis for the estimates attributed to such "sources," or even if such sources actually provided the estimates attributed to them. I do know that no responsible FEA official who was authorized to speak for the agency has provided such estimates and that at no time has FEA used for policy planning purposes any estimates other than those provided the Conference.

"VI. Consumer benefit of a rollback in crude oil prices."

There have been some apparent misunderstandings on the part of some people on the amount and timing of the potential product price reductions that would be generated by the rollback. I am happy to have this opportunity to attempt to clarify the matter.

One estimate of the amount by which the bill would cause a rollback in prices to the consumer that was often quoted at the time of the Committee's deliberations was approximately 3.5 cents per gallon. While that estimate is fairly close to our estimate of what the total potential reduction would be if only products refined in U.S. refineries were considered, it did not take into account product imports, natural gas liquids production or volume expansion through the refinery process. Based on prices of $5.25 for the 60 percent of domestic production that is price controlled, $14.00 for other domestic production, and $15.00 for imported crude, the composite price for domestic production is:

.6 ($5.25 + .4 ($14.00) = $8.75 per barrel

The composite price for all crude runs to refineries (8.5 million barrels per day of domestic production and 3.9 million barrels per day of imports) is approximately:

[8.5 ($8.75) + 3.9 ($15.00)] ÷ 12.4
=$10.72 per barrel

If domestic crude is rolled back to $7.66 per barrel and the import fee is removed, the new composite price of crude runs to refineries would be about:

[8.5 ($7.66) + 3.9 ($13.00)] ÷ 12.4
=$9.34 per barrel

This represents a reduction of $1.38 per 42 gallon barrel, or about 3.3 cents per gallon for products refined in U.S. refineries.

In the period August 1974 through July 1975 the U.S. consumed an average of 16.6 million barrels per day of refined products. However, only 12.4 million barrels per day of that amount involved products refined in the U.S. The remainder was made up of product imports, natural gas liquid products produced at gas plants, prices of which will

not be affected by lowering domestic crude prices, and refinery volume expansion. Accordingly, when these considerations are included, as they must be, the maximum effect on domestic product prices will be about:

3.3 cents per gallon (12.4 ÷ 16.6)
= 2.5 cents per gallon

The question of how fast this decrease will flow through to ultimate consumers depends more on market conditions than on law or FEA regulations. Under Section 4(b)(2)(A) of the Emergency Petroleum Allocation Act companies are authorized to pass through to consumers increased costs of crude oil, but FEA regulations interacting with market conditions have prevented them from doing so on a current basis. As of November 1, 1975, refiners collectively had unrecovered crude oil cost increases of about $1.4 billion that they were authorized to recoup in higher prices but had as yet been unable to recoup because of the competitive pressures of the marketplace.

These "banks" of unrecovered costs are not equally distributed among all refiners. Most are held by refiners who had higher than average feedstock costs before FEA's old crude oil entitlements program began operating. Accordingly, some refiners who currently have little or no banked costs because they have been passing through increased crude oil costs on a current basis will be required to pass on immediately in product prices any reduction in their average crude feedstock costs caused by this bill. In a market characterized by plentiful supplies of product, this mandatory reduction in prices by some refiners will place substantial competitive pressures on other refiners to meet these lower prices so as to preserve their market shares and their volumes of sales.

The exact timing and extent of price reductions therefore simply cannot be predicted with any degree of confidence. They depend on the individual business decisions of literally thousands of refiners, distributors, and retailers of petroleum products. Each is caught between two conflicting motivations; trying to collect as much as possible of any increased costs not yet recovered, versus the need to meet competition so as to keep volume and market share up. Profit-maximizing behavior for each company will be different depending on its own circumstances.

The general direction of the forces at work is clear. Currently, product markets are characterized by plentiful supplies and prices below those allowable under existing law and regulations. For those refiners without "banks" of unrecovered product costs, regulations will force lower prices early, thereby imparting downward pressure on all market prices. How fast that flow-through will be, on which products it will occur and in what amounts will be determined entirely by the interaction of supply and demand in the marketplace so long as prices are below legal limits.

Regardless of the rate at which the cost reductions flow through in lower prices to consumers, the Conferees may rest assured that their actions, if enacted by the Congress and signed by the President, should result in a savings to consumers of about 2.5 cents per gallon on petroleum products. These savings, however, will not necessarily be evidenced by actual and immediate decreases from current product price levels at the point of final purchase. They will also be evidenced by a reduction in prices in future months as a result of the immediate reduction in the amount of costs that refiners and resellers will have available for passthrough to consumers in those future months. Thus, prices will be less in future months than they otherwise would have been under a continuation of the present program. The combined effect of the operation of FEA regulations and competition in the marketplace should assure that consumers will reap the full benefit of the rollback one way or the other. What cannot be specified with any precision is exactly how that benefit will be distributed over time and among the products covered by price regulations.

The analysis set out above is consistent with that developed by FEA in its evaluation of the President's 39-month decontrol proposal, as set out in more detail in Enclosure 8. This proposal spoke of a range of expected reductions in overall product prices below what they would have been in the absence of the proposal, and was made before the recent OPEC price increase. The uncertainties set out above caused that range to be stated as "between —0.5 cents and —1.5 cents per gallon."

FEA was careful to point out in its evaluation of the 39-month decontrol proposal the contingent nature of the extent and timing of crude oil costs being reflected in market prices, and the reasons for the uncertainties necessarily associated with the estimates. Our motive was to avoid giving rise to expectations that might not be fulfilled.

In the case of the Conference Committee Agreement, we would expect the range of price reduction to me from —1.0 cents to —2.5 cents, depending on particular market forces operating for each product and each company involved. Although it is impossible to predict with any degree of certainty, it seems likely that these reductions would begin to appear noticeably in the marketplace within several months after the effective date of the rollback in domestic crude oil prices.

I trust this letter is responsive to your questions. If I may be of further assistance, please let me know.

Sincerely,

FRANK G. ZARB,
Administrator.

PERCENTAGE OF DOMESTIC CRUDE OIL PRODUCTION SOLD AT CONTROLLED AND UNCONTROLLED PRICES

The data are derived from four sources: (1) Form FEA–P–102, (2) Form FEA–90, (3) Bureau of Mines, Mineral Industry Surveys, and (4) The National Stripper Well Survey.

The most current source of this data comes from FEA's entitlements program (Form FEA–P–102). The purpose of the entitlements data is to assure that old oil is equally distributed among all domestic refiners in such a fashion as to minimize the cost disparities caused solely by the two-tier pricing system and to permit a more competitive environment within the refining, wholesale and retail sectors of the industry. These reports detail the volume of all crude oil used by refiners, of old oil, uncontrolled domestic oil and imported oil. This is a census figure in that all refiners are required to report all crude oil receipts. The old oil receipts percentage of total domestic oil *at the refinery* is:

	Percent
November 1974	65.3
December 1974	66.2
January 1975	58.4
February 1975	58.4
March 1975	58.5
April 1975	59.9
May 1975	60.5
June 1975	60.1
July 1975	60.2
August 1975	60.7
September 1975	61.8

Additionally, FEA maintains another data base which captures similar information from producers as oppposed to refiners. This data lags behind entitlements data. Data applicable to new and released oil is derived from FEA Form 90. This form collects data on a lease basis from over 600 respondents which produce new oil. This is not a census figure, since not all producers report, but the companies that do account for approximately 87 percent of total production in the United States. Stripper well production data is estimated from an annual survey conducted by the National Stripper Well Association and the Interstate Oil Compact Commission. Volumes of oil in each of the three categories are then compared to the total domestic production during the relevant period in order to produce the percentage splits. This is the source of the data which is included in FEA's *Monthly Energy Report*. The most recent month for which this information is available is March, 1975, and the percentage of old oil to total domestic production is 60%. Specifically, this data is:

	Controlled old oil	Uncontrolled new oil	Released	Stripper
1974:				
January	60	17	10	13
February	62	15	10	13
March	60	16	11	13
April	60	16	11	13
May	62	15	10	13
June	63	15	9	13
July	64	15	9	12
August	66	14	8	12
September	67	13	8	12
October	66	14	8	12
November	67	13	8	12
December	66	14	8	12
1975:				
January*	58	19	10	12
February*	61	17	9	12
March	60	18	10	12

*Total does not add to 100 due to rounding.

DOMESTIC CRUDE OIL PRICES AT THE WELLHEAD (CONTROLLED AND UNCONTROLLED CRUDE OIL)

The estimate of $5.25 per barrel as the average wellhead price of controlled oil was derived from an examination of representative crude oils by the Cost of Living Council and has been carried over to the FEA and is generally used in all its published data. More specifically, in March 1973, crude oil prices for 34° API crudes were approximately $3.65/bbl. In the following four months typical market prices for that quality of crude increased twice by increments of about $.25 and $.35, respectively, bringing the total to about $4.25/bbl when the Cost of Living Council issued its Phase IV regulations in August of 1973. At that time the Cost of Living Council established the maximum price at which old oil could be sold as the May 15, 1973, posted price in the applicable field plus $.35 per barrel. It then adjusted the price of all old oil upward by $1.00 on December 18 of that year, which accounts for the current $5.25 per barrel estimate. A precise average controlled oil price, on the other hand, has never been determined by the FEA, because old oil prices have remained frozen since December 18, 1973 and because there has been no regulatory need for a more precise figure. While the FEA Form 90 collects some data on old oil prices, that form covers only those producers that also produce new and released oil.

The price of old oil varies from field to field, depending on the May 15, 1973 posted price in that field for the grade and quality of crude oil concerned, and may be as low as $3.50 a barrel and as high as $7 a barrel. These price differentials reflect the different

values of crude oils depending upon their yield characteristics and other relevant factors. It is important to note that although the ceiling price of controlled oil has been frozen for nearly two years, the average price of all controlled oil undoubtedly varies slightly from month to month as a function of the mix of types of crude oil selling at controlled prices.

In conjunction with the second reporting system outlined in Enclosure 1, FEA requires reports on its Form 90 of pricing data from all properties which have produced new and released oil. In addition to being subject to FEA audits, the reliability of these price reports is tested by comparison with advertised price posting of selected crude oil purchasers and prices reported in trade journals (i.e., Platts Oilgram).

The FEA's best estimate, determined in this manner, of domestic crude oil prices per barrel at the wellhead since January 1974 is:

1974:	Old	New and Released
January	$5.25	$9.82
February	5.25	9.87
March	5.25	9.88
April	5.25	9.88
May	5.25	9.88
June	5.25	9.95
July	5.25	9.95
August	5.25	9.98
September	5.25	10.10
October	5.25	10.74
November	5.25	10.90
December	5.25	11.08
1975:		
January	5.25	11.28
February	5.25	11.39
March	5.25	11.47
April	5.25	11.64
May	5.25	11.69
June	5.25	11.73
July	5.26	12.30
August	5.25	12.38
September	5.25	[1] 12.46

[1] Preliminary figure based on early reports.

REFINER ACQUISITION COST OF CRUDE PETROLEUM

Refiner acquisition costs are derived from mandatory reports (Form FEO–96) submitted directly to the FEA by all refiners (155 reports). These figures represent the average cost of crude oil purchased by refiners which they may pass through to their purchasers in the form of price increases. Refiners report their purchases of domestic and imported crude oil separately. These costs include not only the acquisition cost but the cost of transporting the oil into the refiner's inventory and the supplemental import fees. These data are subject to audit by full-time onsite FEA auditors at the largest 30 refiners to determine whether there have been violations of FEA pricing regulations. However, the FEA's data on average crude oil costs, which is normally published 30 days after the end of the reporting period, is usually based upon FEO–96 reports that have not yet been audited by that time.

Refiner acquisition costs of crude petroleum for January, 1974, through September, 1975, were as follows:

1974:	Domestic	Imported[1]	Composite
January	$6.72	$9.59	$7.46
February	7.08	12.45	8.57
March	7.05	12.73	8.68
April	7.21	12.72	9.13
May	7.26	13.02	9.44
June	7.20	13.06	9.45
July	7.19	12.75	9.30
August	7.20	12.68	9.17
September	7.18	12.53	9.13
October	7.26	12.44	9.22
November	7.46	12.53	9.41
December	7.39	12.82	9.28
1975:			
January	7.78	12.77	9.48
February	8.29	13.05	10.09
March	8.38	13.28	9.91
April	8.23	13.26	9.83
May	8.33	13.27	9.79
June	8.33	14.15	10.33
July	8.37	14.03	10.57
August	8.48	14.25	10.81
September	[2] 8.49	[2] 14.04	[2] 10.79

[1] The refiner acquisition cost of imported crude petroleum is the average landed cost of imported crude petroleum to the refiner and represents the amount which may be passed on to the consumer. It includes transportation costs and fees, and any other costs incurred in purchasing and shipping crude oil to the U.S. before March 1975, the estimated landed cost of imported crude petroleum from selected countries did not represent the total cost of all imported crude. Imported crude costs to U.S. company-owned refineries in the Caribbean were not included in the landed cost, and costs of crude petroleum from countries which export only small amounts to the U.S. were also excluded. Beginning in March coverage was expanded to include U.S. company-owned refineries in the Caribbean.

[2] Preliminary data.

ESTIMATED LANDED COST OF IMPORTED CRUDE PETROLEUM FROM SELECTED COUNTRIES

Beginning in March 1975, the estimated landed cost of imported crude from selected countries has been developed from data on import purchases reported to the FEA on Form FEA F–701 by all importers who import more than 500,000 barrels a month. Prior to March, 1975, the FEA Form 1001 was the source of this data. The estimated costs are a weighted average, by volume, of landed costs, and do not contain the supplemental import fees that were imposed during 1975. Verification of data for individual companies submitted on Form FEA F–701 is subject to audit by the FEA, which audit has begun and will continue. The data are also compared to those from traditionally recognized trade sources, i.e., Petroleum Intelligence Weekly, Middle East Economic Survey, the Petroleum Economist, and Patt's Oilgram, to generally verify their accuracy.

These data are published 45 days after the end of the reporting period.

The most recent estimated landed costs of imported crude petroleum from selected countries are as follows:

[Dollars per barrel]

	Algeria	Canada	Indonesia	Iran	Nigeria	Saudi Arabia	U.A. Emirates	Venezuela
1973: December	NA	6.32	6.42	6.37	8.54	5.49	NA	6.70
1974:								
January	NA	6.70	NA	8.53	12.13	NA	NA	10.28
February	NA	10.90	NA	12.11	12.74	NA	NA	11.31
March	NA	11.14	12.13	13.02	13.26	NA	NA	11.78
April	13.63	11.02	12.49	12.83	13.67	11.59	NA	11.38
May	14.67	11.47	12.95	13.84	13.83	11.53	NA	11.28
June	14.43	12.56	13.21	13.44	13.03	11.27	13.06	10.39
July	13.65	12.65	13.77	13.02	12.75	11.97	12.34	10.64
August	13.96	12.49	14.32	12.31	12.70	12.16	12.69	11.20
September	13.83	12.51	13.42	11.87	12.28	11.45	NA	11.01
October	13.20	12.53	14.24	12.07	12.12	11.51	12.84	10.95
November	13.43	12.33	13.45	12.15	12.83	12.15	13.54	11.15
December	13.08	12.15	14.15	11.63	12.88	11.75	14.59	11.37
1975:								
January	12.72	12.43	13.30	12.11	12.07	12.07	13.14	11.37
February**	12.11	12.15	13.52	11.86	12.18	11.94	12.67	11.55
March**	12.46	12.79	13.94	12.08	12.56	11.78	13.40	11.66
April**	12.36	12.95	13.71	12.34	12.46	12.16	12.55	11.61
May**	12.41	12.08	13.72	11.93	12.34	12.27	13.29	11.54
June**	12.37	11.90	13.73	12.51	12.49	11.93	12.48	11.51

ORIGIN OF ESTIMATE PROVIDED CONFERENCE COMMITTEE STAFF

The following factors were used in preparing estimates furnished the Conference Committee staff and in all of FEA's calculations evaluating the effects of various proposals.

(1) Percentage of domestic crude production subject to price controls: 60 percent.

The derivation of this estimate is outlined in Enclosure 1.

(2) Average price of domestic crude production subject to price controls: $5.25 per barrel.

The derivation of this estimate is outlined in Enclosure 2.

(3) Average price of domestic crude production not subject to price controls: $14.00.

This latter estimate is based on FEA's best judgment of the trends in the market for domestic oil not subject to price controls.

These estimates were necessarily subject to a range of uncertainty. To minimize that uncertainty, FEA took as the baseline for developing the estimates the January 1975 price of domestic oil not subject to price controls of $11.28 per barrel. This is the most recent reported figure that is free of the "market lag" influences of the supplemental fee additions of February 1, 1975 and June 1, 1975, and the OPEC price increase of October 1975.

Then, it was assumed, based on experience with the $1.00 fee imposed February 1, 1975, that the full effect of the second $1.00 fee imposed effective June 1, 1975, would be reflected in domestic uncontrolled oil prices by approximately January 1976. This produced an estimate of $13.28 per barrel for uncontrolled domestic prices in that month, exclusive of any effect of the OPEC October price increase.

The amount of that increase agreed to at the October meeting of OPEC was 10 percent. Posted prices before the increase ranged from $11.30 per barrel for Arabian light to $15.80 per barrel for Libyan sweet. Thus, a 10 percent increase in postings ranges from $1.13 to $1.58, with a conservatively estimated

average of $1.25 per barrel based on the possibility that the mix of various kinds of crude from different countries of origin will be weighted slightly toward the lower-priced crudes. Adding this increase to the $13.28 per barrel estimate derived above generates an estimate that the price of domestic uncontrolled crude could rise to as much as $14.53 per barrel.

However, in early November there was limited information available to indicate that not all OPEC countries were in fact posting the full 10 percent increases. Based on such data as were available at the time, FEA estimated that the increases to be expected during the remainder of 1975 would amount to approximately eight percent. Moreover, there was some evidence that even these postings were being shaded in some cases. Thus, to estimate the total dollar impact of the announced increase, the FEA staff used an estimate of 81 cents per barrel as the amount of the increase to be expected on the average for the remainder of 1975.

Adding this 81 cents to the $13.28 price derived above generated an estimate of $14.09 per barrel for domestic crude not subject to price controls. This figure was conservatively rounded down to the $14.00 per barrel estimate used for all FEA's calculations.

(4) Price of imported crude oil: $15.00 per barrel.

This estimate is based on the January 1975 value of $12.77 per barrel as the last value before the imposition of the supplemental fees and the OPEC October price increase. To this amount were added $2.00 for the supplemental fees and the 81 cents per barrel estimate for OPEC price increases in 1975, for a total of $15.85 per barrel. Again, because of the uncertainty associated with these estimates, this estimate was reduced to $15.00 for purposes of computations.

ESTIMATES OF PRICE LEVELS BY MONTH

September 1975:

Assume:

Old oil 60 percent of domestic production.

Old oil price $5.25 per barrel.

Uncontrolled oil price $12.56 per barrel. This price estimate is based on the new oil price as reported on Form FEA–90 for August, 1975, of $12.38 per barrel, plus an estimated increase of $.18 per barrel reflecting continuing upward adjustment in response to the $2.00 supplementary import fee. (Uncontrolled domestic prices rose a total of $1.10 per barrel in the seven-month period beginning in February, 1975, and are estimated to increase another $.90 in the five-month period of September, 1975, through January, 1976, to reflect the import fee.)

Total domestic production 8.5 MMB/D.

Total crude oil imports 3.9 MMB/D.

Imported crude oil price $14.18 per barrel. This price is based on the average import cost for the seven months of February, 1975, through August, 1975, during which OPEC prices were relatively stable, and average monthly import costs as reported on FEA Form 96, exclusive of import fees, were between $12.05 and $12.28 per barrel.

Therefore, the composite price of crude oil would be determined as follows:

$$\frac{[5.25\ (8.5\times0.6)+12.56\ (8.5\times0.4)+14.18\ (3.9)]}{12.4}$$

The domestic crude price would be:

$$\frac{[5.25\ (8.5\times0.6)+12.56\ (8.5\times0.4)]}{8.5}=\$8.17$$

October 1975:

Assume:

All assumptions except the two noted below are identical to those set forth in the September calculations.

Uncontrolled oil price $12.94 per barrel. This represents an increase of $.38 per barrel over the September estimate. It was included in recognition of a further $.18 response to the supplementary import fee and a $.20 increase as a partial response to the October OPEC price increase.

Imported crude oil price $14.99 per barrel. This reflects an increase of $.81 per barrel over the September estimate and represents our best estimate of the short run magnitude of the October OPEC increase on imported crude prices.

Therefore, the composite price of crude oil would be calculated as follows:

$$\frac{[5.25\ (8.5\times0.6)+12.94\ (8.5\times0.4)+14.99\ (3.9)]}{12.4}=\$10.42$$

The average domestic crude price would be:

$$\frac{[5.25\ (8.5\times0.6)+12.94\ (8.5\times0.4)]}{8.5}=\$8.37$$

November, December and January:

Assume:

All assumptions applicable to October estimate remain except as provided below.

Uncontrolled oil price $13.32 for November, $13.70 for December, and $14.08 for January, reflecting monthly increments of $0.38 per barrel as set out in the assumptions for October.

Therefore, the composite price of crude oil in these months, calculated as above, would be:

November	$10.52
December	10.63
January	10.73

The average price of domestic crude would be:

November	$8.47
December	8.63
January	8.78

PROPOSED NEW DATA SERIES FOR CRUDE OIL PRICING POLICY

FEA is in the process of determining the most appropriate data series to use in the administration of a crude oil pricing policy based upon a weighted average first sale price limitation on domestic crude oil. Among the alternatives currently being considered are:

1. Producer reporting:

This approach would involve the collection of data from a representative sample of producers under a new form in order to determine the prices and volumes of old and uncontrolled oil and thus provide the weights necessary for calculation of the domestic composite price.

2. Purchaser reporting:

All purchasers of crude oil directly from producers would be required to report under a new form and the producer-operator would be required to certify old and new oil.

3. Refinery gate price less transportation cost procedure:

Determine the average first sale price of domestic crude oil by subtracting the average transportation cost per barrel (which would be determined under a new form) from the average cost of crude oil delivered to refineries (which is now compiled by FEA).

COMPARATIVE ANALYSIS OF 39-MONTH PROGRAM IMPACT VS. ESTIMATES PROVIDED CONFERENCE COMMITTEE STAFF

The economic impact of the President's 39-month phased decontrol program was issued by the FEA on July 28, 1975. This analysis contained the results of sophisticated econometric modeling, and, although the pricing environment has substantially changed during the past four months, the data contained in that report is remarkably consistent with the abbreviated analytical methodology presented to the Conference Committee staff. For example, the July 28 analysis contained a price path for crude oil which reflected FEA's expectation of average costs (domestic and imported) for crude runs in domestic refiners. At that time it was projected that average crude costs would be $10.56 in the fourth quarter of 1975 assuming a continuation of existing price controls. Uncontrolled domestic crude prices were projected to be $13.50 with old oil at $5.25 and foreign crude at $14.50 per barrel. To the extent that these price estimates were made prior to the recent OPEC increase, it would be appropriate to adjust the uncontrolled oil price upward by the amount of the OPEC increase for purposes of current price projections. An increase in the price of imported crude will affect about 60% of the crude used by domestic refiners by the amount of the increase. Therefore, a one dollar OPEC increase translates into an increase of approximately 60 cents in the composite cost of crude.

To adjust the $10.56 composite fourth quarter 1975 crude cost predicted in July for the OPEC increase requires adding $0.49 (0.6 x $0.81=$0.486=$0.49) to that figure, for an adjusted estimate of $11.05. This compares to the current estimate of $10.73 for January 1976. These estimates are within a reasonable range of one another, considering the uncertainties involved, and show that FEA's November 1975 calculations were consistent with its July 1975 ones.

The estimates contained in the White House fact sheet of July 25, 1975, stated that domestic prices would decline by .5 cents to 1.0 cents per gallon by the end of 1975. This estimate was based on the fact that the 39-month program was to be implemented in September 1975 and would have rolled back the uncontrolled domestic price from $13.50 to an initial price of $11.50. By November 1975 this would represent a reduction of $1.85 per barrel in what would otherwise have been the price for uncontrolled domestic crude, since the price was to increase by $.05 per month beginning in September 1975. To the extent that this increment of oil represents about 20% of total domestic demand, this would equal a reduction of approximately .6 cents per gallon after an appropriate reduction applicable to the phased decontrol of old oil. Additionally, since this program was scheduled to be implemented in September the cushioning effect of banked costs was anticipated to have been neutralized by the end of the year.

U.S. SENATE,
Washington, D.C., December 8, 1975.

Hon. FRANK G. ZARB,
Administrator, Federal Energy Administration, Washington, D.C.

DEAR MR. ZARB: I have reviewed your response to my letter of November 24 requesting clarification of the oil price figures supplied by the Federal Energy Administration to the Conference Committee on S. 622, the "Energy Policy and Conservation Act." Your December 6 letter contains the rationale for the data upon which the conferees relied in arriving at their decision on oil pricing policy. I note, on page two, your explanation that the "average current price/bbl." contained in documents submitted by FEA to the conferees is "intended to be used for policy planning purposes as the price that would obtain assuming continuation of the current program" and is not, in fact, the actual "average current price/bbl.".

In addition, your letter sets forth in a straightforward manner an analysis which supports the Conferees' expectation that the rollback in crude oil prices, including price reductions mandated by the Act, will be reflected in significantly lower refined product prices to domestic consumers.

The purpose of this letter is to point out that your reply with respect to several issues raised in my letter of November 24 fails to address or addresses a number of important questions in less than complete fashion. I would greatly appreciate receiving your answers to these questions at the earliest date prior to Senate consideration of the Conference Report on S. 622.

1. I understand that the $5.25 per barrel price for controlled "old" oil is not a weighted average of actual price observations but is, in fact, a number which has been assumed on the basis of estimates made by the Cost of Living Council in mid-1973. As requested

in my original letter to you, I would hope that you could provide FEA's best estimate of the recent and current actual average price of controlled old oil and the present distribution of the actual production of old oil at the various old oil prices.

2. With respect to the data series published by FEA describing: (a) the percentage of domestic crude oil production sold at controlled and uncontrolled prices; and (b) the refiner acquisition cost of crude petroleum (average cost of domestic crude production, imported crude, petroleum and a composite acquisition cost), your December 6 reply does not appear to contain an estimate of the value of these quantities in the months of October, November and December of 1975.

3. The analysis of the assumptions underlying the "average current price(s)/bbl." provided by FEA was quite complete. However, I am very interested in reviewing your discussion values and justification of the price trajectories transmitted to the Conferees, particularly for the case in which current controls are continued and for the case that immediate decontrol occurs.

4. What data series would FEA intend to use—producer reporting, purchaser reporting or other scheme—to assist in the administration of the Energy Policy and Conservation Act?

5. In estimating the actual current price of new oil and the actual current composite domestic price at the wellhead your estimates do not appear to reflect the results of any survey of actual pricing data for recents months available from FEA itself or from a review of the most accurate industry figures for September, October or November. Was such a review or sampling made? If so, what were the results?

6. On page 6 of my November 24 letter, a copy of which is enclosed, I requested that you provide estimates of the changes in the price of crude oil and in the prices of the principal refined product prices and the influence of various factors on the realization by consumers of these rollbacks for the case that current controls are continued and the case that the Conference Committee Oil Pricing Policy is adopted. Your reply to this question is less than complete in a number of respects, particularly with respect to parts (a), (c), (e), (f) and (h) of question (1). I would greatly appreciate it if the information and analysis requested could be provided.

7. Finally, on page 7 of my letter I asked for copies of any previous statements, analyses or other data in which FEA has analyzed or set forth their best estimates of the impact of the reduction in crude oil prices on consumer prices of refined petroleum product prices. The only document my staff has in its possession is the fact sheet distributed on July 25 to accompany the President's proposed 39-month decontrol program. I would like to request a copy of your July 28 analysis of the impact of this program and reiterate my request for copies of any and all FEA or other Administration analyses of the effect of removal of the supplementary import fees on the prices of refined petroleum products to consumers.

I hope that this request will receive high priority, and that your response can be available for the use and consideration of the Senate in its review of the Conference Report on S. 622.

Sincerely yours,

HENRY M. JACKSON,
Chairman.

