Foreign Commerce. Reaffirms the intent of Congress with respect to the structure of the common carrier telecommunications industry rendering services in interstate and foreign commerce. Grants additional authority to the Federal Communications Commission to authorize mergers of carriers when deemed to be in the public interest. Reaffirms the authority of the States to regulate terminal and station equipment used for telephone exchange service. Requires the Federal Communications Commission to make specified findings in connection with Commission actions authorizing specialized carriers.

H.R. 13262. April 14, 1976. Ways and Means. Amends the Internal Revenue Code to exempt farmers or farm operators from the highway use tax on heavy trucks if the farmer (1) uses such vehicle primarily for farming purposes, and (2) is not a corporation with gross receipts in excess of $950,000 or with gross receipts more than 50 percent of which are from activities other than farming.

H.R. 13263. April 14, 1976. Merchant Marine and Fisheries. Establishes the Minnesota Valley National Wildlife Refuge, Minnesota.

H.R. 13264. April 14, 1976. Education and Labor. Repeals the Occupational Safety and Health Act of 1970.

H.R. 13265. April 14, 1976. Interstate and Foreign Commerce; Post Office and Civil Service. Amends the Public Health Service Act to authorize the Secretary of Health, Education, and Welfare to create 50 additional positions in the Public Health Service, raising the total number of positions to 200. Requires that not less than 125 positions be for the National Institutes of Health and that not less than 25 be for the entity through which the Federal Food, Drug, and Cosmetic Act is administered.

SENATE—*Wednesday, May 5, 1976*

The Senate met at 12 noon and was called to order by Hon. PATRICK J. LEAHY, a Senator from the State of Vermont.

PRAYER

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

O God and Father of all mankind, whose promise is to bless that nation whose people covenant to know and do Thy will, make known to us what we should think and how we should live to fulfill Thy divine intention. May Thy goodness overrule our mistakes and Thy greatness strengthen our weakness. Hasten the day when Thy purposes are expressed not only in the hearts of a few wise and brave men, but throughout the whole Nation, in Congress and in court, in workshop and office, in field and forest, in the city and in the country. Draw us together in this body in unity of spirit, and in bonds of peace that the words of our mouths and the work of our minds may be acceptable in Thy sight, O Lord, our strength and our Redeemer. 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., May 5, 1976.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. PATRICK J. LEAHY, a Senator from the State of Vermont, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, May 4, 1976, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees be authorized to meet until 1 p.m. or the end of the morning business, whichever comes later.

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

CONSIDERATION OF CERTAIN MEASURES ON THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar Nos. 703 and 733.

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

AUTHORIZING APPROPRIATIONS FOR THE NUCLEAR REGULATORY COMMISSION FOR FISCAL YEAR 1977

The Senate proceeded to consider the bill (S. 3107) to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes, which had been reported from the Joint Committee on Atomic Energy with amendments as follows:

On page 2, line 1, strike "$249,430,000" and insert "$274,300,000";

On page 2, line 8, after the period, insert "Funds may be obligated for purposes stated in this section only to the extent provided in appropriation Acts.";

On page 2, beginning with line 16, insert the following:

AMENDMENTS TO PRIOR YEAR ACT

SEC. 104. (a) Title I of Public Law 94–79 is amended by adding section 102 to read as follows: "Moneys received by the Commission for the cooperative nuclear research program may be retained and used for salaries and expenses associated with that program, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484), and shall remain available until expended. Funds may be obligated for purposes stated in this section only to the extent provided in appropriation Acts.".

(b) Section 101 of Public Law 94–79 is amended by adding the phrase "and shall remain available until expended" after the words "September 30, 1976".

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,

SEC. 101. There is hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended; for salaries and expenses, $274,300,000 to remain available until expended.

SEC. 102. Moneys received by the Commission for the cooperative nuclear safety research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484), and shall remain available until expended. Funds may be obligated for purposes stated in this section only to the extent provided in appropriation Acts.

SEC. 103. Transfer of sums from salaries and expenses may be made to other agencies of the Government for the performance of the work for which the appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred.

AMENDMENTS TO PRIOR YEAR ACT

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(b) Section 101 of Public Law 94–79 is amended by adding the phrase "and shall remain available until expended" after the words "September 30, 1976".

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

STATUE OF BERNARDO DE GALVEZ

The bill (S. 3031) to authorize the erection of a statue of Bernardo de Galvez on public grounds in the District of Columbia was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior shall select an appropriate site for the location of a statue, including pedestal therefor, of Bernardo de Galvez, a gift of the Government of Spain in recognition of the Bicentennial celebrations of the United States of America and as a token of the friendship that exists between the people of Spain and the people of the United States. Such statute shall be erected on grounds now owned by the United States of America in the District of Columbia if (1) the choice of the site and the design of the statue is approved by the Commission of Fine Arts and the National Capital Planning Commission, and (2) the erection of the statue is begun within five years after the date of

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the enactment of this Act. The erection of the statue and proper landscape treatment of the site, including walks, shall be without expense to the United States of America, except for necessary maintenance after completion.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Does the acting minority leader seek recognition?

REVENUE SHARING: WHEN WILL CONGRESS ACT?

Mr. GRIFFIN. Mr. President, more than a year has passed since President Ford urged Congress to extend the general revenue sharing program. That legislation was introduced in the Senate on May 1, 1975, as S. 1625 and in the House 1 day earlier as H.R. 6558. Various other measures to renew revenue sharing also were proposed last spring.

Despite the urgent need, Congress has done virtually nothing. In the House there has been a tiny bit of movement. A subcommittee of the House Committee on Government Operations has been marking up a renewal bill, but there is no firm indication as to when it will be reported by the full committee. The Senate is not expected to act until after a bill is passed by the House.

While Congress has been almost ignoring revenue sharing, State and local governments across the Nation have been in a quandary—which pushes some of them closer and closer to the brink of financial disaster.

Those who have the responsibility to manage our cities, big and small, simply do not know at this point whether they can continue to count on this important fiscal assistance. The existing program expires in December. But States and localities that have fiscal years beginning in July have already been required to finalize their fiscal year 1977 budgets. Some have guessed, in formulating their budgets, that they will receive only half a year of revenue sharing payments; others have climbed out on a limb and assumed in their budgets that revenue sharing will be extended beyond December.

The uncertainties caused by this situation create serious problems. Some small jurisdictions count on revenue sharing to fund up to 20 percent of their budgets. Large cities and States have millions of dollars at stake.

The city of Detroit