FEDERAL ENERGY ADMINISTRATION,
Washington, D.C., December 15, 1975.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of December 8, concerning my letter to you of December 6 on the oil price figures supplied by the Federal Energy Administration to the Conference Committee on S. 622, the "Energy Policy and Conservation Act."

You have asked for further clarification of several issues first raised in your November 24 letter and discussed in my December 6 response, listing seven specific questions to be answered. These questions are addressed below in the order set forth in your most recent letter:

1. *Estimated recent and current prices of "old" oil.*

As you know, first sale prices for "old" crude oil are fixed by regulation at the highest May 15, 1973, posted price for that grade of crude oil at that field, plus $1.35 per barrel. The range of prices is from about $3.50 to more than $7.00 per barrel. The estimate of an average price of $5.25 per barrel for price-controlled crude oil was made by the Cost of Living Council, as indicated in my December 6 letter to you. FEA has used the $5.25 figure in all published data series and internal analyses.

As noted in my December 6 letter, there has never been any legal, regulatory, policy, or planning requirement to have an exact measurement of the average "wellhead price" of price-controlled crude oil, and the FEA has collected such data only on Forms CLC–90 and FEA–90 incidental to data collected for properties that also produce new and released oil. The "old" oil data so collected represents about 60 percent of total old oil production, and thus does not include about two million barrels per day. As I indicated in my previous letter to you, the reliability of this information has never been verified and, for the reasons set forth below, is subject to question. Therefore, this information has never been used by FEA for any purpose.

In view of the questions you raised concerning old crude oil prices in your letter of November 24, FEA data analysts have been examining carefully the data that has been collected on those prices by Form FEA–90, in an effort to determine whether that data could be used to provide an estimate of actual recent and current prices for all old crude oil. Although this analysis is still incomplete, it does not appear that the current Form FEA–90 data provides accurate information on old crude oil prices. I would like to outline briefly the problems we have encountered with this data.

Data on crude production and prices was first collected on the Cost of Living Council Form-90 issued in August 1973. Due to subsequent changes in the crude oil price regulations and certain technical deficiencies in the form, the data obtained from this form on old oil prices was never considered reliable nor used for any purpose. In recognition of the technical problems associated with Form CLC-90, FEA revised and reissued this form as Form FEA-90. This revised form has been in use since January 1975, but it still does not have to be submitted by producers which produce only old oil.

Because there was never any need to compile the data on old oil prices collected on the CLC-90 and FEA-90 and because this data was known to be substantially incomplete in any event, this information was not a high priority item for computer processing. As of this date, therefore, the only old crude oil price data collected on Form FEA-90 which has been processed by computer is the data for January, 1975, and even that processing was completed after receipt of your November 24 letter. The data for February, 1975 is just now being entered into the computer for the first time. Since each monthly report involves some 30,000 separate leases, the data is too voluminous for manual processing.

Our analysis of the information that has been produced by the computer processing of the January, 1975, old crude oil price data has just been completed during this past week. This analysis has given us several bases for concluding that this data still is not reliable, notwithstanding the revisions in the Form 90. To begin with, there has been no effort to verify the reported information by comparison to reports filed with state agencies or with other existing sample data, as would be done if the information were to be relied upon for any regulatory purpose. Also, anomalies in the data appear to have arisen from the fact that one of the entries called for by Form FEA-90 can be a negative number (Column D of Part IV, "Adjusted Total Production," which is "Total Production" minus "Current Cumulative Deficiency"). It appears that many of the respondents to the form were confused by this fact, thereby making their responses somewhat unreliable.

Finally, there are certain anomalies in the cumulative figures we have been able thus far to derive from the January, 1975, Form FEA–90 data which suggest that the figures are unreliable. For example, the break-out of prices according to gravity shows, in some instances, significantly higher prices for lower valued low gravity crude oils than for higher valued high gravity crude oils in the same state, which, in general, cannot be an accurate reflection of actual price levels.

Enclosure 1 at Tab A is a tabulation of old crude oil prices for January, 1975, which has been prepared from the Form FEA–90 data for the seven largest domestic producing regions (Texas, Louisiana, Offshore-Gulf of Mexico, California, Oklahoma, Wyoming, and New Mexico). This tabulation omits information from the smaller producing regions, where some of the anomalies referred to above were most apparent. The weighted average price for that amount of old oil produced in these seven regions and reported on the Form FEA–90 is $5.08 per barrel. I must again emphasize, however, that this number has been derived from an unvalidated, partial sample, using a computer system that does not yet take account of reporting inconsistencies.

It is important to note that this $5.08 per barrel number has been derived solely in response to your letters of November 24 and December 8, and, therefore, was not available to me or members of the FEA staff at the time they were consulting with the Conference Committee staff on energy legislation. Furthermore, no other FEA data system collects old oil price data at the "wellhead." In connection with the crude oil entitlements program, FEA does collect price data for controlled old crude oil at the refinery gate (which includes transportation costs in undetermined amounts). The reported refiner acquisition costs, however, have varied by $.19 per barrel during the last year, ranging from $5.31 to $5.50 per barrel. This data is set forth in Enclosure 2 at Tab B. As noted in Enclosure 2 of my letter of December 6, fluctuations in actual average old crude oil prices are to be expected from month to month as a function of changes in the mix of types of crude oil selling at old oil prices.

It is clear that if the Energy Policy and Conservation Act becomes law, its implementation will require considerably different data collection and validation procedures. Until a new, reliable crude oil price data system is implemented (which will take at least until the middle of 1976) it is our intention to continue utilizing the figure of $5.25 per barrel as the best estimate of the weighted average old crude oil price, for purposes of devising a new crude oil price regulatory scheme which complies with the $7.66 per barrel maximum weighted average first sale price ceiling established in the Energy Policy and Conservation Act. We also intend to utilize the estimated 60/40 ratio of controlled to presently uncontrolled domestic crude oil

for this purpose. Therefore, until our new data collection system is operative in mid-1976, no new FEA crude oil price regulatory scheme would allow a weighted average price for the presently uncontrolled domestic crude oil to exceed $11.28 per barrel, except as allowed to be adjusted in accordance with the adjustment provisions of that Act.

As you have been careful to point out in your letters, and as I am well aware, the conferees arrived at the composite domestic crude oil price on precisely these assumptions, i.e., 60 percent of domestic crude oil to be sold at an average price of $5.25 per barrel and 40 percent of domestic crude oil to be sold at an average price of $11.28 per barrel. I want to emphasize again that I believe the estimate of 60 percent controlled domestic crude oil production at an average price of $5.25 per barrel was arrived at in a reasonable manner and yields a conservative result for planning purposes.

As I am sure you understand, these estimates are closely related, and the extent to which either estimate may prove to be inaccurate would have equally significant effects on the composite price of all domestic crude oil. And, if I correctly understand the concern you have expressed with respect to our estimates concerning the price and ratio of old crude oil, it is that when these values are actually measured they should not turn out to be such that they result in allowing a higher price for the presently uncontrolled component of domestic crude oil production than the $11.28 per barrel figure that was contemplated by the Conference Committee. For reasons set forth more fully below, I believe it is highly unlikely that such a result could occur.

I should first like to illustrate the relationship between old crude oil prices and the percentage of old crude oil under the composite domestic crude oil price policy. Assuming that an average price of $11.28 per barrel is to be maintained for presently uncontrolled crude oil, a reduction of 1 percentage point in the ratio of old crude oil to other domestic oil actually produced would require a reduction in the ceiling price of old crude oil of more than $.10 per barrel in order to meet the $7.66 per barrel composite price limitation, as shown in the following table:

Old crude oil ratio:	*Old crude oil price per barrel*
60 percent	$5.25
59 percent	5.15
58 percent	5.04
57 percent	4.93
56 percent	4.82
55 percent	4.70

Of course, if in fact the old crude oil ratio becomes less than 60 percent, ceiling prices for old crude oil cannot as a practical matter be reduced below their current levels. The only other alternative is to establish ceiling prices for what is presently uncontrolled domestic production at levels below $11.28.

As you know, we used 60 percent as the estimate of the old crude oil ratio in our analysis. As set forth in my letter of December 6, at pages 4–6 and in Enclosure 1, we indicated that the 60 percent figure was "approximately the median within (the actual) month-to-month variability," and that "this 60 percent figure would most likely prove to be a conservatively high estimate of what the percentage of price controlled crude oil will be in January or February of 1976 . . . because during the first quarter of 1972 there existed certain production constraints in major producing fields which were removed during the second quarter of that year and which resulted in significantly higher production for the balance of the year."

We therefore stated that "the percentage of old oil during the first quarter of the next two years can be expected to average between four to six percentage points below the percentage of old oil produced during the last quarter of the preceding year."

Since my letter of December 6, we have received data in connection with the entitlements program which shows that the actual old crude oil ratio for October, 1975, is 61.0%. As discussed more fully below in response to paragraph 2 of your letter, this leads us to believe that the old crude oil ratio for November and December of this year will be in the range of 61 to 62 percent, and, if the present crude oil price regulations remain in effect, the ratio in the first quarter of 1976 may therefore be significantly less than 60 percent. Indeed, it could well be, in light of this later information, that the ratio of old crude oil may never again be as high as our 60 percent planning figure after December of this year, since the decline in that ratio in the past few months appears to have been more significant than we anticipated. The data on which these conclusions are based is summarized for your convenience in Enclosure 3 at Tab C.

The point is simply that, even if the actual weighted average price of old crude oil is somewhat less than $5.25 in January 1976, it will be more than offset by the probability that the old oil ratio will be less than 60%. Thus, I am confident that, when the combined effect of the old oil price and ratio is actually measured, it will be reasonably close to our estimate and, in any event, will not be such as to result in higher prices for presently uncontrolled domestic crude oil than were contemplated by the Conference Committee.

2. *FEA published data series for the percentage of old oil and refiner acquisition costs for October through December, 1975.*

Price projections for October through January were provided in Enclosure 6 of my previous letter and represent FEA's best estimate for planning purposes of the distribution of controlled and uncontrolled domestic oil, as well as domestic composite prices, at the first sale level. Two assumptions underlying these price projections were that the percentage of old oil of domestic production is 60 percent and the weighted average first sale price of old oil is $5.25. As explained in my answer to your first question, these estimates were used because they were and still are the best available. We did not attempt to estimate actual percentages of old oil or refiner acquisition costs for the months of October through December as will be reported on Form FEA–P–102 and Form FEA–96, respectively.

Since my letter of December 6, we have prepared preliminary data for the month of October, which serve to update the information supplied on Enclosure 1 and 3 of that letter.

They are as follows:

Old oil receipts as a percentage of total domestic crude oil at the refinery (October, 1975): 61.0 percent;

Refiner acquisition cost of domestic crude oil (October, 1975): $8.59/bbl.;

Refiner acquisition cost of imported crude oil (October, 1975): $14.66/bbl.; and

Refiner acquisition cost of all crude oil (October, 1975): $10.95/bbl.

Our estimate of old crude oil as a percentage of all domestic crude oil for the months of November and December, 1975, is 61 to 62 percent.

This estimate is based on (1) the fact that the percentage of old oil has been approximately 61 percent for the four months of July through October, 1975; (2) the fact that the percentage determined through Form FEA–P–102 has generally paralleled that obtained through a combination of sources and published in the FEA's Monthly Energy Review, as set forth in Enclosure 1 of my December 6 letter; and (3) that although Form FEA–P–102 data is not available for the period of July through December, 1974, the data published in the Monthly Energy Review indicates that during that period, the level of old oil production remained relatively stable (an average of 66 percent). (See Enclosure 3 at Tab C.)

Accordingly, we would not expect the figures for November and December of 1975 to depart significantly from the figures for the preceding four months, except that the Form FEA–P–102 data indicates that the December figure may be somewhat higher than the November figure.

Our estimates of refiner acquisition costs for November and December are as follows:

Estimated refiner acquisition cost of domestic crude oil (November, 1975): $8.69/bbl.; (December, 1975): $8.85 bbl.

Estimated refiner acquisition cost of imported crude oil (November, 1975): $14.99/bbl.; (December, 1975): $14.99 bbl.

Estimated refiner acquisition cost of all crude oil (November, 1975): $10.67/bbl.; (December, 1975): $10.78/bbl.

These estimates are derived in part from the estimates set forth in Enclosure 6 of my December 6 letter with respect to estimated first sale or "wellhead" prices of domestic crude oil and the estimated landed cost of imported crude oil for September 1975 through January 1976, which were as follows:

	Domestic Wellhead	Import	Composite
September	8.17	14.18	10.06
October	8.37	14.99	10.42
November	8.47	14.99	10.52
December	8.63	14.99	10.63
January	8.78	14.99	10.73

Although the estimated first sale prices of domestic crude oil are exclusive of transportation, the estimated monthly increments in the first sale price would also be reflected in higher refiner acquisition costs. Accordingly, the monthly increments in these estimated domestic first sale prices (increments of $.10 per barrel from October to November and $.16 per barrel from November to December) have been applied to the October refiner acquisition cost of $8.59 per barrel, to yield the estimated refiner acquisition cost of domestic crude oil for November of $8.69 per barrel and December of $8.85 per barrel. Landed costs of imported crude oil were previously estimated at $14.99 for the months of October through January, and although our preliminary data indicate they reached a level of $14.66 for October, we continue to anticipate that imports will reach $14.99 for November and December.

3. *Assumptions underlying price trajectories used to analyze alternative price policies.*

The assumptions associated with the table entitled "Domestic Composite Price," and the untitled graph attached to a document entitled "Amendment Proposal" which was submitted to the Committee staff on November 10, 1975, were as follows:

For current controls:

Old oil price $5.25 per barrel.

Supplemental fee continued.

Total domestic crude oil production, MMB/D:

End of 1976	8.2
End of 1977	8.3
End of 1978 and 40th month	9.5
Total old oil production MMB/D:	
End of 1976	4.7
End of 1977	4.3
End of 1978 and 40th month	4.0
Uncontrolled domestic oil price:	
1/1/76	$14.00
End of 1976	15.42
End of 1977	16.15
End of 1978	17.70
End of 40 months	18.08

Imported crude oil prices begin at $15.00 per barrel, including the supplemental fee, and increase by approximately seven percentage points per year.

For immediate decontrol:

All domestic crude oil production permitted to be sold at free market prices which were estimated to begin at $12.00 per barrel and increase by approximately seven percentage points per year.

Assumes immediate removal of supplemental fees.

4. *Data series FEA intends to use to administer The Energy Policy and Conservation Act.*

The implementation of the Energy Policy and Conservation Act, if it becomes law, will require a completely new data collection and reporting system. At this point, we are still evaluating alternative ways to collect the data, with the major alternatives being producer reporting, purchaser reporting, and refinery acquisition cost and transportation cost reporting, as indicated in my letter of December 6. However, I have not reviewed the detailed proposals and have made no decisions. Obviously, we will choose whichever method is both administratively feasible and complies fully with the requirement of the Act that we rely on "valid and reliable information."

5. *Sampling of data for September–November.*

FEA's experience under the Emergency Petroleum Allocation Act has been that samplings of product cost data which are not verified as representative have tended to be only rough reflections of what was ultimately contained in later reports. During the Conference Committee deliberations on S. 622, FEA used $14.00 as the average uncontrolled oil price for purposes of estimating the domestic composite price and for evaluating alternative proposals. The methodology used in these calculations was detailed in my previous letter. FEA staff has recently made random telephone inquiries concerning the uncontrolled price, but these inquiries were not structured in any sense and no conclusion could be drawn from them other than that prices were moving upward.

6. *Estimates of price changes resulting from the Conference Committee pricing policy and the impact of various factors on such changes.*

As set forth at page 12 of my December 6 letter, our estimate is that, when compared with prices that would have obtained under the current system of controls, domestic crude oil prices will be reduced from $8.75 per barrel to $7.66 per barrel—a reduction of $1.09 per barrel, and that overall crude oil prices will be reduced from $10.72 per barrel to $9.34 per barrel—a reduction of $1.38 per barrel.

We have further estimated, in the manner described in my December 6 letter, that this will translate into price reductions at the consumer level of from 1.0 to 2.5 cents per gallon.

(a) *Effect of assumptions as to current domestic crude oil prices on these estimates.*

As we have indicated, the predicted level of domestic crude oil prices is a function of three variables:

The price of old crude oil, which we have estimated to be $5.25/bbl.;

The price of presently uncontrolled domestic crude oil, which we have estimated to be $14.00/bbl.;

The percentage of domestic crude oil which is old crude oil, which we have estimated to be 60%.

As the composite price of domestic crude oil is set at $7.66 under the oil pricing policy adopted by the Conference Committee, the impact of differing assumptions with respect to the three variables above is simply that a price somewhat different from the $8.75 per barrel would obtain for domestic crude oil, were the present system of controls to be continued.

I believe it is reasonable to assume that the actual price of old crude oil could vary by as much as $.25 per barrel less than the estimated price of $5.25 per barrel; that the actual price of uncontrolled crude oil could vary by as much as $.50 per barrel higher or lower than the estimated price of $14.00 per barrel; and that the ratio of old crude oil could vary by as much as 5 percentage points lower than the estimate of 60 percent.

Using these margins of uncertainty, the price of domestic crude oil which would obtain if the present system of controls were to be continued, which we have estimated as $8.75 per barrel, could vary from a high of $9.41 per barrel to a low of $8.40 per barrel, as calculated below.

A comparative analysis has also been prepared for the overall price of crude oil, which adds import prices as a variable, and assumes that they could vary by as much as $.50 per barrel higher or lower than the estimated price of $15.00 per barrel. This analysis indicates that the overall price of crude oil, which we have estimated as $10.72 per barrel, could range from $10.33 per barrel to $11.33 per barrel. Obviously, it is most unlikely that all of the variables concerned would converge at the high or at the low side of our estimates, and we remain convinced that our estimates of $8.75 per barrel for domestic crude oil and $10.72 per barrel for all crude oil are reasonable. These analyses use the same methodology and should be compared with the analysis set forth in Enclosure 6 to my letter of December 6.

DOMESTIC CRUDE OIL

Low Range

January 1976 price estimate contained in December 6, 1975, letter	$8. 75
If old oil price is $5 instead of $5.25— 0.25\left(\frac{8.5\times0.6}{8.5}\right)$ = $0.15	−. 15
If $13.50 is used as the price of uncontrolled domestic crude oil— 0.50\left(\frac{8.5\times0.4}{8.5}\right)$ = $0.20	−. 20
Lowest estimated price for domestic crude oil in January 1976	$8. 40

The complete formula would be:

$$\frac{5.00\ (8.5\times0.6)+13.50\ (8.5\times0.4)}{8.5} = \$8.40$$

High Range

January 1976 price estimate contained in December 6, 1975, letter	$8. 75
If 55% old oil ratio used instead of 60%— $(8.5\times0.05)\left(\frac{14.50-5.25}{8.5}\right)$ = $0.463	+. 46
If $14.50 is used as the price for domestic uncontrolled oil— $0.42\left(\frac{8.5\times0.45}{8.5}\right)$ = $0.189	+. 19
Highest estimated price for domestic crude oil in January 1976	*$9. 40

The complete formula would be:

$$\frac{5.25\ (8.5\times0.55)+14.50\ (8.5\times0.45)}{8.5} = *\$9.41$$

*The difference results from rounding of numbers.

ALL CRUDE OIL

Low Range

January 1976 price estimate contained in December 6, 1975, letter	$10. 73
If old price is $5 instead of $5.25— 0.25\left(\frac{8.5\times0.6}{12.4}\right)$ = $0.103	−. 10
If $13.50 is used as the uncontrolled price of domestic crude oil— $0.50\left(\frac{8.5\times0.4}{12.4}\right)$ = $0.137	−. 14
If $14.50 is used as the price for imported crude oil— $0.50\left(\frac{3.9}{12.4}\right)$ = $0.157	−. 16
Lowest estimated price for all crude oil in January 1976	$10. 33

The complete formula would be:

$$\frac{5.00\ (8.5\times0.6)+13.50\ (8.5\times0.4)+14.50\ (3.9)}{12.4} = \$10.33$$

High Range

January 1976 price estimate contained in December 6, 1975, letter	$10. 73
If 55% old oil ratio used instead of 60%— $(8.5\times0.5)\left(\frac{14.50-5.25}{12.4}\right)$ = $0.317	+. 317
If $14.50 is used as the price for domestic uncontrolled oil— $0.42\left(\frac{8.5\times0.45}{12.4}\right)$ = $0.130	+0. 130
If $15.50 is used as the price for imported crude oil— $0.50\left(\frac{3.9}{12.4}\right)$ = $0.157	+. 157
Highest estimated price for all crude oil in January 1976	$11. 33

The complete formula would be:

$$\frac{5.25\ (8.5\times0.55)+14.50\ (8.5\times0.45)+15.50\ (3.9)}{12.4} = \$11.33$$

(b) [Paragraph (c) in your November 24 letter.] Effect of removal of the $2 per barrel supplemental import fee.

The effect of removing the $2 per barrel supplemental fee would be to reduce the price of imported crude and all currently uncontrolled domestic crude by $2. For the composite price of all crude, the impact would be measured as follows:

$$2.00\left(\frac{8.5\times0.4}{12.4}\right)+2.00\left(\frac{3.9}{12.4}\right) = \$1.18$$ per barrel less than if the supplemental fee were to remain in effect, assuming a 60/40 domestic old/controlled oil distribution

(c) [*paragraph (e) of your November 24 letter*] *Influence of FEA regulations on reseller margins.*

FEA pricing regulations provide for the passthrough of increased product costs and, subject to certain limitations, increased nonproduct costs by all marketers and retailers of covered petroleum products. Briefly, this is accomplished by comparing the cost of product in inventory on a base date (May 15, 1973) with current product costs, and permitting the difference to be added to May 15, 1973, selling prices. Non-product costs are those costs incurred by the marketer or retailer other than the actual purchase price of the product and the additional cost, if any, of transporting it into inventory. Typical costs which would be included in this category would be labor, rent, utilities and other miscellaneous operating expenses. Such increased non-product costs may be passed through only to the extent they do not exceed specified increments which have been determined by FEA, generally on a product-by-product basis and according to the level of distribution concerned.

FEA regulations have therefore operated to freeze gross margins at May 15, 1973 levels, with the only exception being increases deemed necessary to offset the effect of increased non-product costs. An examination of the available data applicable to retail gasoline sales tends to indicate that a very competitive environment exists which has restrained retailers from receiving the maximum price permitted in accord with current regulations. Specifically, in May 1973, the gross margin applicable to retail gasoline sales was approximately 7.3 cents per gallon. Current regulations permit an increase of 3 cents per gallon for non-product costs. However, the most recent data available (August 1975) indicates that gross margins are 8.4 cents per gallon and therefore considerably below the maximum of about 10.3 cents per gallon.

To the extent that this data reflects considerable price pressure in the marketplace, it is reasonable to conclude that current margin controls at the retail gasoline level are having very little effect, because of the overriding effects of price competition. We believe this is a likely case for most of the major product categories with the possible exception of aviation fuel, of which only a small portion is not sold directly by refiners. The impact of this situation on the question of how fast the decreases in crude oil prices will flow through to the ultimate consumers

is identical to the impact of "banked costs" on this question which is discussed in pages 13–14 of my December 6 letter.

(d) [*paragraph (f) of your November 24 letter*] *Effects of supply and demand of refined products.*

Except for anticipated possible spot shortages of propane, current estimates project adequate supplies of principal petroleum products in all regions of the country and levels of product distribution, so that competitive forces should continue to operate to reduce consumer prices to reflect reduced crude oil acquisition costs.

(e) [*paragraph (h) of your November 24 letter*] *The role of relevant provisions of the Energy Policy and Conservation Act, including the amendment to the pricing provision offered by Senator Hartke.*

As you know, the Hartke amendment is embodied in section 401 of the conference substitute, which among other things adds a new section 9 to the Emergency Petroleum Allocation Act which provides in relevant part that FEA pricing regulations "shall provide for a dollar-for-dollar pass-through in prices at all levels of distribution from the producer through the retail levels of decreases in the costs of crude oil, residual fuel oil, and refined petroleum products (including decreases in costs which result from [the rollback of the weighted average first sale price of domestic crude oil to $7.66 as required by the Conference Substitute])."

We understand this provision to be essentially the obverse of section 4(b)(2)(A) of the current Act, as amended by section 402(a) of the conference substitute, which provides in very similar language for a dollar-for-dollar passthrough of crude oil and product price *increases*. We have interpreted the latter provision in the past as requiring the FEA to permit sellers at least the opportunity to passthrough all of their increases in the cost of crude oil or products incurred since the base date of May 15, 1973, even though market conditions may as a practical matter prevent the full passthrough of such increases. The courts have upheld this interpretation in several different cases. By the same token, we believe the new section 9 will require the FEA to force commensurate reductions in a seller's maximum lawful selling prices if he enjoys a reduction in his crude oil or product costs.

Thus, for example, section 4(b)(2)(A) requires the FEA to structure its pricing regulations so as to permit a seller who had a maximum lawful selling price of $.50 per gallon and who incurred an increased product cost of $.05 cents per gallon to increase his maximum lawful selling price to $.55. As a practical matter, however, the seller may in fact be able to increase his actual selling price only from $.50 to, say, $.53 if he wants to remain competitive. Similarly, the new section 9 would require a seller who had a maximum lawful selling price of $.50 and a price *decrease* of $.05 cents to reduce his maximum lawful selling price to $.45. However, an actual price reduction of $.05 may not result if, for example, the seller was previously selling at $.48 cents per gallon, despite a maximum lawful selling price of $.50, because of competitive conditions. The actual price reduction mandated by section 9 in such a situation would then be only $.03.

In addition, we do not interpret the new section 9 as prohibiting the passthrough of existing "banked costs" during the period that the conference substitute would require crude oil costs to be rolled back below existing levels. This is so because the conferees, in addition to adopting the Hartke amendment section 4(b)(2) which expressly recognize the right of sellers to passthrough existing banked costs, subject to the limitation in the case of refiners that not more than 10 percent of the amount of banked costs in existence as of January 31, 1976 can be passed through in any one month.

See section 402. Thus, a firm that incurs a decrease in crude oil or product costs may be able to temporarily to delay passing that decrease on to its customers if it has banked costs currently available to offset any reduction in prices that would otherwise be required by the Hartke amendment and market conditions will permit it to pass through those banked costs.

Our view of the proper interpretation of the Hartke amendment is in every respect consistent with the interpretation contained in the Joint Explanatory Statement of the Committee of Conference. That Statement says in relevant part:

"The Conference Substitute required that *decreases* in a firm's cost of crude oil, residual fuel oil, or refined petroleum products be fully taken into account in computing that firm's maximum lawful selling prices."

". . . This provision of the Conference Substitute will help to assure that as much of the crude oil price reduction as is possible will be passed through the various levels of refining and distribution to the consumer level. Of course, it cannot realistically result in a full and immediate dollar-for-dollar reduction if that seller is already below its maximum lawful prices and if the Federal Energy Administration does not alter the rules regarding so-called 'banked costs.'" S. Rep. No. 94–516, 94th Cong., 1st Sess., at 195 (Dec. 8, 1975) (emphasis in original).

Then, in order "to clarify the relationship between the passthrough in prices of cost decreases provisions of the Conference Substitute and the provisions on banked costs," the Joint Statement quotes at length and with apparent approval from the discussion contained in my letter to you of December 6, 1975 concerning our understanding of the likely passthrough of crude oil cost reductions in light of the interplay of the banked cost rules and existing market forces.

7. *Effects of 39-Month Program.*

As you requested, I am enclosing an evaluation of the economic impact of the President's 39-month decontrol proposal. It should be recognized that the analysis assumes continuation of the $2 import fee, world oil prices held constant, and a somewhat different short-term economic outlook (see Enclosure 4 at Tab D).

I hope this letter properly addresses your concerns. I look forward to responding to any further questions you may have.

Sincerely,

FRANK G. ZARB,
Administrator.

ENCLOSURE 1

OLD OIL PRICE AND PRODUCTION DATA COMPILED FROM THE JANUARY 1975 FORM FEA 90

Gravity range	Weighted average ceiling price	Old oil production
Texas:		
Under 25	$5.11	1,794,615
25 to 30	5.05	4,126,357
30 to 34	5.10	8,565,197
34 to 40	5.20	14,150,433
Above 40	5.27	10,165,322
Louisiana:		
Under 25	5.10	3,086,688
25 to 30	5.13	2,521,614
30 to 34	5.19	3,197,018
34 to 40	5.28	6,058,445
Above 40	5.32	3,242,625
Off shore Gulf of Mexico:		
Under 25	5.42	
25 to 30	5.12	1,137,163
30 to 34	5.17	603,483
34 to 40	5.25	2,001,226
Above 40	5.35	398,577
California:		
Under 25	4.02	5,182,558
25 to 30	4.77	1,086,027
30 to 34	5.04	346,615
34 to 40	5.16	90,832
Above 40	5.06	58,466
Oklahoma:		
Under 25	5.02	143,160
25 to 30	4.80	632,526
30 to 34	4.94	264,086
34 to 40	5.10	1,698,864
Above 40	5.20	645,734
Wyoming:		
Under 25	4.48	2,551,260
25 to 30	4.86	549,560
30 to 34	4.91	209,738
34 to 40	5.20	1,792,196
Above 40	5.21	232,578
New Mexico:		
Under 25	4.85	50,524
25 to 30	5.02	48,465
30 to 34	5.06	330,802
34 to 40	5.19	952,131
Above 40	5.26	973,155
Total for above 7 regions:		
Under 25	4.54	12,809,058
25 to 30	5.03	10,101,712
30 to 34	5.13	13,516,939
34 to 40	5.23	26,744,127
Above 40	5.28	15,716,457
Total	5.08	[1] 78,888,293

[1] This figure represents 50.8 percent of all old oil production in January 1975.

ENCLOSURE 2

WEIGHTED AVERAGE REFINER ACQUISITION COST OF OLD CRUDE OIL (FORM FEA–P–102–M–0)

[Dollars per barrel]

	1974	1975
January		5.50
February		5.40
March		5.38
April		5.35
May		5.37
June		5.35
July		5.31
August		5.33
September		5.33
October		5.31
November	5.36	
December	5.44	

ENCLOSURE 3

PERCENTAGE OF OLD OIL TO TOTAL DOMESTIC PRODUCTION

	1974		1975	
	MER[1]	FEA–P–102	MER[1]	FEA–P–102
January	60		58	58.4
February	62		61	58.4
March	60		60	58.5
April	60			59.9
May	62			60.5
June	63			60.1
July	64			60.2
August	66			60.7
September	67			61.8
October	66			61.0
November	67	65.3		
December	66	66.2		

[1] Data published in FEA's Monthly Energy Review, which is derived from Form FEA–90 and from an annual survey conducted by the National Stripper Well Association and the Interstate Oil Compact Commission. (See enclosure 1 of my Dec. 6 letter).

ORDER AUTHORIZING THE RENEGOTIATION BILL (H.R. 11016) TO REMAIN AT THE DESK

Mr. LONG. Mr. President, will the Senator yield for a unanimous-consent request? I ask unanimous consent that the renegotiation bill remain at the Senate desk.

Mr. TOWER. Reserving the right to object, what was the request?

Mr. LONG. That the renegotiation bill, H.R. 11016, remain at the desk. We will probably call it up if it is at the desk,

if we want to call it up after this conference report.

Mr. TOWER. I have no objection. I did not hear the request.

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

Mr. LONG. I thank the Senator.

ENERGY POLICY AND CONSERVATION ACT

The Senate continued with the consideration of the motion to concur in the amendment of the House to the amendment of the Senate to the amendments of the House to the bill (S. 622) to provide standby authority to assure that the essential energy needs of the United States are met, to reduce reliance on oil imported from insecure sources at high prices, to implement U.S. obligations under international agreements to deal with shortage conditions, and to authorize and direct the implementation of Federal and State conservation programs consistent with economic recovery.

Mr. JACKSON. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. HASKELL. I certainly will. As a matter of fact, I will say to the distinguished Senator, I will yield the floor. I yield the floor.

Mr. JACKSON. Mr. President, I ask unanimous consent that all debate on the pending motion to concur in the House amendments be limited to 4 hours, to be equally divided.

Mr. TOWER. I object.

Mr. JACKSON. Mr. President, I ask unanimous consent that all debate on the pending motion to concur in the House amendments be limited to 6 hours, to be equally divided.

Mr. TOWER. I object.

Mr. JACKSON. Mr. President, I ask unanimous consent that all debate on the pending motion to concur in the House amendments be limited to 8 hours, to be equally divided.

Mr. TOWER. I object.

Mr. JACKSON. Mr. President, it is regrettable but quite clear that a filibuster is underway.

Mr. TOWER. Mr. President, will the Senator yield at that point?

Mr. JACKSON. Certainly.

Mr. TOWER. I am one of those around here who do not like the idea of filibusters, but I do believe I am an advocate of extended discussion on a bill that is going to reduce the independence of the United States on domestic sources of energy still further, and I think it ought to be thoroughly debated, and I think people should understand it. I think, too, people should understand what the House did do on this. The Senate got bamboozled, and the people who have some interest in coal, I think, are justifiably infuriated at what the House has done.

If the Senate is going to supinely lie down every time the House does something like this, then I think it sets a bad precedent because we encourage the House to treat us this way in the future and, therefore, I intend to object for the time being to any time limitation.

Mr. JACKSON. Mr. President, this is a comprehensive energy bill. It dates back to February. It covers more than pricing, it covers conservation, it covers strategic reserves, it covers a long list of things. We were in conference for 5 weeks with 25 Senate conferees from three committees. This was probably the largest conference ever undertaken between the House and the Senate.

Mr. President, a great amount of time has already been spent on this bill because each individual bill incorporated into this omnibus energy bill was debated at length. I think it is regrettable that a filibuster is underway.

Mr. President—let us be very candid about this—an attempt was made to force the reading of the amended version of S. 622 as passed by the House—about 240 pages.

We are not so naive as to believe, when that kind of motion is made, or the attempt is made, that anything but a filibuster is underway. What kind of time would be involved in reading 240 pages?

Mr. HANSEN. Will the Senator yield at that point?

Mr. JACKSON. Just a moment, and I will be glad to.

I just want to say that the signals are clear and, obviously, if that is going to be the position of a group of Senators, we are simply not going to have an energy bill and we are going to have not only total decontrol of prices, but we are going to foreclose any possibility of doing anything about the other critical areas of conservation, strategic reserves, and so on.

I yield first to the Senator from Wyoming and then to the Senator from Colorado.

Mr. HANSEN. I thank my colleague from Washington.

I would just like to say, Mr. President, that being one of the conferees, that request or that effort which was not fruitful to have the report read may not have been as much an exercise in futility as some Senators might suspect.

The fact is that I doubt that there are more than a very, very few, if indeed there are any—and I would exclude the distinguished Senator from Washington because he probably has read it, but we voted on amendment after amendment after amendment that had not even been written.

All we voted on was the report. The idea was that somebody said, "I offer an amendment." I asked two or three times to have the amendment read. All that I got by way of an explanation of the amendment was simply to tell what an objective was.

In the intervening time between the conclusion of that energy conference and this evening, or until last week, I think it is a fact that Senate and House conferees worked long and hard, oftentimes into the night, trying to agree upon language which would fairly implement, in the judgment of both sides, what we had intended to do.

I thank my colleague from Washington.

Mr. JACKSON. Mr. President, I want to say that the Senator from Wyoming has made it clear to me personally that he is not part of any filibuster, and I agree with that.

I would point out, Mr. President, that obviously the reading of 240 pages of a bill, I am sure, would command full attention of the Senate.

I am sure, Mr. President, that when a document has been printed for quite some time it is not possible for Senators to have read it.

We do not mind a little bit of this sort of rhetoric, but we can be candid once in a while and recognize that it is not customary for the Senate to have the clerk read a document of 240 pages.

Mr. FANNIN. Will the Senator yield on that point?

Mr. JACKSON. I yield first to the Senator from Colorado.

Mr. HASKELL. Mr. President, I ask unanimous consent that a vote on this conference report occur at the hour of 7:14 on December 17.

Mr. DOLE. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HASKELL. I thank the Chair.

I say to the distinguished Senator from Washington that we know what is going on.

Mr. JACKSON. I yield the floor to the Senator from Indiana.

Mr. HARTKE. Mr. President, today the Senate is considering the conference report on S. 622, the Energy Policy and Conservation Act. Few pieces of legislation have been as controversial as S. 622; few as complex; and few as misunderstood. No one would claim that this is a perfect piece of legislation—in a democracy we prefer accommodation to perfection. And, indeed, S. 622 abounds with accommodations. There are accommodations between the House and the Senate; there are accommodations between various interest groups; and there are accommodations between the legislative and executive branches. I stress this last set of accommodations because the rhetoric issuing from the White House these days would lead one to suspect it had been written without the President's participation. In reality, the conferees were in constant touch with administration officials whose views were taken into account and which formed an integral part of the final product.

President Ford's constant campaign theme is that the Congress—more specifically, the Democrats in Congress—lacks an energy policy. This supposed failing is contrasted to the well-defined, clearly articulated energy program presented by Mr. Ford. The difficulty lies in discovering what this policy really is. It began with WIN buttons and voluntary conservation measures. It then moved toward rigorous adherence to total and immediate decontrol of oil prices. When it was pointed out to Mr. Ford that this would precipitate economic disaster, the policy became one of phased decontrol. After making this the cornerstone of his program, the President came to the tardy realization that what we in Congress had been saying all along made sense: A free market in oil does not exist because the Arab cartel effectively sets not only its own price but the market price of domestic oil; therefore, the so-called free market price is nothing more than the OPEC-dictated price.

Since then, Mr. Ford has said that he would modify his position further to include a ceiling price on domestically produced oil. As to what that price should be, the White House has been exceptionally vague. The final change in the President's energy policy came amid reports that his own energy advisers were recommending that he endorse the present work of Congress.

What Congress has done in the oil pricing provisions of S. 622 is adopt a variation of the ceiling concept for domestically produced oil. It is an improvement because it combines a ceiling with a certain amount of flexibility that might be necessary to maximize production in certain areas. The law mandates that the President insure that the average weighted price of domestically produced oil not exceed $7.66 a barrel with provisions for this price to keep pace with inflation. Within the framework established, a maximum amount of latitude is given the Federal Energy Administration to create different ceilings for different areas and types of oil.

Pricing is only one aspect of S. 622 which runs the gamut from the creation of strategic reserves to insulate the Nation from any future embargoes to guidelines for the use of recycled oil. It establishes standby energy authorities to allow the President to deal with emergency situations; it sets standards for energy efficiency and conservation in automobiles, appliances, and industry itself; and it takes a major step toward the goal of an accurate and reliable energy data base.

It is good, comprehensive legislation. It is an energy program and an energy policy. It is the Congress, not the White House, that has articulated a coherent policy. I believe that Mr. Ford would be well advised to sign S. 622 as a law of the land; the American people are growing weary of the stale charge of congressional inactivity. The House-Senate conference that produced S. 622—so ably chaired by Congressman STAGGERS and cochaired by Senator JACKSON—lasted a record 6 weeks and involved 32 Members from the two Houses.

As any participant in that historic process can attest, the members and the committee staffs—three committees were involved—worked long and hard. Its work was undertaken in an atmosphere devoid of philosophical rigidity. Decisions were made on issues, not preconceived notions. It is, therefore, pragmatic legislation. But it is also distinguished by a strong sense of justice and equity. It is consumer-oriented, recognizing that what is a national problem should not be shouldered by only one segment of society. It avoided stiff taxes on fuel and astronomical prices because these solutions bear heaviest on those already hard-pressed to survive the present economic crisis.

In what I believe to be a key provision of the bill, the conferees accepted a suggestion I offered which insures that any savings accruing from the pricing provisions of S. 622 will actually be passed on to the consumer. The Hartke amendment, which is part of section 401, requires some elaboration, especially in light of recent speculation on its relationship to bank costs not yet passed through to consumers.

DESCRIPTION OF HARTKE AMENDMENT

The conference substitute contains a provision requiring the President to promulgate a pricing regulation which requires a dollar-for-dollar passthrough in prices of all decreases in the costs of crude oil, residual fuel oil, and refined petroleum products which have occurred or will occur. Under current regulations, the opportunity is provided for a refiner or marketer to pass through its increased crude oil or product costs. This is done by allowing the maximum lawful selling price of each seller to be increased upward to reflect increases incurred in the cost of crude oil or products puchased. The conference substitute requires that decreases in a firm's cost of crude oil, residual fuel oil, or refined petroleum products be fully taken into account in computing that firm's maximum lawful selling prices.

Until now such a provision has been unnecessary because few, if any, firms have enjoyed a reduction in their input costs. The pricing provisions contained in the conference substitute and the removal of import fees should, however, result initially in a significant reduction in the actual weighted average first sale price of domestic crude oil. This provision of the conference substitute will help to assure that as much of the crude oil price reduction as is possible will be passed through the various levels of refining and distribution to the consumer level.

WHAT WILL HAPPEN AT THE GAS PUMP? WHEN?

The Hartke provision will not result in a full and immediate dollar-for-dollar reduction of any seller's current selling price if that seller is already below its maximum lawful prices and if the Federal Energy Administration does not alter the rules regarding so-called bank costs. The Hartke amendment is very much related to another provision in the conference substitute pertaining to cost passthroughs and the banking of those cost passthroughs. In a letter of December 6, 1975, from Federal Energy Administrator Frank Zarb to the Honorable HENRY M. JACKSON, Mr. Zarb estimated that the maximum effect on domestic product prices as a result of the pricing provisions in this conference substitute would be about 2.5 cents per gallon. In that letter, Mr. Zarb went on to explain the relationship between this price decrease and the way that it could be expected to flow through to the consumer.

Mr. Zarb says:

The question of how fast this decrease (2.5 cents per gallon) will flow through to ultimate consumers depends more on market conditions than on law or FEA regulations. Under Section 4(b)(2)(A) of the Emergency Petroleum Allocation Act companies are authorized to pass through to consumers increased costs of crude oil, but FEA regulations interacting with market conditions have prevented them from doing so on a current basis. As of November 1, 1975, refiners collectively had unrecovered crude oil cost increases of about $1.4 billion that they were authorized to recoup in higher prices but had as yet been unable to recoup because of the competitive pressures of the marketplace.

These "banks" of unrecovered costs are not equally distributed among all refiners. Most are held by refiners who had higher than average feedstock costs before FEA's old crude oil entitlements program began operating. Accordingly, some refiners who currently have little or no bank costs because they have been passing through increased crude oil costs on a current basis will be required to pass on immediately in product prices any reduction in their average crude feedstock costs caused by this bill. In a market characterized by plentiful supplies of product, this mandatory reduction in prices by some refiners will place substantial competitive pressures on other refiners to meet these lower prices so as to preserve their market shares and their volumes of sales.

The exact timing and extent of price reductions therefore simply cannot be predicted with any degree of confidence. They depend on the individual business decisions of literally thousands of refiners, distributors, and retailers of petroleum products. Each is caught between two conflicting motivations: trying to collect as much as possible of any increased costs not yet recovered, versus the need to meet competition so as to keep volume and market share up. Profit-maximizing behavior for each company will be different depending on its own circumstances.

The general direction of the forces at work is clear. Currently, product markets are characterized by plentiful supplies and prices below those allowable under existing law and regulations. For those refiners without "banks" of unrecovered product costs, regulations will force lower prices early, thereby imparting downward pressure on all market prices. How fast that flow-through will be, on which products it will occur and in what amounts will be determined entirely by the interaction of supply and demand in the marketplace so long as prices are below legal limits.

Regardless of the rate at which the cost reductions flow through in lower prices to consumers, the Conferees may rest assured that their actions, if enacted by the Congress and signed by the President, should result in a savings to consumers of about 2.5 cents per gallon on petroleum products. These savings, however, will not necessarily be evidenced by actual and immediate decreases from current product price levels at the point of final purchase. They will also be evidenced by a reduction in prices in future months as a result of the immediate reduction in the amount of costs that refiners and resellers will have available for passthrough to consumers in those future months. Thus, prices will be less in future months than they otherwise would have been under a continuation of the present program. The combined effect of the operation of FEA regulations and competition in the marketplace should assure that consumers will reap the full benefit of the rollback one way or the other. What cannot be specified with any precision is exactly how that benefit will be distributed over time and among the products covered by price regulations.

TO WHICH PRODUCTS MIGHT BANK COSTS (PERMITTED TO BE PASSED THROUGH) BE PASSED THROUGH?

In the first place, under S. 622 any cost passthrough is limited to 10 percent per month of the existing bank. This now includes gasoline.

Second, S. 622 prevents by statute any pricing of propane, home heating oil, diesel fuel oil and aviation fuel in a proportion greater than what those products by volume bear to a refined barrel of crude oil. Thus, any permitted pass-

through of bank costs could not be loaded on propane, home heating oil, diesel oil, and aviation fuel. In fact, the conference committee fully intended that existing flexibility to tilt away from propane and home heating oil be preserved.

SMALL REFINER EXEMPTION

Section 403(a) of the Energy Policy and Conservation Act of 1975 provides limited relief to a group of small oil refiners. The provision cancels the obligation of an eligible refiner to buy entitlements based on the first 50,000 barrels per day of its runs. Eligible refiners are those with a total capacity of 100,000 barrels per day or less. It should be emphasized that this section clearly provides that small refiners who are sellers of entitlements should continue to receive their full measure of entitlement payments.

Section 455 of the act provides the President with a mechanism to deal with those cases where the partial exemption contained in the bill may cause an unwarranted and unfair economic or competitive advantage to accrue to benefited refiners compared to other small refiners as defined in the Emergency Petroleum Allocation Act. It also permits an amendment to the partial exemption if it were found that the operation of the exemption seriously impaired achievement of the objectives of section 4(b)(1) of the Emergency Petroleum Act.

It was clearly not the intent of the conferees to create a partial exemption for certain small refiners with one hand and to permit the President to abolish it entirely with the other. I believe that the language of the conference report and the joint statement of managers speaks for itself in this regard.

Mr. JACKSON. I agree with the comments of the Senator from Indiana. The conference substitute allows the President to amend the regulation in order to prevent some small refiners from obtaining an undue competitive advantage through the operation of this exemption, but only to the extent necessary to eliminate such advantage, and not to the extent of wiping out the exemption in its entirety.

In any event, the conferees contemplate that the procedures associated with the development of any amendment under this section shall be open to the views and input of all affected persons. Moreover, the review procedures contained in section 551 will insure that the Congress will have a full opportunity to evaluate any proposed amendment on the merits.

What I am saying in substance, Mr. President, is that this bill will provide for an actual reduction at the gasoline pump of the price of gasoline. The only question is when. I think it is a good idea that this be clearly stated to the American people and that the President understand that the only enunciated, clearcut proposal in energy comes from the Congress and, unfortunately, not from the White House. In other words, we have a program and a policy from the Congress and a rhetoric from the President.

Mr. BENTSEN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. BENTSEN. Mr. President, these pricing provisions that we have seen are not so much a rollback on the pricing of gasoline as they are an increasing of our dependence on OPEC.

It is interesting that they have singled out the independent producer here, who does 90 percent of the drilling and exploration, that he has been the one who has really been struck down in this measure, and much more so than trying to help the American consumers. The bill spells trouble for both the independent producer and the American consumer. It may be good election year politics, but it is bad economics. And I hope my colleagues recognize the political motivations behind it and join me in urging the President to veto it.

I do not want to be misunderstood, Mr. President. This report contains many good and necessary provisions which I supported in the Senate. The provisions for creating strategic reserves and automobile fuel efficiency standards are two examples .

I also supported an extension of the Allocation Act so that a workable compromise could be worked out between the President and the Congress.

But the pricing provision in the bill offers no compromise, Mr. President, only more dependence on foreign oil.

It is incongruous that independent producers should be the single most imperiled segment under the bill's pricing provisions.

It is incongruous that the American consumer is being told in press releases that prices are being rolled back, while this bill is labeled an "energy conservation act."

Energy is a national problem.

And it is a long-range problem.

We must seek long-range, national solutions. And anyone who tries to set one section of this country against another; anyone who promises to roll back the price of energy until the Presidential election is safely behind him is offering not solutions, but election year politics.

This kind of fraudulent political promise—for political gain—will not roll back the price of energy. It can only roll back the number of jobs.

The American people know we face some hard choices in the fight to meet our energy needs. They are far more willing to face those choices than some of the politicians. And I do not think they will be fooled by election year promises that cannot be kept.

This country has a serious shortage of natural gas because of unwise Federal regulation. The Senate recognized this in October and faced one of these hard choices when it approved my and Senator PEARSON'S natural gas bill.

But now we are about to take a step backward by approving these irresponsible oil pricing provisions that will only worsen the energy shortage.

It will only increase our dependence on foreign sources.

It will only increase energy costs to American consumers.

And by promising the American people to roll back the price of energy—even though this is a false promise—the pricing provisions undo all the conservation efforts in other sections of the bill.

We must stop moving from crisis to crisis and take a serious look to the future about our energy needs.

This bill is addressing the wrong oil prices, domestic, not foreign.

How will a domestic price rollback help us produce the marginal wells?

How will it encourage more exploration?

How will it encourage the development of alternate fuels?

It will not. It will do just the opposite. And 6 months from now—in the heat of Presidential politics—we will start seeing the results of this ill-conceived program. By the end of the year it will be more clear.

Domestic drilling activity will be off—wells that would have been drilled would not be drilled.

Domestic production will be off—by 1979, 1.3 million barrels per day less will be produced than would be produced under the present system.

Demand will be up.

Imports will be increased and there will be serious talk of imposing quotas to prevent our becoming even more dangerously dependent on OPEC oil.

If quotas come, so will rationing. And the American voters will start looking for someone to account to them.

It might be, Mr. President, that it will take more than 6 months—maybe more than 12 months—before the results become apparent to the American people. But when they do, they will be looking for the truth—not politics as usual.

And let us not forget who is hurt the most by this legislation. Not the big oil companies, but the independent producers who drill 90 percent of the exploratory wells in this country.

I have been in touch with countless independent producers over the past few months. Their message has always been the same: "Give us certainty."

Without certainty they cannot make commitments for new leases.

Without certainty they cannot borrow to finance the new wells.

Without certainty they cannot and will not reinvest the earnings from present production.

Without certainty they cannot provide the American consumer an adequate supply of energy.

After the adoption of this bill:

It will be months before FEA issues rules.

It will be 1977 before a decision on Alaskan oil is made.

And it will be 1979 before producers know whether they will have market pricing.

That is too long for many of them to wait.

And some of our oil will be lost forever. Over 12 percent of our domestic production comes from stripper wells, many of which will be plugged and abandoned because of this legislation. Once plugged, a well is too costly to ever redrill. The remaining oil will be lost forever.

This is only one example of the shortsightedness of this legislation.

Another is the fact that these producers who own old oil will refrain from seeking new oil. Old oil approximates 60 percent of production today; new oil 40 percent. Should this ratio change to 59 percent-41 percent, new oil prices must drop an average of 16 cents per barrel—and so on, as the ratio shifts to new oil. What this means is that Congress is discouraging the production of new oil. The major oil companies control most of the old oil in this country, and they will continue to profit. Meanwhile, the independent producer who has been drilling 90 percent of the new exploratory wells will watch his prices rolled back if he continues his efforts to make our Nation more energy self-sufficient.

Finally, it will be April of 1977 before a decision to exempt any high cost Alaskan oil from the composite price, and it will be April of 1977 before drillers have enough price certainty to take the tremendous risks necessary to drill in unproven areas. For every barrel of Alaskan oil that is included in the composite average and assigned a high price, there must be an offsetting reduction in the price for oil from the lower 48. Again, the independents are penalized. Why not make the decision today to exempt the Alaskan production and avoid this needless uncertainty?

Mr. President, there are many other elements of the pricing provisions of this legislation that I could talk about. The ones I mentioned are just examples of the shortsightedness of this irresponsible action. I will vote against the conference report, and I urge my fellow Senators to do the same.

Several Senators addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. MANSFIELD. Mr. President, I understand that an attempt has been made on at least three and maybe four different occasions to try to bring about a time certain to vote on the pending business, and that the attempts have been met with objection.

It had been anticipated by the leadership that tonight, if the House of Representatives had agreed to a suspension of the rules to take up and approve the tax conference report, we might take it up this evening; but in view of the fact that the House did not agree to suspending the rules, we are faced with a continuing debate on the pending business.

I would hope that there is not a filibuster in progress in the consideration of this most important conference report, and I would hope that the Senate is aware of the fact that we are trying to get out by Friday of this week, and that if we do not get out by Friday, we will be in Saturday and next week as well.

Mr. President, in view of the fact that all we can do is talk tonight, and not get anywhere except to waste time, it is my intention to move very shortly that the Senate recess until the hour of 9 o'clock tomorrow morning. But I shall withhold that request pending any other talks—I hope they are brief—that Senators may wish to make; and if they are going to be long, I do not intend to subject the Senate to that sort of treatment at this late date in the first session—a session which, I might say, has occupied more hours than any other session in the history of the Republic as far as a session is concerned, and has undergone more rollcalls than any other session in the history of the Republic.

Mr. President, with that statement, I shall withhold what I intend to do, to permit others to speak; but if they intend to speak long, I wish they would notify me, because, I repeat, I do not wish to subject the Senate to undue punishment at this late date.

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

Mr. MANSFIELD. Yes, indeed.

Mr. BARTLETT. I was intending to talk for about 12 minutes, maybe 15. I have about nine pages.

Mr. MANSFIELD. All right.

Mr. BARTLETT. But if it will please the majority leader, I will be happy to do this tomorrow instead of tonight.

Mr. MANSFIELD. No, that is a reasonable time. What about the Senator from Kansas?

Mr. DOLE. I have laryngitis.

Mr. MANSFIELD. Good.

Mr. DOLE. If we all had laryngitis, we might be better off. But in any event, if it is possible to vote tonight, I would like to do that.

Mr. MANSFIELD. I see no possibility of a vote tonight.

Mr. DOLE. Oh, there is not any possibility of a vote?

Mr. MANSFIELD. The only thought I had was the possibility of taking up the tax measure, but that is not possible.

Mr. President, I ask unanimous consent that a vote on the pending business occur at the hour of 10 o'clock tonight.

Mr. DOMENICI. On S. 622, is that what the majority leader says? The pending matter?

Mr. MANSFIELD. Yes.

Mr. DOMENICI. I object.

Mr. WILLIAM L. SCOTT. Ten o'clock tonight?

Mr. MANSFIELD. Yes.

Mr. WILLIAM L. SCOTT. You have already got one objection; that is enough.

Mr. MANSFIELD. Eleven?

Mr. WILLIAM L. SCOTT. I object.

Mr. MANSFIELD. Midnight?

Mr. WILLIAM L. SCOTT. I object.

Mr. MANSFIELD. Ten o'clock tomorrow night?

Mr. DOLE. Nine o'clock tonight?

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. HANSEN. Mr. President——

Mr. MANSFIELD. Ten o'clock tomorrow night?

Mr. HANSEN. Mr. President, reserving the right to object——

Mr. MANSFIELD. Wait, while I ask unanimous consent that a vote occur on the conference report, the pending business, at 10 o'clock tomorrow night.

Mr. HANSEN. Mr. President, reserving the right to object, and I personally do not object to this strategy, but I shall have to object unless Senator TOWER is here in the Chamber, and I do not see him here, so I do object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. MANSFIELD. Mr. President, will the Senator suggest a more reasonable hour?

Mr. FANNIN and Mr. WILLIAM L. SCOTT addressed the Chair.

Mr. FANNIN. Mr. President, will the majority leader yield?

Mr. MANSFIELD. I yield.

Mr. FANNIN. I certainly wish to cooperate in every way possible.

Mr. MANSFIELD. The Senator has always been most cooperative.

Mr. FANNIN. I thank the distinguished majority leader.

Mr. JACKSON. I concur in that.

Mr. FANNIN. We do have a problem which has been brought to my attention and complained about. We do not have a copy of the bill for Senators to even examine. It is not yet printed.

Mr. McCLURE. It is printed in the RECORD.

Mr. FANNIN. In other words, I am trying to be fair.

Mr. JACKSON. Here is a copy of the report with the two changes.

Mr. FANNIN. The report? All I am told is there is not a copy of the bill that has been printed. I am only bringing this up in fairness to some of the complaints that have been made, and I recognize——

Mr. JACKSON. It is all printed there. Here are the two changes.

Mr. MANSFIELD. I say we do not have the bill itself. It is all there except the two changes.

Mr. FANNIN. The bill is not completed as yet.

Mr. MANSFIELD. It is all there.

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

Mr. MANSFIELD. Yes.

The ACTING PRESIDENT pro tempore. Will Senators clear the aisle and will Senators use their microphones? Will Senators speak through the Chair?

At this moment, the Senator from Montana has the floor and is yielding to the Senator from Arizona.

Mr. FANNIN. I do not wish to delay anything.

Mr. JACKSON. Mr. President, will the Senator just yield?

The ACTING PRESIDENT pro tempore. Will the Senator suspend a moment, please, so the Chair can obtain order.

The Senator from Montana has the floor and is yielding to the Senator from Arizona.

ORDER FOR THE RECOGNITION OF SENATOR BARTLETT AND SENATOR ROBERT C. BYRD TOMORROW

Mr. MANSFIELD. Mr. President, in order to allow tempers to cool, I ask unanimous consent that after all other special orders have been finished tomorrow that there be an allocation of not to exceed 15 minutes to the distinguished Senator from Oklahoma (Mr. BARTLETT) and the distinguished Senator from West Virginia (Mr. ROBERT C. BYRD) following the orders already entered.

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

ENERGY POLICY AND CONSERVATION ACT

The Senate continued with the consideration of the motion to concur in the amendment of the House to the amendment of the Senate to the amendments of the House to the bill (S. 622) to provide standby authority to assure that the essential energy needs of the United States are met, to reduce reliance on oil imported from insecure sources at high prices, to implement U.S. obligations under international agreements to deal with shortage conditions, and to authorize and direct the implementation of Federal and State conservation programs consistent with economic recovery.

Mr. MANSFIELD. Now I yield to the Senator from Arizona.

Mr. FANNIN. Mr. President, I still wish to emphasize that it is customary to have a copy of the bill. I am not objecting. I only wished to bring out that this has been the objection expressed to me that Senators have not had a chance to go over these matters, and this is a very lengthy bill and as far as a legitimate amount of time I think we should. I am not trying to delay action, but I do feel that in fairness to many of the Senators on both sides of the aisle—I have objections expressed from both sides of the aisle—reasonable time is in order. I do feel that the Senator from Montana has been unreasonable in his request.

Mr. JACKSON. Mr. President, will the Senator yield for a clarification?

Mr. MANSFIELD. Before I yield to the Senator from Washington, I say it was all printed in yesterday's RECORD, and that is all before us today. I do not believe there is a lack of information, but I appreciate the viewpoint of the distinguished Senator from Arizona.

I yield to the Senator from Washington.

Mr. JACKSON. Mr. President, just to keep the record straight about not having a bill available, I have here in my hand the conference report which was printed on December 8.

This report is on the desk and has been available for every Senator with the following deletions which are embraced in a memorandum that accompanies the report. I emphasize that the report has been in print since December 8.

Mr. President, I ask unanimous consent that the memorandum accompanying the report on S. 622 be printed in the RECORD at this point.

There being no objection, the memorandum accompanying the conference report was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS,
Washington, D.C., Demember 16, 1975.

MEMORANDUM

To All Members of the Senate.
From Senator Henry M. Jackson, Vice-Chairman of the Conference Committee on S. 622.
Re Status of S. 622 and Changes Adopted by the House of Representatives.

Yesterday the House of Representatives sustained a point of order against the Conference Report on S. 622, the "Energy Policy and Conservation Act." The effect of the House action was to reject the Conference Report.

The House did adopt an amendment in the nature of a substitute to S. 622 which is now before the Senate. The text of the House amendment is identical to the Conference Report (Rept. No. 94–516) on S. 622 except for two deletions.

The deletions are:

First, on page 8 of the Conference Report, paragraph (4) of subsection 102(c) dealing with the definition of the term "developing new underground coal mines" has been deleted.

Second, Part B of the new Title V to the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.) entitled "Application of Advanced Automotive Technology" has been deleted. In the Conference Report this language is contained in section 301 on pages 51 through 58 (sections 541 through 550).

Mr. JACKSON. Mr. President, the deletions are as follows: First, on page 8 of the conference report, paragraph (4) of subsection 102(c) dealing with the definition of the term "developing new underground coal mines" has been deleted.

Second, part B of the new title V to the Motor Vehicle Information and Cost Savings Act entitled "Application of Advanced Automotive Technology," has been deleted. In the conference report this language is contained in section 301 on pages 51 through 58—sections 541 through 550.

I am sure the Senate, in the interest of economy if nothing else, would not want a reprint of this document when there is only a small portion in relation to the total that has been deleted, and that explanation is there. This document has been available, I say to the majority leader, since December 8, and fully printed in the RECORD.

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

Mr. JACKSON. Yes, I yield.

Mr. STEVENS. The Senator knows my great affection for him personally, but I remind him in the conference committee, on which I serve, I did not sign the conference report. We had agreed that we would go back in and we would be able to examine this language to see if it carried out the agreements we made. We have never been back in that conference committee. We did not go over the language.

I have great respect for the staff, but we never got a chance to go over it until it was printed. Then after it was printed, the House of Representatives met, and the House deleted two items. First, it turned down the conference report, and then it deleted two items that, in my opinion, had they not been in there we would have won the conference on the oil pricing question.

That is really the problem, in my opinion. There were matters that were put in there to assist to obtain votes from the coal-producing States. Those matters were now deleted by the House, and we were in the position now that if we went back to conference I think we would win.

The Senator, who is in the Chair, will recall some of these items in conference. This has led to some of our feelings about the problem that is here.

I still do not believe in the pricing mechanism that is in the bill, and I do not think that the coal Senators believed in the pricing mechanism that is in this bill, and if their sections were not in there, in the first place, they would not have voted for this bill as it came out of the conference before it was actually drafted.

We did not see one word of this bill in conference. No member of the conference saw it before that conference report was filed in either the House of Representatives or the Senate.

I have great respect for the Senator from Washington, but I have to say I do not see how we can be expected to vote on a bill that none of us who were in conference ever saw before it was reported to the Chamber, and none of us now know the true impact of what has been deleted and particularly we do not know what the votes would have been in conference had the measures that the House of Representatives deleted been deleted in the conference.

That is the real problem with this. I think perhaps we are fighting a losing battle with my good friend from Washington, but I do think the record ought to be clear as to what happened, and what happened was that the items that were put in that conference with regard to incentives for coal production have now been deleted by the House of Representatives in a very extraordinary procedure, in a procedure that I had a long discussion with the Parliamentarian about this morning. I know of no way now to touch some of these matters that are before the Senate for the first time. They were not in the Senate bill when it passed. They were not in the House bill that was passed. They are now in the bill because the conference committee changed the total text.

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

Mr. STEVENS. The Senator from Washington yielded to me, and I am pleased he has done so, but I only wish to express my feelings about this conference report and the way it is coming up.

I know it is the last hours of this session and it is an unfortunate circumstance.

Mr. JACKSON. Mr. President, will the Senator yield for clarification?

Mr. MANSFIELD. I yield to the Senator from Washington.

Mr. JACKSON. Mr. President, first, let me say that the conference report was circulated to all the members of the committee.

Mr. STEVENS. I have to beg my friend's pardon. I was on the conference committee. I did not see it until it was printed.

Mr. JACKSON. The staff informs me that they were sent to all of the members of the conference the day before it was filed.

Second, I point out to the Senator that he has made reference to the coal provisions here. May I say that the only change made by the House of Representatives is in connection with the definition of those eligible, and that is to be found on page 8. The effect of it was not to

knock out the guarantee provisions or assistance provisions for coal mine operators who were not involved in a new type of mine. It is a change of definition.

Mr. STEVENS. It took out all new coal mines; did it not?

Mr. JACKSON. No; just the opposite. It eliminated the old mines, but new mines that were developed were included. It just changed the definition.

Mr. President, so that the record is complete, I point out that the entire text is to be found starting on page 40681 of the RECORD covering yesterday's proceedings, with the changes made by the House. I believe it costs $600 a page to have it printed.

Mr. President, I yield to the majority leader.

Mr. HANSEN addressed the Chair.

Mr. MANSFIELD. Mr. President, I should like to bring this matter to a conclusion tonight, because I do not think the Senate can accomplish much in the way of results. Will the Senator from Wyoming permit me to proceed?

Mr. HANSEN. Yes.

PRIVILEGE ON THE FLOOR DURING THE CLOSED SESSION TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that during the closed session, in addition to the Secretary of the Senate, the Assistant Secretary of the Senate, the Legislative Clerk, the Journal Clerk, the Sergeant at Arms, and the Deputy Sergeant at Arms, all of whom are authorized under rule 36, except that current titles have been used where they have been changed, that the following personnel be authorized to be on the floor: The Parliamentarian, the Assistant Parliamentarian, the Assistant Legislative Clerk, the Administrative Assistant to the Sergeant at Arms, the secretaries to the majority and minority, and their assistants, the general counsel and associate general counsels of the Democratic Policy Committee (Messrs. Ferris, Leach, and Williams), the administrative assistants to the minority leader and the assistant minority leader (Messrs. Davis and Holmes), the official reporters of debates (Mr. Walker, Mr. Perry, Mr. Mohr, Mr. Firshein, Mr. Reynolds, Mrs. Ross, Mrs. Garro, Mr. Smonskey, and Mr. Timberlake), the Appropriations Committee staff (Messrs. Calloway and McConnell), Senator TUNNEY's staff (Mr. Moran), minority policy committee staff (Jody Baldwin).

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the official reporters be authorized to take proceedings of the closed session in shorthand; that the notes be transcribed; and, when the session is concluded, the original notes be placed in the custody of the Secretary of the Senate and kept secret by him along with other minutes and matters of such nature already in his custody.

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

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

Mr. MANSFIELD. I yield.

Mr. STEVENS. Is there a minority member for the Committee on Appropriations?

Mr. MANSFIELD. We have two, to whom I think Senator YOUNG and Senator MCCLELLAN have agreed.

Mr. President, I ask unanimous consent that, at the conclusion of the closed-door session, the complete transcript of the proceedings be personally delivered in a sealed envelope by the Chief Reporter to Senator MCCLELLAN; that the transcript of the remarks of each Senator who participated in the debate be made available by Senator MCCLELLAN under his direction to said Senators for revision of their remarks; and that when this is completed, the transcript shall be resealed and put in a secure place for safekeeping for any future disposition by the Senate. I include with Senator MCCLELLAN the ranking member of the Committee on Appropriations, Senator YOUNG.

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

APPOINTMENT OF SPECIAL SENATE DELEGATION TO VISIT CERTAIN COUNTRIES IN THE SOUTHWEST PACIFIC

Mr. MANSFIELD. Mr. President, I send to the desk a resolution and ask for its immediate consideration.

The resolution (S. Res. 331) was read, considered, and agreed to as follows:

S. RES. 331

Resolved, That the President of the Senate is authorized to appoint a special delegation of Members of the Senate to visit certain countries in the Southwest Pacific to conduct a study on United States security and foreign policy interests in that area and to designate the co-chairmen of said delegation.

SEC. 2. (a) The expenses of the delegation, including staff members designated by the co-chairmen to assist said delegation, shall not exceed $35,000, and shall be paid from the contingent fund of the Senate upon vouchers approved by the co-chairmen of said delegation.

(b) The expenses of the delegation shall include such special expenses as the co-chairmen may deem appropriate, including reimbursements to any agency of the Government for (1) expenses incurred on behalf of the delegation, (2) compensation (including overtime) of employees officially detailed to the delegation, and (3) expenses incurred in connection with providing appropriate hospitality.

(c) The Secretary of the Senate is authorized to advance funds to the co-chairmen of the delegation in the same manner provided for committees of the Senate under the authority of Public Law 118, Eighty-first Congress, approved June 22, 1949.

UNANIMOUS-CONSENT AGREEMENT—H.R. 5247

Mr. MANSFIELD. Mr. President, I ask unanimous consent that following the vote on the nomination of Judge John Paul Stevens at approximately 1 p.m. tomorrow, there be a time limitation of 30 minutes on the Public Works appropriation bill which was considered briefly this evening; that the time be divided equally between Senator MONTOYA, the manager of the bill, and Senator MCCLURE; that the vote occur upon the conclusion of that period.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. MCCLURE. Mr. President, reserving the right to object, I understand from the unanimous-consent request and my understanding of the rules of the Senate that this would not in any way waive points of order. I direct that inquiry to the Chair.

The ACTING PRESIDENT pro tempore. Yes, points of order would be waived, because a point of order might prevent the taking of a vote at the appointed time by the unanimous-consent order.

Mr. MCCLURE. Mr. President, I wonder whether the unanimous-consent request could include the possibility of the raising of a point of order by any Member of the Senate who might desire to do so on any matter which is pertinent to the consideration of that bill.

Mr. MANSFIELD. Yes, indeed. I make that request, also.

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

Mr. BAKER. Mr. President, reserving the right to object, I am not quite sure that I understood the request or the suggestion of Senator MCCLURE. Will the Senator restate that, please?

Mr. MCCLURE. I say to the Senator from Tennessee that the request I made was that the unanimous-consent agreement reserve to any Member of the Senate who might desire to do so the right to raise any point of order that would be pertinent to the proposed legislation, so that no Member of the Senate, by the unanimous-consent agreement, is waiving a point of order that he might make in the absence of the unanimous-consent agreement.

Mr. BAKER. Mr. President, reserving the right to object—and I do not intend to object—it is my understanding, then, that the purpose of that suggestion is to preserve any right to raise a point of order, but it in no way abrogates the unanimous-consent order to vote at the end of the 30-minute limitation.

Mr. MCCLURE. With only this understanding: I assume that if a Member of the Senate were to raise a point of order which was sustained, it would have the effect of abrogating the vote which otherwise would be held.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. DOMENICI. Mr. President, reserving the right to object, I should like a clarification.

The Senator mentioned "appropriation"—it is an authorization bill.

Mr. MANSFIELD. An authorization bill. I am glad to be corrected.

Mr. BAKER. This is H.R. 5247.

I have no objection.

ENERGY POLICY AND CONSERVATION ACT

The Senate continued with the consideration of the motion to concur in the amendment of the House to the amendment of the Senate to the amendments of the House to the bill (S. 622) to provide

standby authority to assure that the essential energy needs for the United States are met, to reduce reliance on oil imported from insecure sources at high prices, to implement U.S. obligations under international agreements to deal with shortage conditions, and to authorize and direct the implementation of Federal and State conservation programs consistent with economic recovery.

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

Mr. MANSFIELD. I yield.

Mr. TOWER. I have been one of the dilatory people here this evening on the energy conference.

Mr. MANSFIELD. Not yet.

Mr. TOWER. I suggest to the Senator from Montana that I think an agreement can be worked out. I would prefer not to try to work one out tonight, but tomorrow. I think we can agree on an expeditious time to vote. We have some bases to touch on this matter. We wanted some time. We did not want to get ourselves locked into a controlled time situation. I can assure the majority leader that tomorrow we can come to terms.

Mr. MANSFIELD. The Senator will never know how grateful I am to him for the statement he has just made.

Mr. President, I yield to the Senator from Wyoming.

Mr. HANSEN. Mr. President, it is not my purpose or desire to take very much time. I simply want to illustrate why I think we do need to have time at least overnight, or to put the staff to work overnight—I intend to go to bed—to look at this bill.

I ask the distinguished floor manager of the bill, the Senator from Ohio, if he is familiar with section 403 of the bill, on page 92.

Mr. MANSFIELD. I beg the Senator's pardon.

Mr. HANSEN. I was asking the distinguished Senator from Ohio if he is familar with the import and the thrust of section 403 of this bill, headed "Entitlements" on page 92.

Mr. GLENN. The section the Senator from Wyoming refers to would grant exceptions from entitlements. Is that the section the Senator is referring to?

Mr. HANSEN. Yes. Is the Senator familiar with that section?

Mr. GLENN. What is the question with regard to that section?

Mr. HANSEN. As I read this section, it occurs to me that we have given a tremendous advantage to any refiner whose refining capacity does not exceed a certain number of barrels in that he will be exempt from having to pay any entitlements on the first 50,000 barrels per day of import if he is using old oil. Am I right?

Mr. GLENN. That is partially correct?

Mr. HANSEN. Is the Senator aware that there are some people in the refining business who think that this bonanza that we have included in there could amount to a very, very sizable amount of money per year, as much as 10 cents per gallon of oil, considering how the present entitlements program now works? Is the Senator aware that the effect of this change would be to make it possible for a refiner to avoid paying the amount of money that the entitlements program otherwise would require of it?

Mr. GLENN. The figure of 10 cents a barrel which the distinguished Senator from Wyoming uses is not a figure that has ever been submitted, to my knowledge, in hearings or during the conference committee nor here, on the floor. I would certainly be interested in seeing the figures and how that was arrived at. That is not a figure that I believe has been used in any debate regarding this legislation.

Mr. HANSEN. I do not question the statement made by the distinguished Senator from Ohio at all. I think it is exactly right. My point is that if we study the section—in what little time I have had to look at it, and it has not been very much, because I just had a phone call about it 15 minutes ago, it occurs to me that this is the way it is going to work.

The entitlements program now requires that payments be made by refiners who use a certain mix of oils if they have domestic crude of their own that they can use or if they have access to domestic crude. The information that I have is that this could conceivably amount to more than $1 billion a year of advantage to small refiners.

Mr. GLENN. Does the Senator from Wyoming recall that he was a cosponsor of this particular section of the bill when we had hearings on this?

Mr. HANSEN. Yes.

Mr. GLENN. I presume that if there had been any objections at that time of the type that he now raises, they should have been raised at the proper time, when he was a cosponsor of this particular section.

Mr. HANSEN. That is a good answer. The only trouble with it is that like so many sections of this bill, I am not at all certain that the language in this section 403 conforms precisely to what we were working on. Maybe it does. If it does, then it certainly is true that it escaped my attention.

It was not my intention at all to make possible such a situation. The fact is that the industry, the people who have to live and operate and work under this law, are just having time now to go through it. I think that what the Senator from Ohio says underscores the point very well.

There are all kinds of sections in this bill which, until it was printed in this conference report, no one had read. The reason no one had read them was that they had not been written.

Mr. GLENN. The Senator from Ohio would certainly concur with that; that we did not have a chance to read them until they were written. But they have been written now and they have been published in the RECORD. Everyone is familiar with the intent. All that is required at this point, as I see it, is that we go through and make sure that those intentions were carried out in the legislation, which has been printed and available for some time as the Senator from Washington pointed out. There were only minor changes made that now need to be checked. The rest of it has been available for some time.

The staff points out that, on page 97, with regard to the concerns of the Senator from Wyoming, subparagraph (g)(1), about a third of the way down that page, reads:

"(g) Notwithstanding the provisions of subsection (e) of section 4, the President may, if he determines that the exemption from payments for certain small refiners required by such subsection—

"(1) results in unfair economic or competitive advantage with respect to other small refiners; or

"(2) otherwise has the effect of seriously impairing the President's ability to provide in the regulation under section 4(a) for the attainment of the objective specified in section 4(b)(1)(D) and for the attainment of those other objectives specified in section 4(b)(1);

submit, in accordance with the procedures specified in section 551 of the Energy Policy and Conservation Act, an amendment to modify the regulation under section 4(a) with respect to the provisions of such regulation as they relate to such exemption. Such amendment shall not take effect if disapproved by either House of Congress under the procedures specified in such sections 551.".

I have indicated to the distinguished Senator from Wyoming that this is a section that does deal with the entitlements that he is concerned about on page 92. Since we are going to be on this bill tomorrow, I suggest that he, overnight perhaps, might be able to refer to that part on page 97 as an answer to the entitlements problem he indicates on page 92.

Mr. HANSEN. Mr. President, let me say that I am glad the Senator from Ohio, a man for whom I have very high regard, read the entire appropriate portion of that reference on page 97. I underscore the words that he read last, which are: "such amendment shall not take effect if disapproved by either House of Congress under the procedures specified in such sections 551." Based upon the President's track record this year of trying to persuade Congress to take some action and to follow his leadership on practically every energy matter we have had before us, I should say, if I were in the business and were complaining about the section to which I referred earlier on page 93 of this pamphlet, that I should not find very much comfort in the section that has just been read to me by the Senator from Ohio. That is because either House of Congress, as the Senator recalls, can disapprove the actions of the President. It underscores once more the importance of knowing what is in this bill.

I did not know, and as the Senator from Ohio has said, I was a cosponsor of an amendment which had a certain objective. He said the important thing here is to see that our intentions are carried out. I am afraid that realistically, in the cold light of tomorrow and all of the tomorrows after that, the issue is going to be, what do the words say? Unless there is legislative history that clearly contravenes what the words say, I suspect that most courts and most resulatory bodies and authorities are going to interpret these words literally. I sub-

mit again that this section 403 does not do what I intended that it should do.

I think that if the Senator from Ohio was aware of what I have said about this section, how it has been interpreted, and if it were his intention that it should work in that manner, I shall be very much surprised, because I think that the Senator from Ohio is a much fairer man than one would have to conclude was capable of doing what clearly, it seems to me, this particular section would accomplish.

Mr. GLENN. If the Senator from Wyoming will yield, I believe that the entitlement section to which he refers, section 403, is identical, or nearly identical, to what was in the original language of the House. It has been available for study for a lengthy period of time. There are only two sections that were changed in the House, as the Senator from Washington, the floor manager of the bill, pointed out earlier. This entitlement section was not one of them. That has been available for some time. I think if we are to go now and take sections of the bill that were approved, and which have been available, and have been through committee here on the floor and through the House, and now raise questions concerning them, this would be, in truth, an endless exercise for such a complicated bill.

It is admittedly a very complicated piece of legislation, but the energy problem is a complicated problem. I do not think we can simplify it much more than has been done here.

Mr. HANSEN. I would have to agree with my friend from Ohio on that, that it is a very complicated problem, and if we think it is complicated now, wait until we pass this bill. It is really going to get complicated then. I agree with my friend from Ohio, and I am even more frightened by what he just said.

If sections that we had looked at as closely as seemingly we had this one, and what I have said is true, and it is on the record, and I invite Senators to read it and interpret it overnight and see if the conclusion that has been reached by a person who called me on the phone just a few minutes ago is in error, and if it is not in error, then I say we had better make haste very slowly because I am truly frightened that, given the situation we now have, admitting that the energy situation is in a very critical situation, that it is complicated, it is difficult to understand, there are all kinds of laws that we call upon the Federal Energy Administrator to administer, seemingly in an effort to try to make greater fairness and equity prevail within the industry, with all of its ramifications, if that situation is true now, it sure is going to get a lot, lot worse.

I am not encouraged at all by the very well-intentioned observations that my friend from Ohio has just made in saying that, impliedly, we do not possibly have time enough to go through it, I grant that, and it seems to me that that might be an awfully good reason, if what I have called attention to here is typical at all of what is in this bill, to have the bill not passed by the Senate.

Mr. GLENN. If the Senator will yield, Mr. President, I would like to ask the staff to place in the record tomorrow information which was supplied by the Federal Energy Administration, which deals with the entitlements program and pricing. The costs of exemptions the Senator has referred to in this case, will be available for the record. Will the staff please bring these documents tomorrow?

Mr. HANSEN. I have no objection, Mr. President.

Just one further and final observation: I think, too, it has been correctly interpreted that if this regulation were to stand it would encourage the bringing into being of a number of small refineries for a very obvious reason, they would have a tremendous purchasing advantage if, by buying old oil they could escape the impact that normally would result from the entitlements program, and we would be moving in the wrong direction. We do not find our most efficient economical plants to be the small plants in today's real world. It is the biggest plants that can operate most efficiently, and I just add that as a footnote to what I had earlier said.

I yield the floor.

Mr. STEVENS. Mr. President, I would like to ask the manager of the bill a question, and again I state I do not know of a time when I have felt more frustrated by a bill that meant more to my State than this does.

I remember discussing and, perhaps, the Senator from Ohio will recall, the definition of Federal land. I have just checked it again, and I find the change that I thought was made is not there.

My State has been given the right to select lands as part of its Statehood Act, and those lands that are tentatively approved, which is a technical definition, of tentatively approved lands, after selection, are treated as State lands, and the State was specifically given the right to lease those lands.

Production of oil and gas from those tentatively approved lands has been treated as State oil. I find that the term "Federal land" as it is defined on page 6 in subsection (10) does not include lands that were tentatively approved to a State in the process of its selection, and I wonder if the Senator from Ohio will recall that exchange we once had in the conference committee, and tell me is this definition now that says it means all lands owned or controlled by the United States, is this to be taken literally or does it mean lands in Alaska that are tentatively approved are still not lands that are owned or controlled by the United States?

Mr. GLENN. In reply to the distinguished Senator from Alaska, I do not specifically recall the conference committee discussion on this. It may well have occurred while I was there, but there was a lot of discussion, of course, and so I have no quarrel with the fact that it occurred as stated.

I think probably what I would like to do on this is to get a legal opinion and have it available tomorrow here on the definition, and have it printed in the RECORD tomorrow to clarify any questions that the Senator from Alaska might have, if that is satisfactory.

Mr. STEVENS. I am hopeful—I am sure the staff will remember my discussing it on several occasions, and the fear I have is this could be interpreted, unless there is a proper record for it, as being in contravention of specific terms of the Statehood Act which permits the State to treat the tentatively approved lands as though they are owned by the State.

Mr. GLENN. There was no such intent to do that, and I think this could be clarified with a statement that we will have available tomorrow morning.

Mr. STEVENS. I appreciate that very much because it is very much of a difficult problem, and I will be pleased to see that.

I have some other questions. I do not know whether this is a proper time to raise them or whether we should wait until tomorrow to raise the question concerning the language as it appears in the bill and, I might say, to my friend, I am sure there has been no secret that I have been very disappointed with the conclusions of the conference committee with regard to Alaskan oil and gas potential, particularly the oil potential and its problem as far as I am concerned to try to deal with this.

Let me again just make sure the RECORD shows my exchange, if I might, with the Parliamentarian and make a parliamentary inquiry, Mr. President.

Is my understanding correct that the Senate has no opportunity even though this is not a conference committee report, this is a bill, that the Senate has no opportunity whatsoever to amend this language?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. STEVENS. Does the Senate have the opportunity to refer this bill to a committee with specific instructions to add an amendment or to change language and have it reported back to the floor?

The ACTING PRESIDENT pro tempore. The only available parliamentary motions at the moment are a motion to table, a motion to postpone indefinitely, a motion to postpone to a day certain, and a motion to refer, the motion to agree having been made which precludes a motion to disagree.

Mr. STEVENS. A motion to refer to a committee with instructions would be in order, is that correct?

The ACTING PRESIDENT pro tempore. Not with instructions to add an amendment.

Mr. STEVENS. I do not understand the Chair's ruling. I thought it was in order to instruct a committee from the floor of the Senate.

The ACTING PRESIDENT pro tempore. An amendment in the second degree is not subject to further amendment and a motion to refer cannot accomplish indirectly what cannot be done directly.

We can refer this matter to a committee, but we cannot amend it.

Mr. STEVENS. If it were referred to a committee, the committee could treat S. 622 as a bill before that committee and make such amendments as it saw fit.

The ACTING PRESIDENT pro tempore. The committee could not amend this bill further in any way. This bill has been amended in two degrees, by the two Houses and reference to a committee could not result indirectly in further amendment of the bill.

Mr. STEVENS. I hope the Chair is seriously considering its ruling. We will have to challenge that tomorrow. I think that would be a terrible precedent for the Senate if that were the case, because the House could emasculate a bill and the Senate could have no power either through its committees or on the floor to amend that legislation before it sent it to the——

Mr. GLENN. Mr. President, I believe in this particular case, the reason we are up against this is that the amendment would be out of order because the House amendment to S. 622 was in the second degree and any future amendments would be in the third degree and therefore out of order. Under longstanding practice and precedent this would apply, whether it went to committee or was taken up on the floor.

The ACTING PRESIDENT pro tempore. That is the opinion of the Chair and that is the advice to the Chair.

Mr. STEVENS. I cannot concur and I thought I had studied my parliamentary procedure for some manner of years.

I think the Senate is becoming hidebound by misinterpretation of a precedent, if that is the case, because certainly the Senate has a right to stop this bill and to turn it around if it decides to do so.

S. 622 is merely a bill of this body and it could be put into a committee and changed completely, in my opinion, and sent back to the House anew.

I do not see how we can possibly get to the position where we are tied so tightly to what the House has done. I think it is very much a frustrating situation for those of us who, again, had no chance to determine what would happen to this bill if the House made the maneuver that it did.

Is the Chair of the opinion the bill cannot be sent back to the conference committee?

The ACTING PRESIDENT pro tempore. The conference committee was discharged when the House disagreed to the conference on yesterday, and there is no longer a conference committee to which this bill could be recommitted.

Mr. STEVENS. Then if the Senate were to ask for a conference, is that in order?

The ACTING PRESIDENT pro tempore. The Senate can ask for a conference if the motion to agree is defeated and then the Senate disagrees and requests a conference.

Mr. GLENN. Will the Senator yield?

Mr. STEVENS. Yes.

Mr. GLENN. This being an unusual condition where we would be getting into third-degree amendments, I think it probably is a little bit unusual and is not normally encountered.

I would refer the Senator and any of those wishing to check the record to examine the book on Senate procedure, pages 83 and 84.

I hardly think it is necessary to have those reprinted in the RECORD. If Senators could refer to the pages 83 and 84 in Senate procedure, it outlines exactly all the procedures regarding amendments between houses.

I think that covers this exact situation.

Mr. STEVENS. I did refer to them, but I do not think there is an exact precedent for what the House did to us last night.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. STEVENS. I am happy to yield.

Mr. ROBERT C. BYRD. Mr. President, may I say that the matter before the Senate is the motion to agree to the House amendment to the Senate amendment to the House amendment to the Senate bill S. 622.

When that matter came back before the Senate, there were only six motions available to Senators: A motion to disagree, a motion to agree, a motion to refer, a motion to postpone to a definite time, a motion to postpone indefinitely, and a motion to table, and in that order of inverse precedence.

The pending motion before the Senate is a motion to agree, which is a motion of higher precedence than a motion to disagree. The reason being that the motions are so arranged that they will make possible the resolution of disagreements between the two Houses.

The measure that is before the Senate has been amended in the second degree. In the Senate, no amendment can be offered in the third degree. The same is true with respect to amendments between Houses—no amendment can be offered in the third degree.

In view of the fact that no amendment can be offered on the Senate floor in the third degree, the same cannot be accomplished indirectly which cannot be accomplished directly.

Consequently, while the motion to refer to a committee is in order, a motion to refer with instructions to bring back the bill with certain amendments is not in order because, if that could be done, then that would be accomplishing indirectly that which cannot be accomplished directly.

The matter is not altogether a matter of precedence, and the Chair is precisely correct in his statement. I would hope that no challenge would be made to the Chair's statement. If such is made I would have to do everything I could to persuade the Senate to uphold the ruling of the Chair. The Chair is correct.

I realize that what the Senator from Alaska is saying has a lot of merit. It is frustrating to Senators who wish to amend the measure at this time and who cannot do so. But this is the situation in which the House placed the Senate, and, under the precedents, there is nothing we can do about it except to proceed in the direction of one of the six motions that I have outlined.

The ACTING PRESIDENT pro tempore. The Chair would state that the Chair completely agrees with the distinguished Senator from West Virginia and would refer the Senator from Alaska to the first paragraph on page 83 of Senate procedure, which says:

> In the Senate, when acting on "amendments between Houses," the original amendment added to the bill by the second House is open to amendment in two degrees; that is, an amendment to the original amendment, and an amendment to the amendment to the original amendment.

Mr. STEVENS. I appreciate what the Chair said and what the Senator from West Virginia said. But I still believe a motion to refer has higher priority. It is in order, and once that committee got that bill, they could just put that in the cabinet and leave it and take the next numerical order in numbered bills and make the bill read the way the Senate wants it, report it back to the floor, and we could send it to the House.

I have never seen the time when one House can frustrate the other one if it really wants to do the thing right.

Last night the House undid that conference. Last night the House reneged on part of the conferees' agreement.

I did not sign the conference report because of other provisions, but I did want that coal provision in here and we had agreed to it in that form.

I think it is a very bad precedent to let one House pull that kind of action, and that is what they have done to us.

I say to my friend that I think we are both capable of seeing to it that the Senate would work its will if we both wanted to see it happen. I wish the Senator was totally with me because I can assure that I can get that bill over to the House in a condition where they have to take it the way we brought it out of the conference committee, or else.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. STEVENS. Yes.

Mr. ROBERT C. BYRD. The Senate can do exactly what the Senator says. It can refer this to the committee, the committee can put it in a box, lock the box, and forget about it and that is the end of that bill.

Mr. STEVENS. And bring another bill and send it over.

Mr. ROBERT C. BYRD. Bring out another bill.

But with the time restrictions that are upon us, I think that would be the end of it.

Mr. STEVENS. I understand, but it can be done. I just do not believe that the impact, we cannot do indirectly what in committee we cannot do on the floor, is exactly correct, with due respect to the occupant of the Chair.

Mr. ROBERT C. BYRD. The Chair is exactly correct, that the Senate cannot do indirectly that which it cannot do directly in respect of S. 622. But if it wants to put S. 622 in the committee and put it in cold storage until the spring thaws come, it can do that. In the meantime, time permitting, it could bring out another bill. But therein lies the problem.

Mr. STEVENS. I will not belabor the Senate tonight, but it does seem to me there are other questions about this bill the way it has been drafted.

I might say again with all due respect, because I have high respect for the staff

that sits behind the manager of the bill, regarding Alaskan oil, which, incito my knowledge, the minority staff was not in on the drafting of the bill at all. To my knowledge, there are some changes that have been made in this bill that are different from the ones in the last draft of the bill that I saw in conference. I do not argue with them; I just have not had time yet to understand whether I want to argue with them. That is a frustrating thing. This bill is going to cost my State, I would estimate, between 100,000 barrels to 500,000 barrels a day in terms of the impact of this bill.

As far as I am concerned, it is going to put exploration for new oil in my State in a permanent deep freeze for 40 months. Almost every rig in my State is stacked now. There is only one seismic crew operating in Alaska today. Alaska is an area one-fifth the size of the United States. All those rigs should be active in view of the intense demand for oil. I just believe that somehow there ought to have been another way for us to have an expression.

I hasten to admit to my friend that I was operating under the feeling that perhaps we might get a second go-round at this. But now that that question of a veto seems to be on a teeterboard, I am examining the language just a little bit more. I find some language, as I said, that I am not familiar with.

For instance, I do not know the impact of the provisions of section H, with regard to judicial review. That is on page 90. I am not saying I quarrel with them. It is just that that is new language as far as I am concerned. It pertains to judicial review of the amendment dentally, is limited to the trans-Alaskan pipeline. I argued that in conference and lost. I do not believe it should have been so limited.

What is the impact of that judicial review limitation if the judicial review is sought by my State?

The Senator from Ohio may want to present something from the staff in the morning.

Mr. GLENN. That is correct. We have a statement.

Mr. STEVENS. I believe my State may well want to challenge that determination by the President, the way I understand the FEA's attitude at the present time. I wonder, does that judicial review section limit my State as to the findings that it may challenge if the President makes an inadequate finding?

Mr. GLENN. We would like to address the issue raised by the Senator from Alaska with a statement for the RECORD in the morning. We have the scope of judicial review statement with us which can be printed in the RECORD. I will not read it all tonight. It is a number of pages. It should clarify that.

Mr. STEVENS. Again, I do not want to prolong the Senate tonight, but I do believe that there are some of these things which we should go into in depth tomorrow to make certain that there is no misunderstanding. Not that we may be in total disagreement, but at least so that we understand what is meant by some of the changes made in the final draft of the bill as it came out of the conference committee.

I appreciate that statement and will read it tomorrow morning.

Mr. GLENN. Mr. President, I will ask unanimous consent that a statement entitled "Summary Analysis of the S. 622 conference report," by the Library of Congress, Congressional Research Service, be printed in the RECORD. Will the staff also please submit tomorrow for the RECORD the statement entitled "Judicial Review of Oil Pricing Policy?"

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

ENERGY POLICY AND CONSERVATION ACT—SUMMARY ANALYSIS OF THE S. 622 CONFERENCE REPORT

INTRODUCTION

The Energy Policy and Conservation Act of 1975, reported from Conference on December 8, 1975, marks the culmination of more than two and a half years of almost continuous debate by the 93rd and 94th Congresses legislation to provide standby energy emergency authorities as well as longer run measures to conserve existing fuels and to increase the volume of domestic energy supplies.

As reported by the Conference Committee, the text of the bill consolidates provisions of five major bills introduced in the 94th Congress—H.R. 7014, the Energy Conservation and Oil Policy Act; S. 622, the Standby Energy Authorities Act; S. 677 the Strategic Energy Reserves Act; S. 349, the Energy Labeling and Disclosure Act; and S. 1882, the Automobile Fuel Economy Act—and amends and substantially extends the provisions of the expiring Emergency Petroleum Allocation Act of 1973.

Many of the provisions are very similar to those in the predecessor bill of the 93rd Congress, the National Energy Emergency Act which had been equally hotly debated. This bill was revised by literally hundreds of amendments, vetoed, and twice reintroduced before that Congress adjourned. If would be a mistake, however, to infer from this that there is little difference between the two. On the contrary, there appear to be major shifts in both the mood of Congress and the intent of the current legislative action.

It is indicative that the term "emergency" has been dropped from the title of the bill, the word "temporary" from the statement of the purposes, and that the termination date for most of the key provisions is now not two years hence but five.

Overburdened with detail as are the 123 sections of the bill, there may be seen throughout clear signs that this Congress is assuming both authority and shared responsibility for the outcome of the rigorous tasks required to shape a new energy policy for the nation's future.

The following brief summary highlights major provisions of the bill under the following five titles:

I. Matters Related to Domestic Supply availability

II. Standby Energy Authorities

III. Improving Energy Efficiency, including

IV. Petroleum Pricing Policy and Other Amendments to the Allocation Act

V. General Provisions

TITLE I.—MATTERS RELATED TO DOMESTIC SUPPLY AVAILABILITY

Part A.—Domestic Supply

Coal Conversion

The authority of the Federal Energy Administrator is extended to direct powerplants, and other major fuel burning installations, to convert to the use of domestic coal. All powerplants that have a coal-burning capability on June 22, 1974 or acquire it thereafter would be required to use coal. In many areas, however, particularly in large urban areas this requirement could conceivably conflict with air quality standards. Some plants, PEPCO's Anacostia plant, for example, have recently been ordered to shift from coal to oil. Further reconciliation of these two goals will probably be necessary.

Incentives To Develop Underground Coal Mines

The legislation authorizes the FEA to guarantee loans to increase coal production by encouraging new market entry. The total guarantees to any person (or company) are limited to $30,000. The aggregate outstanding principal amount of loans guaranteed may not exceed $750 million and only 20% that amount can be used to develop coal which is not low in sulfur content. Eligibility restrictions will limit the loans to very small operators. Maximum interest rates are not specified nor are provisions for them discussed. There is no provision for penalties in cases of non-payment or for companies that already having financing problems. The cost of opening a new mine is so large and the cost of equipment so great that a loan of $30,000 would be only a very slight incentive. Because participation is limited only to small operators of underground low-sulfur coal mines, the volume of new production that it might stimulate is automatically reduced.

Domestic Use of Energy Supplies and Related Materials and Equipment

The President is given the authority to restrict exports of coal, petroleum products, natural gas, or petrochemical feedstocks as well as equipment necessary for further exploration, production, refining, or transportation of energy supplies. Exceptions are allowed for exchanges, for increased transportation efficiency, and for the historical trading relations with Mexico.

Materials Allocations

This section amends the Defense Production Act to authorize the President to require allocation or priority performance on contracts relating to supplies of materials and equipment needed to maximize domestic energy supplies. The authority may be used only if such supplies are scarce, critical, and essential to energy production, processing, distribution, conservation, or the construction and maintenance of energy facilities. This authority expires December 31, 1984. The bill provides that this special authority would continue even if the Defense Production Act of 1950 were otherwise to expire.

Prohibition of Certain Lease Bidding Arrangements

Increased competition in the oil industry is the objective of this Section. Joint venture bidding by major oil companies or their affiliates in the development of crude oil or natural gas on the Outer Continental Shelf is prohibited. A major oil company is defined as one producng in excess of 1.6 million barrels of crude oil, natural gas liquids, and natural gas equivalent per day. This restriction is quite similar to a rule recently made by the Interior Department on a temporary basis. The bill also requires a study to be made for similar limitations on crude oil, natural gas, natural gas liquids, coal, and oil shale on other Federal lands.

Production of Oil and Gas at the Maximum Efficient Rate and Temporary Emergency Rate

The President is authorized to require the production of crude oil and natural gas from designated fields at the maximum efficient rate of production or the temporary emergency production rate on Federal lands. The states would still set the MER and TEP for areas, except for Federal lands, within their borders. During a severe energy supply interruption, the President may require that any field in any state be produced at the maximum levels allowed by those states. MER's

and TEP's may be set by the Secretary of the Interior for fields on state land that are unitized with Federal lands and in energy emergencies production levels may also be set.

Part B.—Strategic Petroleum Reserve

A Strategic Petroleum Reserve would be established for storage of up to 1 billion barrels of petroleum products and not less than 150 million barrels within three years of enactment. The purpose of the reserve is to reduce the impact of petroleum product supply disruptions and to carry out obligations under the international energy program. An Early Storage Reserve is also established to meet near-term emergencies. It is not clear if the term "petroleum products" includes crude oil, for it is mentioned separately in other parts of the bill. If the term is not construed to be inclusive, it could be an oversight in the language of the section.

A plan for the Reserve is to be prepared and transmitted to Congress by December 15, 1976. Within seven years the volume of crude oil in the Reserve is to be equal to the total volume of crude oil imported during a base period, within 18 months 10%, within three years 25%, and within 5 years 65%. In this section the reference is to crude oil rather than to petroleum products. No limitation is placed on cost and siting of the Reserve or related facilities, although this and several other considerations are to be included in the Strategic Petroleum Reserve Plan. The impact of the acquisition of such large amounts of petroleum on world market prices and on competition within the petroleum industry is to be taken into account.

An Industrial Petroleum Reserve may also be established with up to 3% of the oil imported or refined being placed in storage. A Regional Petroleum Reserve in which demand for residual fuel oil and other products exceeds 20% of the demand for the preceding 24 months is also established. Authority is given to the Administrator of FEA to implement the reserve by storing crude oil produced from Federal lands including the Naval Petroleum Reserves, royalty oil, and oil purchased or received in trade. Drawdowns would be permitted by the President only in accordance with the distribution plan.

TITLE II.—STANDBY ENERGY AUTHORITIES

Part A.—General emergency authorities

The Conference bill requires the President to transmit to Congress, within 180 days after the date of enactment of this legislation, one or more energy conservation contingency plans and a gasoline rationing contingency plan. Additional such plans could be submitted at any time. No such contingency plan could become effective unless it was approved by a resolution passed by each House of Congress within the first period of 60 calendar days of continuous session of Congress after such transmittal, in accordance with procedures for expedited congressional review. No such approved plan could be put into effect unless (1) the President found that a severe energy supply interruption required such implementation, and he transmitted to Congress a request to put such plan into effect, and (2) neither House of Congress disapproved such request within the first period of 15 calendar days of continuous session of Congress after such transmittal. Such an approved plan could be put into effect without such additional review by Congress if and to the extent that the President determined, during a "7 percent shortfall period" that such implementation was necessary to meet the obligations of the United States under the international energy program. A "7-percent shortfall period" was defined as a period commencing on a date when the President determined countries who are parties to the international energy program have sustained a reduction in oil supplies equal to at least 7 percent of average daily consumption during the base period and ending 60 days after the date on which he finds that this condition no longer exists.

Energy Conservation Contingency Plans

An energy conservation contingency plan is defined as a plan which imposed restrictions on the public or private use of energy which were necessary to reduce energy consumption. No such plan could provide for the imposition of gasoline rationing or any tax, tariff, user fee, or minimum price for any petroleum product or for any credit or deduction in computing any tax. Energy conservation contingency plans could remain in effect for the period specified in the plan up to 18 months. States or political subdivisions could be exempted from an energy conservation contingency plan if the President determined that a comparable program or special circumstances exist in that jurisdiction.

Gasoline Rationing Contingency Plan

The Conference bill requires the President to prescribe a gasoline rationing contingency plan, as part of the regulation under section 4(a) of the Emergency Petroleum Allocation Act of 1972.

As amended by the bill such a plan must provide for the establishment of a program for the rationing and ordering of priorities among classes of end-users of gasoline and for the assignments of rights entitling certain classes of end-users to obtain gasoline in precedence of other classes. No gasoline rationing contingency plan could be put into effect unless (1) the prerequisites for implementation of an energy conservation contingency plan were satisfied, and (2) the President determined that, without such rationing plan, all other practicable and authorized methods to limit energy demand were inadequate to achieve the objectives of section 4 (b) of the Emergency Petroleum Allocation Act. The President is directed to make appropriate adjustments in the petroleum allocation program in furtherance of a gasoline rationing contingency plan which is in effect. The President is directed to provide for the use of local boards whose composition reflected the community as a whole of States or their political subdivisions to receive petitions from end-users of gasoline and to order reclassification or modification of any determination made with respect to the end-users' rationing priority or entitlement. No gasoline rationing contingency plan could impose a tax, provide for a tax credit or deduction, or impose any user fee except to cover administrative costs. A gasoline rationing plan could remain in effect for up to 18 months.

It is indicative of the extreme reluctance Congress has shown in respect to authorizing consumer end-user rationing that, although the President is permitted to order any other approved contingency plan to be put into effect in the case of an extreme interruption in energy supply without again obtaining Congressional consent, the gasoline rationing contingency plan is an exception to this authority and must be first resubmitted to offer Congress an opportunity to indicate disapproval.

Part B.—Authorities with respect to international energy program, international oil allocation and voluntary agreements

The President is authorized to require that the energy industry make arrangements to meet U.S. obligations in the international allocation of petroleum products. Such action would be immune from the antitrust laws. The Attorney General and the Federal Trade Commission are to be involved in the development of agreements and plns to propose alternatives which would avoid or minimize anticompetitive effects. Reports to Congress are to be made by both agencies every six months. Authorization is also provided for the establishment of an advisory committee. Exchanges of information are also authorized, except for material considered proprietary or trade secrets, unless the President certifies that it will not be disclosed because of adoption of adequate security measures by IAE. This information is to be transmitted only if other countries are supplying comparable data.

TITLE III.—IMPROVING ENERGY EFFICIENCY

Part A.—Automotive fuel economy

The Act requires that the average fuel economy for passenger automobiles manufactured after the 1977 model year must be no less than 18 MPG in 1978, 19 MPG in 1979, 20 MPG in 1980 with future increases to be set by the Secretary of Transportation at the maximum feasible level. By 1985 the standard is to be 27.5 MPG. Each year the Congress is to review these levels and to determine the ability of the industry to meet the 1985 levels. Manufacturers of less than 10,000 automobiles per year may be exempted. Any manufacturer may apply for modification of its average fuel economy standard. Each manufacturer would be required to attach to each automobile a label indicating its fuel economy, the estimated annual cost of operation, and the fuel economy range of comparable automobiles. This section is very similar to a comparable provision in H.R. 6860, which is still pending.

If a manufacturer or importer fails to meet the required average fuel economy standard, he would be liable for a civil penalty, which could be waived or modified under certain conditions. Conversely, if a manufacturer exceeds the fuel economy standard, he would be entitled to a credit of $5 for each extra $\frac{1}{10}$th of a mile per gallon multiplied by the number of units manufactured to be applied to future model years. The penalty for noncompliance would be calculated the same way, plus an additional $10,000 per day for the duration of the violation period. A program to test the fuel economy improvement potential of retrofit devices would also be initiated.

Part B.—Application of advanced automotive technology

This part would establish within the Department of Transportation an advanced automotive technology program designed to improve automobile performance in terms of fuel economy, environmental impact, safety, damage susceptibility, reliability, and other characteristics. A report to the Congress within two years of enactment is required which would indicate the need for Federal support for prototype construction.

Part C.—Energy conservation program for consumer products other than automobiles

The Energy Policy Act would require test procedures for and energy efficiency labeling of major home appliances and certain other consumer products using more than 100 kilowatt-hours. This information is essential to consumers in making an informed judgment in the purchase of appliances. The label must include representative annual operating costs associated with the use of these products unless the FEA determines that labeling would not be feasible or would not be likely to assist consumers in making purchasing decisions.

If the FEA prescribes a labeling rule for a class of major household appliances and then finds (1) that labeling will not suffice to induce manufacturers to produce (or consumers to purchase) products of that class which achieve the maximum energy efficiency which is technologically feasible, and (2) that the benefits of increased energy efficiency outweigh any increased consumer costs and any decrease in utility of the product, the FEA is authorized to prescribe an energy efficiency performance standard for that class of product.

The FEA would be required to exercise this authority in certain cases where industry is unable to achieve energy efficiency improve-

ment targets which would be set by the FEA for major home appliances. These targets would be set at the maximum level which would be economically and technologically feasible, and would require at least a 20-percent overall improvement in energy efficiency for new major home appliances in 1980, in comparison to 1972 levels.

Part D.—State Energy Conservation Plans

This legislation authorizes a $150 million Federal grant-in-aid program ($50 million in each of three years beginning in FY 76) to assist States in developing and administering State energy conservation programs. These programs will have as a target a 5% reduction in energy consumption by 1980 below levels projected for that time. The legislation identifies conservation measures to be implemented by the States, but calls for administration of the programs on the State and local levels. State programs would include the following energy conservation measures:

Lighting efficiency standards and restrictions on hours of public buildings;

Programs to promote carpooling, vanpooling, and public transportation systems;

Energy efficiency and insulation requirements for new and remodeled buildings.

Within these Federal guidelines, States would establish conservation programs in a manner tailored to local economic geographic and climatological conditions. This legislation thus provides impetus, direction and financial assistance for energy conservation while protecting the States' interest in self-determination and local control.

Part E.—Industrial Energy Conservation

The goal of the industrial efficiency program is to increase the national average industrial energy efficiency by the maximum feasible amount by January 1, 1980. The Energy Policy Act recognizes that industry must share responsibility for attaining the goals of energy independence and wise utilization of scarce resources. The Project Independence Blueprint estimates that the energy equivalent of 400,000 to 600,000 barrels of crude oil per day can be saved in the industrial sector in the 1980's.

Industrial energy efficiency targets would be set for the ten most energy-intensive industries. Each target would represent the maximum possible improvement in industrial efficiency which a particular industry could achieve by January 1, 1980. The 10 most energy-intensive industries would be required to report annually on their programs in attaining energy-efficiency targets.

Part F.—Other Federal energy conservation measures

In addition, all Federal agencies would be required to develop a ten-year plan for energy conservation. This plan would lead with lighting standards, construction guidelines, restrictions on hours of operation, thermostat settings and other conditions related to the operation of Federal buildings.

TITLE IV.—PETROLEUM PRICING POLICY AND OTHER AMENDMENTS TO THE ALLOCATION ACT

This title includes what are probably the most controversial provisions of the entire Act. They are controversial not so much because of the still differing views over the quantitative levels of petroleum prices but because the basic confrontation has been and remains the far more fundamental one of public vs. private mangement of those prices.

Two Congresses have been debating this issue now for more than two years. Should the management of petroleum prices be left to the private producers and distributors of petroleum products and their mutual adjustments in the market or should those prices be subject to regulation by the executive within criteria laid down by Congress and closely monitored for conformance? The Conference bill provides an answer which, while clearly a compromise on levels of prices, accepts and asserts a right and responsibility in management and monitoring of those prices in the market as a whole.

A.—Effect of price level provisions

As reported in the Conference bill, the substantive provisions are likely to produce little if any reduction in the composite acquisition costs for crude oil paid by domestic refiners, and consequently little if any reduction in prices to the end-use consumer.

Once the acquisition costs of imported oil (now running in excess of 4 million barrels a day as compared with slightly over 8 million barrels a day from domestic crude) are equalized through the entitlements program, that averaged price could easily be $1.00 to $1.50 higher than the "weighted average first sale price" for all domestic crude of $7.66 mandated as the new domestic price. This may be the case even if the President's $2.00 import fee is removed and even if there is no additional upward pressure from companies who have withheld some $1.4 billion allowable "banked" prices increases and who may decide to pass them through to consumers.

The Conference report includes an explanation of reason why the full "rollback" of $1.09 in first sale average prices of domestic crude, highlighted in the official summary, may not be reflected immediately in consumer prices and may be offset by pass-throughs of banked costs. It does conclude that at least "prices will be less in future months than they otherwise would have been under the continuing of the present program."

Whatever level composite domestic-imported crude oil prices reach, the bill, if enacted, would insure that domestic crude oil prices *could* be maintained below the established world market prices established by the OPEC cartel.

B.—Effect of management provisions

On the other hand, the Conference bill reflects important and substantive changes which strengthen the authority for and mandate the participation of both the Executive Branch and Congress over a period which would extend until September 30, 1981. This does not mean that all allocation and all price controls would continue without change until that time. On the contrary, the bill provides for a shift from mandatory to discretionary authority in pricing regulations for the President 40 months after enactment, and for a much earlier shift from mandatory to standby authority for the continuing allocation regulations, if the President so recommends and Congress does not disagree.

Nevertheless, the combined effect of the pricing and allocation provisions of Title IV marks an assertion of the right of public regulation and surveillance of petroleum prices and responsibility for maintaining authority to correct inequities in both price and distribution of domestic and imported crude and refined petroleum products which is unprecedented in peacetime in the United States in a period not clearly identified as an emergency.

C.—Selected provisions

Among the many specific provisions of Title IV which give effect to this substantive strengthening of public responsibility for petroleum price management are the following:

Formal endorsement of and authority for continuing the "entitlements" program, under which the various domestic and imported prices are equalized among refiners with varying access to less expensive crude. (The program was launched by FEA in January 1975 and an earlier simple extension of the Emergency Petroleum Allocation Act from February 1975 to August 15, 1975 had been premised on Congressional understanding that the entitlements program would be undertaken by FEA.)

The previously floating uncontrolled price for "new", "released" and "stripper well" oil which makes up about 40 percent of all domestically produced crude oil was replaced by a ceiling to be imputed from a "maximum weighted average first-sale price" for all domestic crude of $7.66 per barrel. As described in the Conference report, this could be as high as $11.28 for all previously uncontrolled domestic oil, provided that "old" oil prices were continued at present levels of $5.25. The old stripper well provisions were explicitly repealed. Old oil was redefined as that volume of crude oil produced from a property in a month which is equal to or less than the volume produced and sold from such property in the months of September, October and November of 1975.

The President is given authority to adjust whatever prices are promulgated upward under prescribed criteria and subject to Congressional veto by as much as 10 percent a year, of which no more than 3 percent can be justified as needed to encourage additional production from difficult and high cost properties. Upward adjustments for inflation are permitted within this formula, again subject to criteria which seek to prevent undue weighting in the inflation rate from increased energy costs themselves. Even these levels can, under certain conditions, be increased if Congress agrees to the Administration's arguments.

Monitoring of prices at all levels of production and distribution would be tightened in timeliness and detail, and further audited by the General Accounting Office.

Any regulations and changes proposed are subject to Congressional right of disapproval over a period of 15 days, rather than the 5-day period provided for in the Old Emergency Allocation Act.

The President is directed to submit to Congress on February 15, 1977, an analysis of energy supply, demand and import relationships that have evolved under the Act.

The President is required to submit to the Congress on April 15, 1977, a report on the impact of anticipated Alaskan oil production levels and prices on domestic oil prices and on incentives to increase and maintain production in the lower 48 states. The President may then propose, subject to Congressional review, the exclusion of up to two million barrels per day of Alaskan production from the composite price ceiling and the establishment of a separate ceiling for this production not to exceed $11.28 per barrel as adjusted for inflation.

The bill permits conversion of allocation authority to standby status at an early stage if the President recommends and Congress agrees; converts the oil price control authority described in the Act to standby status at the end of 40 months; provides that the standby authority terminates after five years.

The President is specifically prohibited from using any authority in this legislation to prescribe minimum prices for crude oil, residual fuel oil, or any refined petroleum product. Establishment of a "floor" price for crude oil was a policy which the Administration has urged be adopted to encourage domestic production.

New discretionary authority is provided under which the U.S. government may exercise the exclusive right to import and purchase all or any part of the crude oil, residual fuel oil, and refined petroleum products of foriegn origin for resale in the United States.

In exercising this authority, the President is required to "endeavor to buy and sell without profit or loss," except that he may in individual cases sell on the basis of competitive bid any oil or oil product "at a price above or below the cost of such oil or product if, in the judgment of the Presi-

dent, such sales may result in progress toward a lower price for oil sold in international commerce."

New discretionary authority is provided under which the President may "require adjustments in the operations of any refinery in the United States with respect to the proportions of residual fuel oil or any refined petroleum product" if this is necessary to assure adequate volume of any priority product in the event of shortages. The bill omits a House-passed mandatory ceiling that would have limited the consumption of gasoline to the level of 1972–1974 and would have further reduced consumption by 2 percent per year for each of the next three years.

He may also require maintenance of up to 90 days inventory of crude or oil products at any stage from production through distribution, except that no one is required to make physical additions to their existing storage capacity in order to comply.

V.—GENERAL PROVISIONS

The expanded data collection authority, which is included among the general provisions, provides one of the most important of the new energy policy management measures included in the bill. The authority of the Federal Energy Administration to gather information under the Energy Supply and Environmental Coordination Act of 1974 is extended until December 31, 1979. The Comptroller General is authorized to conduct detailed verification audits of books and records of any person or corporation in the energy industry who is required by this or other laws to furnish such information or if requested to do so by a full congressional committee with legislative or oversight jurisdiction. Furthermore, the Comptroller General may conduct verification examinations of financial information relating to energy resources and products of any vertically integrated petroleum company. A civil penalty of up to $10,000 is imposed for failure to comply with an inspection order, and each day of failure to comply will constitute a separate violation.

Among the many lessons of the Arab oil embargo and the subsequent experience of coping with the serious petroleum shortages which developed was the recognition of the difficulty of shaping and executing new policies in the absence of any reliable and current energy data base other than that supplied by the industry itself.

It is the intent of the 94th Congress that this weakness be corrected under the authority provided in this Act.

SCOPE OF JUDICIAL REVIEW—OIL PRICING POLICY

It is important to explain the scope of judicial review called for under Title IV relating to oil pricing policy. It is inaccurate to argue that the new section 8 of the Emergency Petroleum Allocation Act of 1973 would necessitate lengthy, detailed, expensive and time-consuming administrative proceedings or court review. In fact, just the opposite is the case.

This new provision establishes a pricing formula for domestically-produced crude oil which provides for an initial price but authorizes gradual increases in the prices received by domestic producers over a 40-month period. In determining the oil prices, there are two different types of procedures employed, depending on the situation.

In the first type of procedure, the President makes certain determinations based on an enumerated list of "findings." For example, in the new section 8(b)(2) which would be added to the Emergency Petroleum Allocation Act of 1973, the President is mandated to establish price ceilings and classifications of crude oil. Paragraph (b)(2) of that section would prohibit an increase in the price of any volume of old crude oil production from any properties unless the President finds that the increase (a) will give positive incentives for enhanced recovery techniques or deep horizon development; (b) is necessary to take into account declining production from such properties; and (c) is likely to result in a level of production from such properties beyond that which would otherwise occur if no such amendment were made.

This type of procedure, and others like it under the oil pricing scheme, are in the nature of a rule-making action pursuant to section 553 of the Administrative Procedure Act. As such, the President would be required to publish his proposed findings and proposed change in the regulation and give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation. There should be no opportunity for cross-examination. Section 706 of the Administrative Procedure Act further defines the scope of review in such a rule-making procedure as "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law". Thus, given this narrow scope of review, decisions made by the President in this type of proceeding will not be buried in a myriad of extended court review.

The second type of procedure is identical to the first at the administrative level but provides for a different review mechanism. In the first place, the President must give Congress an opportunity to disapprove the action. In the new section 8 which S. 622 would add to the Emergency Petroleum Allocation Act, there are three circumstances where this procedure applies:

(1) A proposal to modify the 3% incentive adjustment and the 10% ceiling on adjustments if the President finds that such a modification is likely to result in an increase in domestic production;

(2) A proposal to continue or modify the production incentive or the adjustment limitation, or both; and

(3) A proposal to exclude up to two million barrels per day of Alaskan oil production from the composite price ceiling and the establishment of a separate ceiling for this production, not to exceed the highest price granted to significant volumes within the composite.

With respect to this type of procedure, where the President's proposals must first be submitted to Congress, the new section 8(h) specifically defines and limits the scope of review. This subsection provides that the reviewing court may not hold an amendment of the oil price unlawful or may not set aside such amendment on the grounds that the findings made by the President were not adequate to meet the requirements of the new section 8 provisions or that they were (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) unsupported by substantial evidence; or (3) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. Under section 706 of the Administrative Procedure Act, the Court could hold the President's action unlawful or set aside the action only if it was found to be (1) contrary to Constitutional right, power, privilege, or immunity; (2) in excess of statutory jurisdiction, authority, or limitations, or short of statutory rights; and (3) without observance of procedure required by law.

These limitations on the scope of review in this type of procedure where Congress must first be given the opportunity to disapprove are appropriate because this is a new, hybrid type of administrative action. Here, the action involves active participation by both the Executive and the Legislative branches. The reference to the substantial evidence test and de novo test in subsection (h) was included to assure that this hybrid action could not be subject to such standards. No implication can be drawn from such reference that any other procedure in section 8 is subject to the substantial evidence test or to the de novo court review.

OPPOSITION TO ENERGY POLICY ACT

Mr. DOLE. Mr. President, the junior Senator from Kansas opposes passage of this bill, the Energy Policy and Conservation Act.

It is a delusion for consumers.

It is detrimental to the national interest.

It would decrease domestic oil production and increase our dependence on foreign oil.

It would be worse than the existing program. That is why I introduced a bill yesterday, S. 2785, to extend until March 15, 1977, the Emergency Petroleum Allocation Act which contains the authority for the existing price control program on the oil industry.

The primary purpose of that bill is to show that there is a better approach than that contained in the conference report on S. 622, the Energy Policy Act. The purpose in introducing this bill is to show that S. 622 is not a step forward. On the contrary, it is a step backward. It is even worse than the existing price control program.

My purpose in introducing S. 2785 is not to say that a simple extension is the best possible approach to achieve energy independence. It is simply to say that a simple extension is better than the legislation that is now in its final stages.

The second purpose of my bill is to provide a rallying point for those Members of the Senate who recognize that the energy policy bill is contrary to the national interests. This is particularly important in view of continued silence from the White House as to whether the President will sign or veto the Energy Policy Act.

The prevailing argument in favor of the President signing S. 622 into law seems to be based on the argument that it is the best compromise energy policy that can be obtained from the Congress. It is my strong feeling that such an argument is wrong.

The introduction of a simple extension is intended to provide other Senators the opportunity to recognize that there is a better approach to our national energy policy. One approach—and not necessarily the best approach—is a simple extension of the existing program.

BETTER FOR NATIONAL INTEREST

There has been almost universal acceptance in this country that it is in our best national interest to obtain self-sufficiency in our own energy production, and thereby reduce our dependence on foreign produced oil. With nearly 40 percent of our total petroleum consumption coming from foreign sources, it is obvious that we have a long way to go.

The existing program of price controls does not move us toward energy independence as quickly as other programs might. However, it does maintain market prices for new stripper and high-cost recovery crude oil. This market-oriented aspect of the existing program has led to some important and striking results. In my own State of Kansas, for example, the oil industry reached a production

peak in 1956. Oil production there has been declining in the 20 years since. This year in the first 10 months of 1975, that trend has been broken. For the first time in all those years, we have had a reversal of the decline and an actual increase in production.

That increased production could not and certainly would not have occurred without the tremendous market incentive that exists under the present system of controls.

The Energy Policy Act, S. 622, would go the opposite direction. It would establish price controls on new, stripper, and high-cost crude oil for the first time. The market incentive that has existed in these categories of production would be reduced.

The reduction of incentives would in turn reduce our domestic energy production.

If the crude price rollback is enacted and if there is any reduction in retail gasoline prices, then there would be a further increase in our petroleum consumption in this country. Greater consumption of petroleum here means a need to increase imports of foreign-produced oil. It would further increase our dependence on foreign oil production.

In short, S. 622, the energy policy bill, would strengthen the hand of the oil-exporting countries to further increase their prices and to force us to follow their dictates. A simple extension of the existing program does not reduce our dependence as quickly as I would like, but still it is far better than the policy contained in S. 622.

NO DELUSION OF CONSUMERS

An extension of the existing program does not attempt to give consumers the illusion that there is an easy or inexpensive way to achieve energy independence.

In my opinion, the supporters of the oil price rollback contained in S. 622 are attempting to convince the public that their bill will make it easier on consumers. In the long run, it clearly will not, since it will increase our dependence on foreign-produced oil, as I have already discussed. Even in the short term, the energy policy act may not make things any easier for consumers.

As I understand, a 2.5 cents-per-gallon decrease in retail gasoline prices is expected to accompany the oil price rollback in the Energy Policy Act. However, the reduction in retail prices may, in fact, be nowhere near 2.5 cents per gallon and may not even result at all. This is because several factors have not been taken into consideration in calculating the 2.5-cent decrease. For example, there are the banked cost of refineries which are costs that refiners have simply saved and have not passed on through to consumers. There is also the problem that all cost increases resulting from the most recent price increase of the petroleum exporting countries have not been passed through in the retail price of gasoline. Third, there have been increases in the cost of transportation and other overhead expenses that would tend to offset the price rollback. Finally, as I understand, it was assumed that the average price of crude oil for the purposes of calculating the 2.5-cent retail price decrease is $8.75 per barrel. In actuality, the cost of crude oil on an average may not be that high, so that any rollback in crude oil prices would result in a retail price decrease of less than 2.5 cents.

So, all these factors tend to offset the predicted 2.5-cents-per-gallon retail price decline. In the end, consumers would not only find themselves more dependent on foreign oil, but would possibly also receive the nasty shock of not even receiving a small price decrease in the gasoline and petroleum products they buy.

A continuation of the existing program makes no pretense of any kind of rollback or decrease in retail prices. It simply recognizes the fact that we are heavily dependent on foreign-produced oil and that if we are ever to achieve independence from the whims of those producers, we must greatly expand our own petroleum and energy production in this country.

Mr. President, there are numerous other things wrong with the Energy Policy Act which I have not mentioned. My discussion has been concerned only with the primary difficulty with this legislation. This is not to say that there are also some good provisions in S. 622. It is my hope that we might reenact those advantageous provisions at a later date.

But my primary purpose is to call attention to the fact that enactment of the Energy Policy Act would be a step backward from what we already have now. It is my hope that others in the Senate will recognize this fact and vote against the conference report on S. 622.

A strong showing in opposition to S. 622 will hopefully encourage the President to veto the bill, as he should do in the best consumer, public, and national interest.

Mr. JACKSON. Mr. President, section 461 of the Energy Policy and Conservation Act amends the Emergency Petroleum Allocation Act of 1973 by adding a new section 18 which extends that act, as amended, and the authority to promulgate regulations and issue orders thereunder, to September 30, 1981. Section 461 also makes clear that the mandatory requirements of the Allocation Act become discretionary at the end of 40 months.

Mr. President, section 463 of the Energy Policy and Conservation Act, provides that the amendments made by that act to the Emergency Petroleum Allocation Act of 1973 shall be effective as of midnight December 15, 1975. The clear purpose of this section is to avoid any hiatus or gap during which violations of the Federal Energy Administration's regulations would not be subject to price adjustments and civil sanctions.

Mr. President, when the Allocation Act temporarily lapsed in September, and again in November, I asked that a Library of Congress study and a legal memorandum addressing the retroactivity issue be printed in the RECORD. I ask unanimous consent that these documents again be printed in the RECORD, as well as a copy of an FEA ruling of September 17, 1975.

I ask that these documents be printed in the RECORD simply to put all parties on notice that they shall continue to be subject to applicable FEA regulations, notwithstanding the expiration of the Allocation Act at midnight last night.

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

[The Library of Congress, Congressional Research Service]

EFFECT OF RETROACTIVE EXTENSION OF THE EMERGENCY PETROLEUM ALLOCATION ACT ON CURRENT OIL PRICE CONTROLS

Circumstances surrounding enactment of legislation extending the Emergency Petroleum Allocation Act have given rise to a serious question regarding its impact on existing relevant statutory and implementing regulation. Specifically, it is asked whether any hiatus occurring between expiration on August 31, 1975, of the current price regulations under the Emergency Petroleum Allocation Act, as amended, 15 U.S.C.A. 753(a), (g)(1) (Supp.), and an assumed congressional override of an expected presidential veto of S. 1849, the Emergency Petroleum Allocation Extension Act, would permit petroleum producers to irrevocably revise oil prices upward.

That Congress as a general matter could have properly legislated a price rollback in the present circumstances seems fairly clear. See, generally, *Amalgamated Meat Cutters & Butcher Workers* v. *Connally*, 337 F. Supp. 737 (D.C.D.C. 1971), and authorities cited therein. Because there exist statutory price setting authority and implementing regulation in place, Congress instead chose to extend it for an additional period in order to give itself time to consider a broad attack on the Nation's energy problems. For reasons hinted above and soon to be examined, such authority may expire before the recently adopted extension becomes effective.

Congress, and particularly the House of Representatives which was acutely aware of the possible gap between expiration and reinstatement of the price control law and regulation, took the position that extension, if and when effective, would be retroactive to August 31, 1975. Accordingly, if such action is valid, there would be no gap in the current price control mechanism when S. 1849 becomes law. Moreover, the clear intent of the Congress to have S. 1849 apply retroactively together with delaying its submission to the President for his signature until resumption of the current session, seems effective notice to all parties concerned that existing price levels are to be maintained through March 1, 1976.

Section 4(a) of the Emergency Petroleum Allocation Act, as amended, 15 U.S.C.A. 753 (a) (Supp.), gives the President authority to issue regulations fixing the price of petroleum products as well as allocating them. Current regulations fix the per barrel price of a substantial amount of domestically produced oil at $5.25. This latter is substantially below the world price (and even below the price of oil obtained from more recently developed domestic sources). 10 C.F.R. Part 212. However, the price regulation now in effect and the "authority to promulgate and amend [it] . . . expire at midnight August 31, 1975." 15 U.S.C.A. 753(g)(1) (Supp.). Because final House action on S. 1849 came on the eve of the congressional August recess and faces an all but certain Presidential veto, a hiatus of uncertain duration will likely result before the new March 1, 1976 expiration date becomes effective.

As will be noted shortly, key congressional spokesmen were aware that the resulting gap presented the oil companies with an opportunity to raise prices. Accordingly, they made legislative history clearly indicating that S. 1849 was retrospective legislation vio-

lation of which was undertaken "at the [violator's] peril".

That S. 1849 was intended to hold the present price line while Congress worked out a comprehensive energy program is unquestionable. In its report on the bill, the Senate Interior and Insular Affairs Committee declared its—

". . . strong [] belie[f] that a six month extension of the Act of essential to assure an orderly transition period for resolving the significant issue of domestic crude oil pricing. Without such an extension, there will be no opportunity either to phase out price controls gradually or to extend the Act with appropriate amendments for an interim period. Moreover, the abrupt termination of price control authority and the consequent increase in domestic prices may occur simultaneously with further price increases contemplated by the OPEC cartel this fall. This would place an intolerable burden on the economy and destroy any prospect of recovering from the current recession. . . .

"Because the Emergency Petroleum Allocation Act of 1973 contains the only existing authority to control prices of crude oil and petroleum products and to allocate fuels in time of shortage, the Committee believes it should not be allowed to expire. Accordingly, it is proposing a simple six month extension of the Act, without further amendment, from August 31, 1975 to March 1, 1976." Senate Report No. 94–220, at 2, 7.

During the course of the Senate debate on S. 1849, Interior and Insular Affairs Committee Chairman and floor manager on the legislation, Senator Henry Jackson, spoke of the adverse economic consequences likely to follow upon the lifting of oil price controls. He said:

". . . In addition to providing the authorities necessary for dealing with the shortage induced by the Arab embargo, the act has served to insulate the economy and the American consumer from the drastic petroleum price increases which followed.

"The act is now scheduled to expire on August 31, 1975. If it is not extended, . . . the two-thirds of domestic crude oil production now under price controls will jump abruptly from $5.25 to over $13 per barrel. With the President's $2 tariff, the cost to the U.S. economy of decontrolling old domestic crude oil—coupled with the higher costs for new and imported oil and intrastate natural gas—will amount to a staggering $33.5 billion per year. Assuming the OPEC cartel raises world oil prices by $2 this fall, . . . the total drain on the economy would approach $50 billion.

* * * * *

". . . S. 1849 extends the act for 6 months. Without such an extension there will be no opportunity either to phase out price controls gradually, or to extend the act with appropriate amendments for an interim period. Since the Allocation Act permits the President to increase crude oil prices, or exempt any category of petroleum from regulation, the issue of domestic crude pricing can and should be resolved while preserving the important protection provided by the act.

* * * * *

"The problem of exorbitant world oil prices and their adverse impact on the domestic economy and American consumers, coupled with the ever present danger of another embargo or other shortage condition, persuasively demonstrates the need for extending the Allocation Act an additional 6 months. The uncertain action of the oil producing cartel, which may raise world oil prices this fall by as much as $2 or $4 per barrel, further reinforces the case for maintaining a capability to control domestic crude oil prices in the next term." 121 Cong. Rec., p. 22548 (July 14, 1975). (Emphasis supplied).

Of course, the Senate did not directly consider the matter of retroactive application of the bill in so many words. At the time of the Senate's consideration of S. 1849—July 14 and 15—the lapse of price control authority was not imminent. Indeed, fully two weeks remained before the Congress would begin its summer recess. However, as clearly indicated by the remarks of Senator Jackson and others, the intent to retain unimpaired existing oil prices controls through March 1, 1976, is unmistakable. To all intents and purposes, this intent seems to be the equivalent of an outright *in haec verba* call for retroactive application.

The time situation was altogether different when the House considered the bill. It was now July 31 and the day before the beginning of a month long recess. The prospect of a gap in the price control authority, a foregone conclusion if the President as widely anticipated vetoed the measure, was a matter uppermost in the minds of supporters.

As Senator Jackson had before him, House Commerce Committee Chairman Harley O. Staggers stressed the need for a lid on oil prices for an additional period thereby giving the Congress sufficient time to develop a more comprehensive energy program. In his words:

". . . this bill contains interim extensions of certain energy authorities to allow an additional period of time for the Congress to work out a well reasoned energy policy.

". . . the provisions of the Emergency Petroleum Allocation Act are proposed to be extended beyond their August 31 termination date to March 1 of next year—an additional 6-month period. As my colleagues know, the Allocation Act constitutes the only existing authority for continuing price regulation of crude oil and petroleum products. A failure to extend this act would result in abrupt decontrol of existing price ceilings. Every economic analysis available to the committee indicates that abrupt decontrol holds great peril. Although different estimates of impact have been made, there is general agreement that resulting price increases would wound our economy, prevent recovery, and drive this Nation into a deeper recession. 121 Cong. Rec., p. 26181 (July 31, 1975).

Following similar supportive remarks by proponents of the legislation, Congressman John Dingell, Chairman of the Subcommittee on Energy and Power, and Chairman Staggers undertook to make it clear that the bill embodied retrospective legislation, that is, that it was to preserve the status quo ante midnight August 31, 1975 insofar as oil price controls were concerned. In brief, it was intended to preclude a gap in the current price control authority. Their remarks, in relevant part, follows:

Mr. DINGELL. Mr. Speaker, I have a question I would like to direct to the chairman of the committee in light of the comments I have raised.

There is a possibility of a veto of this extension. If a veto of this legislation does occur, there is a possibility that there would be a hiatus or a brief period during which there would be no authority to enforce the allocation and price control regulations relating to petroleum products, to supply relationships, to allocation and to entitlements.

Mr. Speaker, I am satisfied on the basis of reading the language in S. 1849 that it is the intent of the Congress that the extension of the allocation act included in S. 1849 take effect immediately and retroactively in the event of a veto and an override of that veto, and that there be no hiatus or gap during which violations of these regulations would not be subject to civil sanctions. Am I correct?

Mr. STAGGERS. Mr. Speaker, the gentleman is correct.

Mr. DINGELL. I am apprehensive that someone might interpret our actions today as failing to provide adequate notice to persons who might be affected by these regulations and it is my view that the consideration of this legislation at this time and the long history of the legislation, both in the House and in the Senate, makes it very plain that it is the intention of the Congress that there be no gap, no hiatus, and that the legislation be considered as following immediately and successively. That is to say, the allocation act as amended by this bill, if amended after the 31st of August, would none the less be read quite literally. As amended, the allocation act would continue, without interruption, to make enforceable the regulations. Thus, if this bill has not become law before August 31, and therefore, the authority to enforce the regulations under the EPAA should expire, if this bill becomes law thereafter, violations of the regulations during the interim would subject the violator to civil liability under the act.

The SPEAKER. The time of the gentleman from Michigan has expired.

Mr. STAGGERS. Mr. Speaker, I yield the gentleman 1 additional minute.

Mr. DINGELL. Thus, this legislation be considered as following immediately and successively upon expiration of the Emergency Petroleum Allocation Act on the 31st of August of this year at 12 o'clock midnight; is that correct?

Mr. STAGGERS. The gentleman is correct.

Mr. DINGELL. So, therefore, I might assume that all persons are necessarily on notice and there is no peril that this legislation would raise constitutional questions as to lack of notice by Congress regarding retroactivity in these matters; is that correct?

Mr. STAGGERS. The gentleman is correct.

Mr. ADAMS. Mr. Speaker, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Washington.

Mr. ADAMS. Mr. Speaker, I want to associate myself with the remarks of the gentleman from Michigan, the chairman of the subcommittee, and the gentleman from West Virginia, the chairman of the full committee, in the colloquy they have just finished. I am in support of the resolution—121 Cong. Rec., p. 26186 (July 31, 1975).

Congressman Bob Eckhardt, also a member of the Commerce Committee, rose "to further emphasize [the] point. . . because . . . it is extremely important." His remarks in this regard follow:

. . . That is, that this act does not permit for any hiatus between the termination of the present Allocation Act and its effective date. Of course, this act would not go into effect until a veto override, assuming there were a veto and then an override, but the act purports to take effect immediately at the termination of the Allocation Act. If there were a veto override, there would indeed be a hiatus during which prices might rise, but Congress would have given notice that such rise is made illegal if Congress ultimately prevails by a veto override. Clearly Congress has authority to act retroactively, and that retroactive effect would be unconstitutional when those acting with notice of Congress intention have deliberately acted at their peril.—121 Cong. Rec., p. 26186 (July 31, 1975).

Accordingly, "any increase in price during the hiatus period could result in treble damages against whose [sic] who deliberately raised prices above the level that Congress ultimately mandated." 121 Cong. Rec., p. 26186 (July 31, 1975).

When challenged by an opponent of the bill, Congressman Eckhardt, citing *First National Bank of* [sic] *Dallas* v. *United States*, 420 F. 2d 725 (Ct. Cl. 1970), stated that extensive nonstatutory notice prior to enactment regarding retroactive effect of a statute

constituted sufficient information in advance that if the act had retroactive effect such would not deny due process.

I was simply trying to make it clear that there is obviously extensive nonstatutory notice here and by this debate that the Allocation Act extension refers to and incorporates the Economic Stabilization Act, which provides for treble damages and other penalties and puts that into effect retroactively, assuming the President vetoes the bill and we override the veto, and that constitutes a binding effect.—121 Cong. Rec., p. 26186 (July 31, 1975).

Accordingly, if there were an ultimate override of a veto, that act would be in effect continuously until March 1, 1976.

The hiatus time woud be, in effect, be a time subject to a retroactive penalty governed by section 210 of the Stabilization Act which is adopted in this act, which reads to this effect:

In any action brought under subsection (a) against any person renting property or selling goods or services, who is found to have overcharged the plaintiff, the court may, in its discretion, award treble damages or $1,000 in each case, whichever is the lesser.—121 Cong. Rec., p. 26188 (July 31, 1975).

Congressmen Dingell and Staggers again made the point of intended retroactive effect before the final vote was taken on S. 1849. Their comments follow:

Mr. DINGELL. Mr. Speaker, I observe that the legislation before us strikes out the date "August 31, 1975," and inserts in lieu thereof "March 1, 1976." I observe that the language of section 4(g)(1) of the Emergency Petroleum Allocation Act states:

The regulation promulgated and made effective under subsection (a) shall remain in effect until midnight August 31, 1975 . . . The authority to promulgate and amend the regulation and to issue any order under this section, and to enforce under section 5 such regulation and any such order, expires at midnight August 31, 1975, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight August 31, 1975.

I note that the practical effect of the amendment is to extend the period during which the regulations must remain in effect and the life of the authority to promulgate, amend and, most importantly, amend the regulations until the first of March 1976. I think this is a very important point. I ask if my chairman of the committee agrees.

Mr. STAGGERS. Mr. Speaker, I yield 1 additional minute to the gentleman from Michigan.

Mr. Speaker, the answer is "Yes."

Mr. DINGELL. I ask my friend, the chairman of the Committee on Interstate and Foreign Commerce who is managing this bill, if it is not the clear intention of this Congress that the literal reading of the plain language of S. 1849 and of the Allocation Act as amended by S. 1849 be followed. Thus, it is the Congress intent that the regulations be viewed as having continued in effect without interruption from their original effective date until March 1 of 1976.

Mr. STAGGERS. That is correct.

Mr. DINGELL. Therefore, if this bill is vetoed, and the veto overridden, the regulation and the authority to enforce it would continue according to the literal language of the Allocation Act as amended by this bill. No constitutional impediments exist to this interpretation in view of the notice which this debate and the legislative history of this bill affords all interested persons.—121 Cong. Rec., p. 26189 (July 31, 1975).

That the Congress intended to maintain the status quo relative to oil prices seems clear. That the Congress, particularly the House of Representatives where the issue became both apparent and acute, intended to maintain the status quo ante August 31, 1975, should a reconsideration of S. 1849 become necessary because of a presidential veto, also seems clear. The question, therefore, is whether the retroactive application of the measure, if then enacted, is valid. It would so appear.

The Constitution does not expressly prohibit retroactive or retrospective laws. ("The terms . . . are synonymous in judicial usage and may be employed interchangeably." 2 *Sutherland Statutory Construction* 4th (Sands) ed. s. 4101.) True, certain specific kinds of statutes with retrospective aspects are prohibited by the Constitution: ex post facto laws, bills of attainder, and legislation impairing the obligation of contracts. However, none of these constitutional restrictions has any appilcation to S. 1849. The first two relate generally to the area of criminal law and to nonjudicial determinations of guilt, respectively. See *Calder* v. *Bull*, 3 Dall. (3 W.D.) 386 (1798); *United States* v. *Lovett*, 338 U.S. 303 (1946)." . . . the impairment of contracts clause of the Constitution . . . is applicable on its face only to the states." *Amalgamated Meat Cutters & Butcher Workers* v. *Connally*, 337 F. Supp., at 763.

In the words of the court in the last mentioned case, "[a]s to the Federal Government [the application of legislation to existing contracts raises] concern [under] the due process clause." Ibid.

The essential problem posed by retroactivity relates to fundamental fairness. In the words of a leading treatise writer:

"It is a fundamental principle of jurisprudence that retroactive application of new laws involves a high risk of being unfair. There is general consensus among all people that notice of warning of the rules that are to be applied to determine their affairs should be given in advance of action whose effects are to be judged by them. The hackneyed maxim that everyone is held to know the law . . . presupposes that the law is at least susceptible of being known. But this is not possible as to law which has not been made. 2 *Sutherland Statutory Construction*, as s. 41.02.

As noted, the Congress, both in actions and words, gave notice of its intent to have S. 1849, when enacted, apply back to September 1, 1975. It has been held that "where there is reasonable cause to believe or expect that a tax will be imposed upon a presently nontaxable transaction, the retrospective application of such tax does not constitute a denial of due process." *First National Bank in Dallas* v. *United States*, 420 F. 2d 725, 730 (Ct. 1970). "Preenactment notice of a tax, followed by the enactment of such tax" was sufficient notice to comply with constitutional requirements. *Id.*, at 732. Such "warnings" were declared to "represent . . . elements of fairness, reasonableness, and equity." Accordingly, it was held that persons who in those circumstances "gamble" that a bill will not become law or will not cover their personal situation, act at their peril. *Id.*, at 731. This case, *inter alia*, was relied on by the House in passing S. 1849, 121 Cong. Rec., pp. 26188, 26189 (July 31, 1975).

However, even if the fact of notice were less conspicuous than it is in the present circumstances, persons potentially affected by extension of the Emergency Petroleum Allocation Act, would seem to be in a weak position to challenge it as a denial of due process. Such persons are not newly found subjects of government regulation. "Those who do business in the regulated field cannot object if the legislative scheme is buttressed by subsequent amendment to achieve the legislative end." *F.H.A.* v. *The Darlington, Inc.*, 358 U.S. 84, 91 (1958). As stated in *Fleming* v. *Rhodes*, 331 U.S. 100, 107 (1947);

"Federal regulation of future action based upon rights previously acquired by the person regulated is not prohibited by the Constitution. *So long as the Constitution authorizes the subsequently enacted legislation, the fact that its provisions limit or interfere with the previously acquired rights does not condemn it. Immunity from federal regulation is not gained through forehanded contracts.*" (Emphasis supplied.)

In *Flemming*, the Court sustained rent regulations as applied to prevent execution of a judgment of eviction rendered by a state court before the enabling legislation was passed.

RAYMOND J. CELADA,
Senior Specialist in American Public Law.

[Memorandum, Aug. 18, 1975]

CONTINUITY OF THE EMERGENCY PETROLEUM ALLOCATION ACT

In accordance with Section 4(g)(1) of the Emergency Petroleum Allocation Act (EPAA) existing "authority to promulgate and amend [an allocation and price control] regulation . . . expires as of midnight August 31, 1975. . . ." Apart from "proceedings, civil or criminal, not finally determined on such date, [on] any action or proceeding based upon any act committed prior to midnight, August 31, 1975," where jurisdiction continues under the specific terms of the EPAA, the EPAA will have no operative significance after August 31, 1975.

Immediately before adjourning on July 31, 1975, the House completed congressional action on S. 1849 which has been passed by the Senate on July 14. That bill, entitled the Emergency Petroleum Allocation Extension Act, would amend Section 4(g)(1) of the EPAA by substituting the date March 1, 1976, for the date August 31, 1975.

S. 1849, the Extension Act, is expected to be transmitted to the President not earlier than August 28, 1975. Under Article I, Section 7, Clause 2 of the Constitution, the President will then have 10 days (excepting Sundays) to determine whether to sign the bill into law, permit it to become law without his signature, or veto it and return it to Congress for possible override. President Ford has made clear his continuing determination to veto S. 1849 and decontrol the prices of all crude oil and petroleum products as of September 1, 1975.

Because Congress will not even be in session until September 3, there will clearly be a hiatus between the expiration of price control authority under the EPAA and the completion of any override action. Moreover, it is well settled that a bill which becomes law by virtue of a veto override is considered to take effect on the date that the override action is completed regardless of the date of original congressional action. *Matthews v. Vane*, 20 U.S. (7 Wheat.) 164, 211 (1822); *Gardner v. Collector*, 73 U.S. (6 Wall) 499 (1868); 2 C. Sands, Sutherland's Statutory Construction, § 33.06 at 9 (4th Ed. 1972). Thus, the Extension Act amendment to the EPAA will not take effect until *after* the EPAA's major provisions have expired by their own terms.

There is a body of law to the effect that when an amendment applies to a statute which has been repealed, or is otherwise ineffective, the amendment itself is void. *See*, e.g., *United States v. Auffmordt*, 122 U.S. 197 (1887); *State v. Blackwell*, 246 N.C. 642, 99 SE. 2d. 867 (1957); 1A C. Sands, *supra* § 22.03 at 108. But cf., e.g., *Mayor and Council of Wilmington v. State ex rel. Dupont*, 44 Del. 332, 57 A.2d 70 (1947) (where amendment is complete and interpretable on face as independent statute, its terms will be valid).

Given this precedent, and the obvious syllogism that one cannot change something which does not exist, it might be possible to argue that a veto override on the Exten-

sion Act would be useless. In fact, the Administration might well consider refusing to promulgate and enforce further allocation and price control regulations unless Congress passed a new act replacing, rather than amending, the EPAA.

The possibility of a Presidential veto and consequent hiatus before override was readily apparent in the House debate on the S. 1849 Extension Act. That debate took place after the House had disapproved the President's proposed 39-month phaseout of crude oil controls and Congressman Brown had introduced a letter from FEA Administrator Zarb clearly warning of a veto. While there was no specific discussion of the legal consequences of a hiatus before override, a colloquy between Representatives Dingell and Eckhardt made clear that the majority not only looked forward to continuation of the EPAA after August 31, by override if necessary, but also sought to put sellers on notice that revised regulations past September 1 could have retroactive effect in the hiatus period. 121 Cong. Rec., pp. 26186–26189 (July 31, 1975).

Based on a study of all applicable precedents, it appears almost certain that the clear intent of Congress to revise EPAA authority would prevail over any technical argument that the Extension Act is void because of the price expiration of rulemaking and enforcement authority under the EPAA. As more fully discussed below, the courts might either hold that the Extension Act itself reenacted and thus revived the EPAA or that the EPAA's saving clause preserving federal jurisdiction over controversies relating to pre-September transactions sufficed to keep the EPAA alive and hence amendable. Under either theory, the President would be obligated to reinstitute allocation and price controls on the date of override.

At the outset, it is important to note that the technical limitation on amending "nonexistent" statutes has been operative almost exclusively where the underlying statutes have been repealed. In fact, a leading commentator states flatly that "there is no question about the amendability of the statute which has lapsed by operation of its own terms." A. C. Sands, *supra* § 22.03 at 109.[1]

In the case of repealed statutes, judicial voiding of amendments has served to force legislators to be more precise in specifying when they intend to receive a moribund statute. The doctrine also prevents a minority from surreptitiously, or a majority from inadvertently, resurrecting a repealed statute by referring to its title in an act which might be argued to take the form of an amendment to the repealed statute, *See Brig Aurora v. United States*, 11 U.S. (7 Cranch.) 382 (1813) (revival of statute by reference to title); 1A C. Sands, *supra*, § 22.26 at 168. However, these considerations are inapplicable to a specific legislative effort to revive statute where the intent, impact and scope of the legislative action are clear.

In *Kersten v. United States*, 161 F.2d 337 (10th Cir.), *cert. denied* 331 U.S. 851 (1947), the court faced the revival problem in a context quite similar to the existing situation under the EPAA. *Kersten* arose under the Price Control Extension Act of 1946 (PCEA) which amended the Emergency Price Control Act of 1942 (EPCA). Price control authority under the EPCA expired, by its own terms, on June 30, 1946, although the EPCA, like the EPAA, survived as a basis for jurisdiction for litigation over events prior to its expiration. On June 19, 1946, Congress passed the PCEA to extend price control authority for one year. President Truman then vetoed the PCEA and his veto was sustained. However, on July 25, 1946 the PCEA was reenacted by Joint Resolution and signed by the President.

Section 1 of the PCEA was drafted in precisely the same terms as Section 102 of S. 1849 merely replacing the June 30, 1946 expiration date with a June 30, 1947 date. In addition, the PCEA expressly reinstituted the regulations in force on June 30, 1946 retroactive to that date with a proviso which exempted from civil or criminal liability any acts or transactions occurring between expiration and passage of the extension.

In *Kersten*, the defendant was charged with violating the statutory price ceilings in sales occurring on June 21 (prior to expiration), and August 10 and August 12 (after passage of the extension). He argued that because price regulation authority had lapsed prior to the amendment, the amendment was void.

The Tenth Circuit rejected the argument. Although, as was noted by another court reviewing the PCEA, neither Section 1 nor any of the other provisions of the Extension Act undertook in "express formal enacting words to re-enact or adopt provisions of [the EPCA]," *United States* v. *Gantt*, 72 F. Supp. 205, 206 (E.D.S.C. 1947), the Tenth Circuit found that the language of the extending act made it "plain" that the PCEA was to be extended and remain in force. 161 F.2d at 337. Per the Court: "Congress may revive or extend an act by any form of words which makes clear its intention so to do." *Id.* at 338.

Similarly, indications of Congressional intent to extend the EPAA abound in the Extension Act. The name of the act and the subtitle (Extension of Mandatory Allocation Program) are fairly strong indications in and of themselves. Moreover, the language of Section 102 of the Extension Act is identical to that of Section 1 of the post-World War II provision. Both take the form of an amendment and simply substitute a later expiration date. The sole difference on the face of the bills in Section 18 of the PCEA which provides for continuation of "all regulations, orders, price schedules, and requirements" under the original statute which were in effect as of the original expiration date. Under the EPAA, however, the President is not only authorized but *required* to promulgate an allocation and price control regulation. That regulation was to be devised and take effect within 15 days of the enactment of the EPAA. Specifying the continuation of such a regulation would appear to be largely superfluous. Further, the President is given the authority, within the general guidelines of the EPAA, to amend orders and regulations. By specifying the continuation of the regulation and orders in existence on August 31, 1975, Congress might have in effect been removing this power.

Moreover, there is one other common bond between the EPAA extension and the post-World War II extension of price controls. In both cases, Congress completed its initial passage of the Extension Act prior to the lapse in authority. Although this fact was not specifically mentioned in *Kersten*, other courts have regarded it as a significant indication of legislative intent to provide for the continuous enforcement of the statute. An example of this thinking is *Milk Control Board* v. *Pursifull*, 219 Ind. 396, 36 N.E. 2d 850 (1941).

In *Pursifull*, an amendment extending the date of expiration of a state milk control law was passed and approved by the governor prior to the expiration date of the law. Indiana, however, has a constitutional provision that unless an emergency clause is attached to a statute, it does not become effective until published acts have been distributed to all counties of the state. Through some oversight, the legislature neglected to attach an emergency clause to the extension. The governor was not able to proclaim statewide distribution until a week after the expiration of the underlying act.

The Indiana court was laboring under a broad commonlaw rule that the legislature cannot amend an act or a section of an act "not then in force." Yet it distinguished *Pursifull* from the previous case law on the grounds that at the time of passage, the earlier act was still in effect and "delay in performing these purely administrative acts [should not] be permitted to thwart the purpose and intention of the legislature [.]" 36 N.E.2d at 851.

Pursifull may itself be unique because formal approval by the governor was the last necessary step in the legislative process, that the bill had then become a duly enacted law and all that remained were "purely administrative acts." On the other hand, failure to include an emergency clause nevertheless meant that the statute was not valid in the sense of being enforceable until after those "purely administrative acts" were performed. Regardless of the actual result, it is clear from the court's opinion that the fact that the enactment was passed prior to expiration was a strong indication of legislative intent for continuous enforcement.

Another example of this approach is found in *State v. Lanza*, 74 N.J. Super. 362, 181 A.2d 399 (App. Div. 1962), *aff'd.*, 190 A.2d 574 (1963), *app. dis.*, 375 U.S. 451 (1964). At issue in *Lanza* was the expiration of condemnation authority. A two-year extension passed the legislature two weeks prior to the termination date, but the governor failed to sign the bill until 11 days after expiration. It was argued that the authority had lapsed and that, at the very least, the extension represented a new act, a fact which would require the state to stop all present condemnation proceedings and start them over again from scratch.

Opting for continuity, the court admitted that a statute "cannot make itself operative as of a date prior to its enactment but it can apply retrospectively." 18 A.2d at 398. Since the statute was passed prior to the lapse in condemnation authority, this is, of course, judicial fictionalizing. It indicates, however, the lengths to which courts will go to avoid thwarting the clear purpose of the legislature.

In light of these decisions, it is almost certain that a court faced with a challenge to the validity of the S. 1849 Extension Act would sustain the act. Congressional intent to give continuity to the full scope of existing control powers is clear from both the language and legislative history of S. 1849. And the choice of a format recognized to provide after-expiration continuity in *Kersten* certainly bolsters the argument that the August 31 expiration is no bar to revival.

An additional line of authority to the "indicia of intent" approach of *Kersten* distinguishes statutory existence from prospective regulatory authority and thus rejects the notion that because the authority to prospectively promulgate and enforce regulations under a statute has expired that the act itself has become a nullity.

The clearest explication of this view is found in *State ex rel. Dawes v. Bailey*, 56 Kan. 81, 42 P. 373 (1895). *Bailey* involved

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[1] It must be said, however, that the authorities backing this rather sweeping statement, though clear and unanimous, are not extensive. The most plausible reason for this occurrence is that there are very few circumstances in which a legislature will be found trying to amend an expired temporary act. The institutional structures are such that most intense pressures for the extension of an act will occur prior to its expiration rather than at some later date. This observation is borne out in the negative by the fact that in all of the cases thus far, the post-expiration amendments have been the result of procedural snafus or, as in the present case, the veto of an extension act passed prior to expiration.

the amendment of an appropriations measure passed in 1889. Under the Kansas constitution, appropriations measures could not be valid for more than two years. In 1895, the Kansas Legislature passed an appropriations act purporting to amend the act of 1889. The amendment was attacked on the grounds that the 1889 measure had necessarily expired in 1891, four years before the amendment. The court was not receptive to this argument:

"The contention that this act is invalid because the act of 1889 had spent its force, and is therefore not a law capable of amendment, is not sound. It was a valid law for raising revenue for two years. It had a continuing force until amended for various purposes; among others, the collection of the amount levied wherever the same remained delinquent, and as a basis for all the necessary tax proceedings provided for its collection. It was never a mere nullity, and the legislature had ample power to amend it." 42 P. at 374.

A similar situation occurred in *Fenolio v. Sebastian Bridge District*, 133 Ark. 380, 200 S.W. 501 (1917), where the underlying statute authorized the county commissioners to levy assessments and issue bonds for the construction of a bridge. Authorization, however, was contingent upon the institution of certain proceedings within two years from the effective date of the statute. These proceedings were not undertaken. One month after the expiration of the two-year period, the legislature amended the act changing the words "two years" to "six years." The court held that this was a valid amendment:

"[F]or if the law was enacted by the legislature it remained in force, even though the time for exercising the powers conferred expired before the amendment extending the time was enacted. The law itself was not dead, so the power conferred could no longer be exercised without further legislative action. *State v. Bailey*, 56 Kan. 81, 42 P. 373." 200 S.W. at 503.

There is a hint of this same approach in the tacit approval of the Price Control Extension Act of 1946 by the Supreme Court in *Fleming v. Mohawk Wrecking & Lumber Co.*, 331 U.S. 111 (1947). In *Mohawk*, in the context of a procedural issue, the Court said that the EPCA "was amended in 1946 to provide for its termination not later than June 30, 1947, saving, however, rights and liabilities incurred prior to the termination date. . . . Though most of the controls have been lifted, the Act is *still in effect*. Liabilities incurred prior to the lifting of controls are not thereby washed out. . . ." 331 U.S. at 119 (1947) (tacit approval of the PCEA); *Woods v. Cobleigh*, 75 F. Supp. 125 (D.N.H. 1947) (explicit approval of PCEA); *United States v. Gantt*, 72 F. Supp. 205 (E.D.S.C. 1947) (same).

Viewed from this perspective, it should be clear that the EPAA will not be a nullity on September 1, 1975. Because the savings clause maintains all pre-lapse causes of action, whether or not they had already been filed, all that will happen on the expiration date is the demise of the authority to promulgate, amend and enforce regulations concerning conduct after that date. Thus, the Extension Act could well be considered an amendment to existing rather than moribund legislation even if it is enacted by veto override.

In short, whatever mode of analysis is employed, the Extension Act will almost certainly be found to be valid means of extending the energy and pricing program, despite the hiatus in some operative provisions of the EPAA. The statutory language, timing, legislative history and presence of a savings clause in the original act all support, under applicable precedent, the validity of the extension.[2]

APPLICATION OF FEA'S MANDATORY PETROLEUM PRICE AND ALLOCATION REGULATIONS DURING SEPTEMBER 1975

The expiration of the Emergency Petroleum Allocation Act of 1973 ("EPA of 1973") on August 31, 1975 and the subsequent extension of that law by adoption of the Emergency Petroleum Allocation Act of 1975 ("EPAA of 1975"), which was signed by the President and became law on September 29, 1975, have raised a number of questions regarding the application of the FEA's regulations to transactions that occurred during the hiatus period of September 1 to September 29. The purpose of this Ruling is to give notice of the manner in which the FEA regulations apply to transactions occurring during that period.

I. BACKGROUND

S. 1849, which would have simply changed the expiration date in § 4(g)(1) of the EPAA of 1973 from August 31, 1975 to February 28, 1976, was passed by Congress on July 31, 1975. The President vetoed S. 1849 on September 9, 1975, and the veto was sustained by the Senate the following day.

Although S. 1849 passed the Congress a month prior to the scheduled expiration of the EPAA of 1973, it was contemplated at the time of its passage that the bill might not be sent to the President until late August, that the President was likely to veto it, and that it would become law only if Congress overrode the veto—which would occur at the earliest a few days after the August 31, 1975 expiration date. Thus, in the floor debate on S. 1849, several key proponents of the bill in the House made it clear that:

"It is the intent of the Congress that the extension of the allocation act included in S. 1849 take effect immediately and retroactively in the event of a veto and an override of that veto, and that there be no hiatus or gap during which violations of these regulations would not be subject to civil sanctions." 121 Cong. Rec., p. 26185 (July 31, 1975) (remark of Cong. Dingell). *See also id.* at pp. 26186–26187.

During the month of August it became apparent that the President would indeed veto S. 1849 because he believed the six-month extension provided for therein would unnecessarily delay the resolution of the difficult energy issues confronting the Nation. However, on August 29, 1975, the President informed the Majority Leader of the Senate and the Speaker of the House that he would be willing to sign a short-term (approximately 30 to 45 day) extension of the Act if he received assurances that during the extension period the Congress would act to adopt a phased decontrol program. On that date FEA Administrator Frank G. Zarb issued a public statement, widely reported in the press, that:

"A short-term extension, if signed by the President, would be applied retroactively. Since the Congress does not return until September 2, there would be a short gap in the Allocation Act authority between the August 31 expiration of current authority and any possible Congressional action on the short extension. It is likely, however, that the Congress will intend no regulatory gap and will intend to reinstate automatically the price and allocation regulations in effect on August 31 with the passage of any short extension.

"FEA, in consultation with the Department of Justice, has reviewed the legal effects of such a gap and concluded that by an extension the Congress can revive the current controls retroactively to September 1. If the President signs such a short extension, appropriate regulatory action can then be taken to correct any transactions in violation of FEA's current controls that occurred during the gap."

There was substantial commentary in the trade press and elsewhere to the effect that the reinstitution of controls would, and could legally, apply retroactively to September 1. For example, the September 12 edition of the *Oil Daily* commented that:

"All this points to the wisdom that oil companies must still act as if controls were in place unless there is more assurance that decontrol will stick. Any action taken outside of the mandates of the defunct EPAA might be subject to expensive adjustments when Congress makes up its mind on the issue of oil company regulation."

On September 11, 1975, the day following the Senate vote to sustain the veto of S. 1849, the House unanimously passed H.R. 9524, which would have extended the EPAA of 1973 for 60 additional days after September 1. The bill passed the Senate with certain amendments, including an expiration date of November 15, 1975 on September 26, 1975. The House concurred in the Senate amendments on the same day, and the EPAA of 1975 was signed into law by the President on September 29, 1975.

The EPAA of 1975 expressly states that the FEA regulations in effect on August 31, 1975 are to be considered reinstituted in full force and effective retroactive to that date:

"Sec. 3. It is the intent of the Congress that the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 shall be effective for the period between August 31, 1975, and the date of enactment of this Act."

In the floor debate on this amendment, Representative Staggers, the Chairman of the House Committee on Interstate and Foreign Commerce, stated:

"It is the intent of both bodies of the Congress that the pricing and allocation controls contained in Federal Energy Administration regulations which were promulgated under that act continue in effect as though there had been no hiatus. Both the administration and leaders of the Congress have repeatedly stated that any extension of the Allocation Act finally agreed to would be retroactive in character. The industry has had ample notice of this matter.

"Accordingly the Federal Energy Administration is called upon to enforce their regulations as if they had remained in full effect in the period it has taken for the Congress and the President to agree upon the terms of an extension of the act. In this regard the FEA will be expected to order a rollback and refunding of any price increases

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[2] *Lanza* raises the additional point of retroactive application of the Extension Act to any statutory hiatus prior to final adoption. The unregulated period is unlikely to be more than a few days and it is doubtful that producers and refiners will raise prices dramatically before Congress has attempted to override the veto. Nevertheless, should the issue become important, it would appear that the act probably could be enforced for the intervening period. The validity of retroactive application is a very muddled and unclear area but basically boils down to questions of fairness and notice. *See* generally, 2 C. Sands, *supra*, § 41.05 et seq. at 259; *First National Bank in Dallas* v. *United States*, 420 F.2d 725 (Ct. Claims 1970). Retroactive application of the penal and treble damage provisions might cause problems, the former almost assuredly invalid as an ex post facto law. Retroactive civil and criminal liability were explicitly removed in the PCEA of 1946.

which may have occurred on or after September 1 and take other appropriate action to assure the continuity and integrity of the distribution system for petroleum products." 121 Cong. Rec., p. 30417 (September 26, 1975).

Similarly, Senator Jackson, Chairman of the Senate Interior Committee, stated in connection with H.R. 9524, as amended, that "the extension restores petroleum price controls, on a retroactive basis to September 1, until November 15, 1975." 121 Cong. Rec. p. 30503 (September 26, 1975)

Judicial precedent supports the FEA's and the Congress' determination that enactment of the EPAA of 1975 can lawfully reinstate the FEA's Mandatory Petroleum Allocation and Price Regulations as though they were continuously in force during the hiatus period, particularly where there was, as in this case, a clear expression of Congress' intention in this regard and extensive notice to the public that the EPAA of 1973 would be extended on a retroactive basis. See *Porter v. Senderowitz*, 158 F. 2d 435 (3d Cir. 1946), *cert. denied*, 330 U.S. 848 (1947); *Porter v. Shibe*, 158 F. 2d 68 (10th Cir. 1946); *Purvis v. United States*, 501 F. 2d 311 (9th Cir. 1974); *First National Bank v. United States*, 420 F. 2d 725 (Ct. Cl.), *cert. denied*, 398 U.S. 950 (1970).

II. GUIDELINES FOR DETERMINING COMPLIANCE WITH THE FEA REGULATIONS

A. Civil Remedies

Since the EPAA of 1975 reinstitutes the FEA Mandatory Petroleum Allocation and Price Regulations (Parts 210, 211, and 212, Chapter II of Title 10, Code of Federal Regulations) in effect on August 31, 1975 retroactive to that date, as stated above, FEA will apply its allocation and price regulations as though they had been in effect continuously since August 31, 1975. Persons subject to the regulations should carry out September transactions as though the EPAA of 1975 had been enacted prior to September 1. 1975.

This means, at a minimum, that any supplier/purchaser relationships, terminated during the hiatus contrary to the regulations must be immediately reestablished and that that portion of prices charged during the hiatus in excess of amounts permitted by the regulations must immediately be refunded or rolled back. It is recognized, however, that in other types of cases, particularly in the allocation area, there may be some practical difficulties in retroactively implementing measures that will result in strict adherence to all other regulations during the hiatus period. Thus, whether the FEA will require that steps other than reestablishing supplier/purchaser relationships and refunding overcharges be taken to remedy violations of the regulations during the hiatus will be determined on a case-by-case basis, depending upon the practical difficulties in doing so, the extent of injury already incurred by any person and the degree to which further remedy would amount to a penalty on any person.

Corrective actions to conform transactions during the hiatus to the regulations should be voluntarily undertaken by the firms involved as soon as possible. For example, supplier/purchaser relationships that were terminated during the hiatus period contrary to the regulations in effect on August 31 should be reestablished promptly. Prices charged in excess of amounts permitted by the regulations in effect on August 31 should be refunded where the overcharged customers are identifiable and, with respect to unidentifiable customers, should be "rolled back" through a reduction in the current (as opposed to the maximum lawful) selling price until the full amount of the overcharge is returned to the marketplace. To insure that proper credit is given by the FEA for the rollback or refund of prices charged during the hiatus period, firms are advised to keep detailed records of any corrective action taken and to advise the FEA of such corrective action. Firms that have questions concerning the form of remedy that will be acceptable to the FEA should seek guidance from the FEA as soon as possible.

The FEA will audit transactions that occurred during the hiatus period in the normal course of its compliance program. To the extent that violations are found not to have been remedied, the FEA, as part of its normal compliance efforts, intends to issue remedial orders and take such other action as is authorized by regulations to secure compliance with the regulations and to remedy violations that occurred during the hiatus.

B. Civil and criminal penalties

The *ex post facto* clause of the U.S. Constitution limits the authority of Congress to apply a criminal statute retroactively. Therefore, it is the FEA's intention not to seek criminal penalties for willful violations of FEA regulations that occurred during the hiatus period.

It is less certain that the *ex post facto* clause applies to a statute that imposes civil penalties, as does the EPPA of 1973, as amended by the EPAA of 1975, although due process considerations of course remain applicable. Therefore, while as a general rule the FEA will not seek civil penalties for violations that occurred during the hiatus period, it expressly reserves the right to do so if the factual circumstances of a particular case appear to warrant such action.

Finally, while FEA's authority to seek civil or criminal penalties for violations that occurred during the hiatus may be limited, the FEA does not consider such limitations to apply to violations of lawful orders issued after the hiatus period to remedy violations that occurred during the hiatus. As noted above, the FEA intends to issue orders after the hiatus period to remedy violations that occurred during the hiatus. Notwithstanding the FEA's general intent not to seek civil or criminal penalties for *violations of the regulations* during the hiatus period, a firm that willfully refuses to comply with a *remedial or other order* issued by the FEA to remedy a violation that occurred during the hiatus period will be fully subject to the civil and criminal penalties provided for in Section 5(a) of the EPAA of 1973 and Section 208 of the Economic Stabilization Act.

III. COMPLIANCE WITH PRICE REGULATIONS, ILLUSTRATIVE EXAMPLES

The following examples illustrate how the FEA's Mandatory Petroleum Price Regulations will be applied to transactions that occurred during the period September 1 to September 29, 1975.

Example 1 (Producers): On September 2, 1975, Firm A, a producer of crude oil, sold 100 barrels of crude oil to Firm B, a refiner. Of the 100 barrels, 60 barrels were old crude oil subject to the ceiling price rule contained in § 212.73 of the regulations, and 40 barrels were new and released crude oil pursuant to § 212.74 of the regulations. Payment was made September 17, 1975 for all 100 barrels at the free market prices for new and released crude oil.

Firm A is required to present to Firm B a revised invoice that correctly states the volumes of old, new, and released oil sold on September 2, 1975 and specifies that payment for 60 barrels is to be made at or below the ceiling price for old crude oil, in accordance with § 212.73, and that payment for 40 barrels is to be made at the September 2, 1975 posted or free market price for new and released crude oil, in accordance with § 212.74 and with Ruling 1974–11, "New" and "Released" Crude Oil (Current Free Market Price Under § 212.74). Amounts paid by Firm B in excess of the corrected price shall be refunded.

Example 2 (Refiners): Firm B, a refiner, entered into the above transaction. For purposes of §§ 212.82 and 212.83, in computing prices for October, Firm B's cost of crude oil for the month of measurement September must be computed according to the corrected invoices presented by Firm A. Prices charged by Firm B in October in excess of amounts permitted by the regulations (including amounts carried forward from previous months and available in accordance with § 212.83(e)) shall be refunded to identifiable customers and, to the extent its customers cannot be identified, shall be "rolled back" in the form of reductions from current (as opposed to maximum lawful) selling prices.

Example 3 (Refiners): Firm B, a refiner, anticipating increased costs of crude oil purchased during September, began on September 1 to charge prices for refined petroleum products based on September costs of crude oil at free market price levels. In applying the formulae in § 212.83 to compute prices for September, Firm B's cost of crude oil must be computed from costs for crude oil purchased or landed in August, the month of measurement, and may not include the cost of crude oil purchased or landed in September. Prices charged by Firm B in September in excess of maximum lawful prices permitted by §§ 212.82 and 212.83 of the regulations (including amounts carried forward from previous months and available in accordance with § 212.83(e)) shall be refunded to identifiable customers and, to the extent its customers cannot be identified, shall be "rolled back" in the form of reductions from current (as opposed to maximum lawful) selling prices.

Example 4 (Resellers): Firm C, a reseller, purchased refined products from Firm B in the circumstances of Example 2 and received a refund of overcharges in September by Firm B. Firm C is required to recalculate its product costs in the month of September to reflect the refund and to make appropriate refunds or rollbacks to its customers, to the extent that the recalculation has resulted in its own prices having been in excess of prices permitted by the regulations. That is, Firm C is similarly required to make appropriate refunds or rollbacks of prices charged in September in excess of amounts permitted by §§ 212.92 and 212.93 of the regulations (including amounts carried forward from previous months in accordance with § 212.93 (e) and available in accordance with § 212.93 (g)).

Example 5 (Leases): Firm E, a refiner, is the lessor of real property used by Firm F in retailing gasoline. On September 2, 1975, Firm E notified Firm F of its intent to exercise the lease termination clause of their contract because of Firm F's failure to comvert to a 24-hour per day operation. Firm F did not operate 24 hours per day at any previous time.

Firm E's notice violates § 212.103(c) of the regulations and is therefore void.

Example 6 (Leases): Firm E, a refiner, is the lessor of real property used by Firm G in retailing gasoline. On September 2, 1975, Firm E notified Firm G of its intent to exercise a lease clause permitting it to increase the rent up to 50%.

Firm E's notice is void, and Firm G is entitled to a refund of any rent already paid by it in excess of the amounts provided for in § 212.103(a) of the regulations.

IV. COMPLIANCE WITH ALLOCATION REGULATIONS, ILLUSTRATIVE EXAMPLES

The following examples and discussion illustrate how the FEA's Mandatory Petroleum Allocation Regulations will be applied with regard to the September 1–29 hiatus period.

Example 7 (Supplier/wholesale purchaser relationships): Supplier H is the base period supplier of middle distillates to Firm J, a wholesale purchaser-reseller, and Firm K, a wholesale purchaser-consumer. On Septem-

ber 1, 1975, Supplier H notified Firms J and K that it would no longer supply them.

Supplier H must continue to supply Firm J since under § 211.9(a)(2)(i), supplier/wholesale purchaser-reseller relationships are fixed for the duration of the allocation program and may not be modified or terminated without FEA approval.

Supplier H must also continue to supply Firm K since supplier/wholesale purchaser-consumer relationships are also established for the duration of the program, as provided in § 211.9(a)(2)(ii), unless the parties have given their mutual consent to the termination of the supplier/purchaser relationship. Only if Supplier H and Firm K had so consented and could establish that their consent was in fact mutual and voluntary, would their supplier/purchaser relationship be considered terminated.

Example 8 (New supplier/wholesale purchaser relationships): During September, 1975, Supplier H entered into a contract to supply middle distillates to Firm L, a wholesale purchaser-reseller, and also agreed to supply Firms M and N, both wholesale purchaser-consumers. On September 1, 1975, Firm M and its base period supplier had mutually consented to terminate their supplier/purchaser relationship. Firm N had been notified that its base period supplier no longer intended to supply it.

The supply contract between Supplier H and Firm L does not establish a valid supplier/wholesale purchaser-seller relationship because FEA approval has not been obtained as required by § 211.12(e)(2)(ii). Unless Firm L is without a base period supplier or a new supplier as provided in § 211.10(e)(1), it may not even apply to FEA for assignment of Supplier H as its base period supplier.

The supply arrangement between Supplier H and Firm M may continue as a mutual arrangement as contemplated by § 211.12(e)(1). This new supplier/purchaser relationship is subject to the notice and approval provisions of § 211.12(e)(1)(ii) and (iii).

In the case of Firm N, however, the new relationship between it and Supplier H is not valid unless Firm N now arranges by mutual consent to terminate its supplier/purchaser relationship with its base period supplier, which unilaterally refused to supply it during September. If that termination is effected, Firm N is considered to have been without a base period supplier and is therefore able to enter into a mutual supply arrangement with Supplier H as provided by § 211.12(e)(1). In this event, the notice and approval provisions of § 211.12(e)(1)(ii) and (iii) apply.

Supplier H may, of course, supply purchasers with which it has no supplier/purchaser relationship to the extent that it has surplus product and has complied with the provisions of § 211.10(g).

Example 9 (Crude oil supplier/purchaser rule): On September 1, 1975, Firm O, a crude oil producer, contracted for the sale of its production to Firm P, to whom Firm O had never previously sold. Prior to September 1, 1975, Firm O had sold its production to Firm Q, which had purchased Firm O's production under a supplier/purchaser relationship with Firm O. Therefore, Firm Q continues to be entitled to purchase Producer O's production for the month of September 1975 and thereafter, except as to September 1975, production where the sale and delivery thereof to Firm Q is no longer feasible because it is no longer within Firm O's possession or control as of the date this ruling is published in the *Federal Register*. Crude oil which Firm O is otherwise contractually required to supply to Firm P but is still in Firm O's possession or control as of such publication date shall be delivered to Firm Q. This result would be identical if a broker or reseller, instead of Firm O, were the supplier to Firm Q.

In general, pursuant to the crude oil supplier/purchaser rule set forth in 10 CFR 211.63, all supplier/purchaser relationships in effect under contracts for sales, purchases, and exchanges of domestic crude oil on December 1, 1973 are required to remain in effect for the duration of the Mandatory Allocation Program, in accordance with the provisions of the EPAA of 1975, as a general rule, all crude oil supplier/purchaser relationships in effect under § 211.63 immediately prior to the period September 1 to 29, 1975 are required to be maintained in effect under § 211.63 for the period subsequent to August 31, 1975 during which the EPAA of 1973, as amended, is in effect.

If a valid termination under § 211.63 of Firm Q's supplier/purchaser relationship had been effected as of September 1, 1975, Firm O would no longer be required to sell its crude oil to Firm Q. Supplier/purchaser relationships required to be maintained under § 211.63 may be terminated by mutual consent of both parties and, as to new and released crude oil, may be terminated where the present purchaser of the crude oil refuses, after notice by the seller, to meet any bona fide offer for the crude oil by another purchaser at a higher lawful price. As to terminating by mutual consent. FEA has consistently ruled that any consent to such a termination must be made affirmatively in writing in light of the provisions of § 211.63. Accordingly, supplier/purchaser relationships in effect on August 31, 1975 may be terminated in the period September 1 to September 29, 1975 in the manner prescribed in § 211.63. No termination in this period is valid under § 211.63 unless effected in accordance with the provisions of that section.

Example 10 (Old oil allocation program). From September 1 to September 28, 1975 Firm R, a crude oil producer, sold its production to Firm S, a refiner. Firm R's entire production is classified as old crude oil under §212.72 and therefore constitutes old oil (as defined in § 211.62) for purposes of the old oil allocation set forth in § 211.67. All of such sales were made at a price in excess of the lawful ceiling price as computed under § 212.73.

Firm S must include the crude oil purchased from Firm R in its crude oil receipts (in accordance with the provisions of § 211.62) and must report these particular receipts as old oil for purposes of § 211.66 and § 211.67, in accordance with the certification under § 212.131 received by Firm S from Firm R, regardless of the fact that Firm S may have paid an exempt price for the crude oil. Firm S's remedy in this case is to seek a refund from Firm R (under the procedures set forth in Example 1 above) for these sales made at a price in excess of the lawful ceiling price.

Mr. MOSS. Mr. President, I am pleased to speak in support of S. 622 because I believe that it offers an opportunity to end the stalemate between the Congress and the administration on energy and to begin a national energy program in this Nation.

After months of study and debate, it has become apparent that there are no perfect solutions and no easy answers to the energy problem in this country. Compromises have to be made. This bill strikes not only an economic compromise but a political one. If the President signs the measure and I would urge him to do so, it will enable us to move forward to increase domestic energy production which has been dropping steadily below levels of last year, and to increase conservation as well. The measure will also have a favorable impact on the economy. Because of the price rollback on crude and refined products—gasoline and heating oil—and the associated ripple effects, I would expect to see an increase in consumer purchasing power, a reduction of inflationary pressures, and an increase in employment.

I believe that this compromise measure will signal an end to the uncertainty that has prevailed for so many months; will provide stability and enable consumers, businesses, and producers alike to plan ahead. The concept of implementation of this plan is one which not only avoids abrupt price increases, but more importantly it avoids the resultant shock effect on the economy that was sure to happen under immediate decontrol as the administration originally recommended earlier this year. A phased price increase will allow adjustments to be accomplished more gradually. After all, it will take time for people to adjust their patterns of living, and it will take time to substantially increase energy production. However, these facts serve to underscore the need to make a start.

Once this bill is approved, the administration and the Congress can and indeed we should soon focus on other aspects of the energy situation. For example, we need not only to get on with increasing domestic production of oil and natural gas, but to move toward greater use of coal and development of alternative sources of energy—such as oil shale, tar sands, nuclear and solar power, and others that are feasible. Similarly, I believe the climate to move forward to resolve individual aspects of the energy program will be aided by passage of this bill.

Achieving domestic energy sufficiency will require efforts to reduce energy consumption, to increase domestic energy production, and provide standby ability to meet the threat and the reality of future embargoes and other emergencies. This measure provides for these.

Along with addressing the oil price problem, this bill contains a number of other initiatives which meet urgent national energy needs. For example, the compromise bill includes a program for conservation, a program to require industry to produce more efficient automobiles and to require manufacturers to label major household appliances to show buyers how much energy they consume; a provision for Federal assistance to help States develop energy conservation programs, the benefits of which might be passed on to consumers in the form of lower taxes or prices; a loan guarantee program to encourage underground mining of clean coal; and finally, a provision to allow the GAO to audit industry figures on energy reserves. Up to now, Congress and FPC, who is responsible for regulating the oil industry, have lacked adequate information to accomplish their responsibilities.

It is regrettable that it has taken so long to reach this point in developing an energy program, but not all of the time has been wasted. Up to now we have not solved the problem, but we have avoided many bad solutions that were proposed along the way. For example, the administration, the Congress, and indeed, the country now have a greater awareness and appreciation of the energy problem. The additional time has also been valu-

able in giving Congress an opportunity to study the problem and enabled the country to avoid the energy shock which would have surely resulted from imposition of immediate decontrol as the administration originally proposed.

As chairman of the Senate Budget Committee's Task Force on Energy, I know of the urgency of finding a solution to the energy problem. Much of the Nation's present inflation is directly attributed to the high cost of energy. And there is a close interrelationship between energy, the economy, and the budget. Energy is the lifeblood of the American economy and our economic progress depends upon the availability of energy at a price the Nation can afford. As a conferee on this bill, I know something of the great efforts on the part of many in Congress to develop a bill that would lay the groundwork for an effective solution to this problem.

This bill is not everything I, or the other conferees, would have wanted, but based on hard economic analysis, it has much to recommend it. It is a compromise measure which signifies a victory for neither side, neither those advocating a price rollback, nor those seeking rapid deregulation. I believe it is the best result attainable. It represents a reasonable and responsible strategy for meeting the Nation's energy needs as they are assessed at this time.

If it is rejected by the Congress or the President, we are left with the worst of all alternatives—immediate decontrol. Let us labor to avoid that. We have already seen the adverse impact resulting from oil price increases following the oil embargo. The economy is still trying to recover.

Accordingly, I urge my colleagues to support S. 622 so that we can begin a national energy program which is long overdue.

Mr. BELLMON. Mr. President, it is extremely timely that while the Senate is considering the conference report on S. 622 that a story is published in the Washington Post entitled "Shell Oil Banking on 'Cognac' Field in Gulf" by Thomas O'Toole, relating to a new oil discovery in the deep waters off the Gulf of Mexico. The article expresses dramatically the need for this Nation to end the counterproductive energy price policies that have been in effect since the OPEC oil price embargo.

Anyone who reads Mr. O'Toole's article cannot escape the conclusion that immense investments are necessary and immense risks must be taken in order to produce energy from the deep waters of the Outer Continental Shelf. Increased investments of this nature must be made and risks of this magnitude must be taken if America's energy requirements are to be met by America's energy development.

According to Mr. O'Toole's article, more than 50 million barrels of oil will be produced from the Cognac field, but none will be coming ashore until after 1980; and then only after $400 million has been invested.

These simple but impressive facts illustrate the reason that this Nation must have a realistic energy policy that provides the incentive which investors need before risks of this scale can be taken.

Legislation which artificially restricts prices in an effort to bring temporary economic advantages to consumers and political advantages to politicians will simply strangle projects of this kind and leave this and other Cognac fields undeveloped and other energy reserves undiscovered.

Mr. President, Congress cannot have it both ways. Either we must allow a realistic price relationship to develop in the energy industry or we must be willing to accept a permanent position of economic and energy dependence and a second-class status in world affairs which will follow. I believe sincerely that American people want this Nation to continue strong and self-reliant. This means becoming independent of OPEC. The Post article gives a dramatic example of what must be done. I ask unanimous consent that this article be printed in full in the RECORD.

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

[From the Washington Post, Dec. 16, 1975]

SHELL OIL BANKING ON 'COGNAC' FIELD IN GULF

(By Thomas O'Toole)

Aboard *Pacesetter II*—The Mississippi River has carried more than 10,000 tons of silt into the Gulf of Mexico every day for at least 200 million years—silt rich in the organic material that is the basis of oil.

That is why there is so much oil to be found in the sediments off the shores of Texas and Louisiana.

The trouble is that 6.5 billion barrels of that oil has already been removed. The 2,700 oil producing platforms scattered across the Gulf still pump 1 million barrels of oil every day, but they were pumping 1.5 million barrels a day three years ago. Like the onshore fields of Texas and Oklahoma, the offshore wells of Texas and Louisiana have begun to run down.

So it's a major occasion when a new offshore field is found, like the Cognac field discovered by Shell Oil Co. just 100 miles southeast of New Orleans and 15 miles from the mouth of the Mississippi.

Shell drilled its first exploratory well in Cognac last June. It has drilled six more since and is now drilling an eighth. The first seven found oil and gas, not a bad performance considering that wells drilled in four out of five Gulf leases these days strike nothing.

"We're here to announce that Shell is committing itself to a $100 million production platform." Shell vice president Robert Ferris said the other day in an unusual press conference at the drill site. "The company is doing this because it is convinced there is enough oil and gas here in the Cognac field to justify it."

What is enough?

Shell's geologists say there are in the Cognac field at least 50 million barrels of oil, which is Shell's "threshold" volume to go to production. There could be twice or even three times that in Cognac but it will take another six months of exploratory drilling to find out.

Unique to Cognac is the fact that it's being drilled in more than 1,100 feet of water, making it by far the deepest water field drilled in almost 30 years of exploration in the Gulf of Mexico.

Drilling at that depth is made possible by a mammoth drilling rig being used by Shell, a semi-submersible platform named Pacesetter II that propelled itself from port in Morgan City, La., to the drill site. The rig cost $30 million. Shell rents it for $50,000 a day, so its roustabout crew works round the clock.

There are only a few rigs like Pacesetter in the world. They sit on six huge pylons mated to two ballast tanks sunk like pontoons 60 feet below the sea. Chains weighing almost 100 pounds per foot hold the tanks to the sea floor, while the whole rig rides moored to eight anchors weighing 30,000 pounds apiece.

The rig in the Gulf didn't budge the other day. There wasn't even a slight roll, sitting as it was in deep but calm water. It's built to take hurricane winds and 100-foot waves. A sister is drilling in the North Sea. Another one like it is drilling in 1,700 feet of water off the coast of Gabon in West Africa.

Shell admits some reluctance to being first to move into the Gulf's deepest water, but sees no other way for companies drilling offshore. Shell says the big fields in shallow water have all been found. The future in the Gulf and in the Atlantic and Pacific lies only in the deep water.

Pacesetter II will finish drilling its eighth exploration well in another few weeks, then move closer to the edge of the Cognac field and drill three or four more wells. This is to measure more precisely the size of the field, and to help geologists pinpoint where to put the production platform when that's moved to sea in 1977.

Pacesetter II is the biggest drilling rig in the Gulf, but the production platform will dwarf it. From its base at the bottom of the sea to its top 120 feet above the water it will be about as tall as the Empire State Building. It will weigh 45,000 tons, roughly the size of battleships and aircraft carriers.

Shell plans to drill 56 wells from its production platform, some of them straight down, some at shallow angles and some angled up to 60 degrees to pull the most oil possible out of the field.

The platform will come equipped with no fewer than 500 safety devices to guard against spills and blowouts, where high pressure gas rushes out of the well and brings oil with it. Shell says it's proud of its pollution record in the Gulf, where it is the biggest driller. It says its wells have spilled only 46 barrels of oil so far this year.

Shell won't get any oil out of Cognac until 1980. The platform must be proven, the wells must be drilled and a pipeline must be laid. A factory will have to be built onshore to remove the water from the oil and to separate the oil and natural gas. Facilities must also be built to get the oil to refineries.

By the time all that happens, Shell and six other companies will have spent close to $400 million getting the oil out of Cognac. But Shell has carefully figured the risks, right from the start 18 months ago when it leased the lands from the federal government for $214 million.

Shell figures the platform will produce 25,000 barrels of oil a day by 1981 and produce at that rate for at least two years. It figures oil will be selling for at least $16 a barrel by that time. It calculates the well will have a lifetime of at least 15 years, more likely 20.

That's at least 50 million barrels of oil. Equal to 50 days' production out of the entire Gulf of Mexico at current rates. It's also three days' consumption in the United States, which is what the energy crisis is all about.

THE ENERGY POLICY AND CONSERVATION ACT

Mr. BELLMON. Mr. President, if the current situation weren't so critical, the

Energy Policy and Conservation Act would be comical. This bill should appropriately be called the "Energy Hash Act." It purports to do something for everybody's energy ailment; but the net result if it becomes law is to insure perpetual national energy anemia.

Summed up, the bill amounts to a huge disincentive to producers and creates another vast Federal bureaucratic controlled mechanism. It encourages further wasteful use of scarce energy supplies. It punishes the small risk-taking independent energy businessman and rewards the major multinational oil companies, delays the development of alternate energy sources and it assures the weakening of both the Nation's economic and defense structures.

Our Arab friends will leap for joy if this bill becomes law. Under the terms of S. 622 the United States will become consistently more and more dependent on ever higher and higher priced and less and less dependable Arabian oil. Voting for this bill is like voting arms aid to the Palestinian terrorists and handing the Middle Eastern foreign policy decisionmaking over to the Syrians and Egyptians.

Mr. President, those who support S. 622 use as one of their main arguments the benefits consumers will receive from lower prices if it becomes law. The facts do not support this contention. The end of the present price control program and the end of the $2 per barrel tariff by the President, combined would produce a maximum of 3 cents per gallon increase in gas and fuel oil prices. Recently, fuel prices have been declining and there is real question as to whether the 3 cents per gallon increase would be passed on to consumers. Even if the full cost were passed on the impact of the small additional price increase is negligible.

Since over 40 percent of the crude oil used is now imported and since this percentage is rising rapidly, there is no way Congress through legislation can insulate the consumer from constantly increasing prices in foreign oil. Congress can protect American consumers against an energy price ripoff by foreign governments by taking effective action to insure increased domestic production. This bill will reduce domestic production and its long range impact on the consumer will therefore be negative.

Apparently the authors of the legislation intend to punish the major oil companies. If this is the case, they have missed their mark for the wounds will be inflicted rather on the Nation's consumers and on the elements of the industry which do not have the flexibility and survivability of the multinational oil companies.

The major oil companies which run integrated operations could still remain profitable by adjusting price structure, by keeping refineries and filling stations running full blast and by taking over the activities which independents will be forced to give up as the full impact of the bill is felt.

This Nation is the greatest loser under S. 622. Stripper wells will be plugged. Secondary and tertiary oil activities will diminish. Wildcatting for desperately needed new oil supplies will be phased down. Plans for producing solar energy will be deemphasized. Completion of coal liquefaction and gasification plants will be delayed. Additional exploration in the deeper water of the Outer Continental Shelf will be slowed down and a creeping paralysis will begin throughout the entire energy industry.

Under the terms of this bill every member of the public will be disadvantaged. The provisions relating to gas rationing, creation of costly oil storage, the plans for another oil embargo and the provisions for Government regulation of auto manufacturing are in many ways contrary to the national interest. This bill should never have survived the committee process.

Mr. President, summed up this legislation is a giant step in the wrong direction. It means further reliance on high priced, insecure foreign oil. It means that the day when the United States can again conduct its economic and international affairs without fear of interruption by the OPEC cartel is further postponed. In the national interest, this conference report should be rejected.

If the conference report passes, President Ford cannot allow it to become law.

Mr. PEARSON. Mr. President, one of the elements of this measure that most disturbs me is the potential impact it may have on production by independents. As Members know, independents are chiefly concerned with two prices: the price for new oil, and the price of oil from stripper wells. Most of the country's new oil is found by independents, and most stripper wells are operated by independents. As whatever they do not find and produce must be bought from OPEC, it is in the country's interest that prices for new and stripper oil remain at incentive levels.

Under the composite price formula provided in the bill, new and stripper oil prices are jeopardized by two factors:

In the event old oil prices are raised, new and stripper oil prices might be reduced in order to comply with the composite price requirement.

As old oil production declines, new oil will constitute a larger share of total domestic production. Consequently, the price of new oil might be reduced, again in order to maintain the composite price.

I understand that the conference committee was well aware of this problem, and further, that the report provides that,

"The President must find that the departure from current controls—on old oil—is likely to result in greater production from such properties than would otherwise occur had the departure not been made."

Now, my question is, Does the committee intend that FEA, in setting prices for new, old, and stripper oil, should take into account the relative long-term productivity of those prices? In other words, that FEA should determine whether a certain increase in old oil prices, or maintaining the new and stripper oil prices at incentive levels, would be likely to produce more oil over the long term?

Mr. JACKSON. Mr. President, the Senator has stated the committee's intent. As the report reads:

> The President is granted broad authority to establish ceiling prices for classifications of domestic crude oil production if he finds that such classifications are administratively feasible and will optimize domestic production.

It might be possible, by a sudden large increase in the price of old oil, to bring about an equally sudden rise in production through workovers, water-flooding, and other techniques. But if the result of doing that would be to cut the new oil and stripper oil price in such a way that the incentive was removed for finding and producing such oil, FEA would have sacrificed long-term production for a short-term gain. That is not what the committee intended.

The bill also provides that the annual production incentive adjustment should encourage the development of high-risk, high-cost properties, including production by independent producers, and to encourage production from stripper wells, most of which, as the Senator says, are operated by independents.

So I would say to the Senator that the conferees intended that the FEA should move very cautiously in increasing the price of old oil, with a view toward maintaining production of new and stripper oil; and that the incentive adjustment should be employed, at least in part, to offset the effect of the progressive change in the relative shares of old and new oil in total domestic production. We were aware that independents are chiefly concerned with new and stripper production, and we want FEA to encourage them, through its pricing policies, to continue to explore for new oil and to produce from stripper wells. Our purpose, as the report states, is to optimize production.

ORDER FOR RECOGNITION OF SENATOR STENNIS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the name of Mr. STENNIS be substituted for the name of Mr. ROBERT C. BYRD in respect of the order that was previously entered today for recognition on tomorrow.

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

ORDER TO HOLD H.R. 11045 AND H.R. 8304 AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that H.R. 11045, an act to amend the Rehabilitation Act of 1973 to extend the authorizations of appropriations contained in such act,

and H.R. 8304, an act to amend the national reading improvement program to provide more flexibility in the types of projects which can be funded, and for other purposes, be held at the desk pending further action.

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

WIDOWS OF FORMER EMPLOYEES OF THE LIGHTHOUSE SERVICE

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 1535, and that the bill be considered as having been read twice.

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

The legislative clerk read as follows:

A bill (H.R. 1535) to increase the amount of benefits payable to widows of certain former employees of the Lighthouse Service.

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

There being no objection, the bill (H.R. 1535) was considered, ordered to a third reading, read the third time, and passed.

RETIRED PAY OF CERTAIN MEMBERS OF THE LIGHTHOUSE SERVICE

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 6851, and that the bill be considered as having been read twice.

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

The legislative clerk read as follows:

A bill (H.R. 6851) to increase the retired pay of certain members of the former Lighthouse Service.

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

There being no objection, the bill (H.R. 6851) was considered, ordered to a third reading, read the third time, and passed.

QUORUM CALL

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

BRIG. GEN. CHARLES E. YEAGER

Mr. ROBERT C. BYRD. Mr. President, the Senate Committee on Banking, Housing, and Urban Affairs today reported, by its chairman (Mr. PROXMIRE), without amendment, H.R. 8151 (Report No. 94-565), an act to authorize the President of the United States to present, in the name of Congress, a medal to Brig. Gen. Charles C. Yeager.

The measure reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby authorized to present, on behalf of the Congress, to Brigadier General Charles E. Yeager, United States Air Force, an appropriate silver medal, equivalent to a noncombat Medal of Honor, for contributing immeasurably to aerospace science by risking his life in piloting the XS-1 research airplane faster than the speed of sound on October 14, 1947. For such purpose the Secretary of the Treasury is authorized and directed to cause to be struck a silver medal with suitable emblems, devices, and inscriptions to be determined by the Secretary of the Air Force subject to the approval of the Secretary of the Treasury. There is hereby authorized to be appropriated the sum of $5,500 for this purpose.

SEC. 2. The Secretary of the Treasury shall cause duplicates in bronze of such medal to be coined and sold, under such regulations as he may prescribe, at a price sufficient to cover the cost thereof (including labor), and the appropriations used in carrying out the provisions of this section shall be reimbursed out of the proceeds of such sale.

Mr. President, Brig. Gen. Charles E. Yeager is a West Virginian, and I take great pride in asking unanimous consent that the Senate proceed to the immediate consideration of H.R. 8151.

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

The legislative clerk read as follows:

An act (H.R. 8151) to authorize the President of the United States to present in the name of Congress, a medal to Brigadier General Charles E. Yeager.

The ACTING PRESIDENT pro tempore. Without objection, the Senate will proceed to its consideration.

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

Mr. ROBERT C. BYRD. I yield.

Mr. GLENN. I would like to support this measure, and speak on it just briefly.

I know General Yeager personally and have knowledge of his many years of test work. I think the U.S. Air Force and the country are better off for having had Chuck Yeager doing this testing over the course of many years. His most notable exploit was back some years ago, when he piloted the X-1 through the sound barrier for the first time and thus entered a new arena of flight that was unknown previous to that time, and could not be adequately predicted. His effort has led on to many other things with regard to military aviation and the upgrading of civil aviation.

I comment this action of Congress, and I am happy to speak on its behalf. I certainly hope the Senate passes this measure. I wish General Yeager very well, and offer him my sincere congratulations on behalf of the Senate.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Ohio for his timely and very gracious comments.

The ACTING PRESIDENT pro tempore. The question is on the third reading of the bill.

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene at the hour of 9 a.m. tomorrow. After the two leaders or their designees have been recognized under the standing order, Mr. BARTLETT and Mr. STENNIS will be recognized for not to exceed 15 minutes each, and in that order, after which there will be a closed session which will extend over a period of 2 hours with respect to the defense appropriations conference report on H.R. 9861.

Upon the Senate's going back into open session, there will be not to exceed 30 minutes of debate in open session, after which the Senate will proceed to vote on the defense appropriations conference report on H.R. 9861. That will be a 12 o'clock meridian vote.

Upon the disposition of that vote, the Senate will take up the nomination of Mr. Stevens to be a Justice on the U.S. Supreme Court, and the vote on the Stevens nomination will occur at no later than 1 p.m., after which the Senate will resume legislative session and will debate for 30 minutes the conference report on the public works authorization bill, H.R. 5247. If a point of order is not made on that conference report, a vote will occur thereon at the expiration of that time. If a point of order is made and is sustained, the conference report will go back to conference.

Then the Senate will proceed to take up the amendments in disagreement on the defense appropriations conference report, H.R. 9861. The Senate will then resume consideration of the bill S. 622, and the question at that time will be on adoption of the motion to concur in the House amendment to the Senate amendment to the House amendment to the Senate bill S. 622.

At some point tomorrow, the Senate is expected to take up the conference report on extending the tax cut. Senators are alerted to the fact that several rollcall votes will occur tomorrow.

RECESS UNTIL 9 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until the hour of 9 o'clock tomorrow morning.

The motion was agreed to; and at 8:45 p.m. the Senate recessed until tomorrow, Wednesday, December 17, 1975, at 9 a.m.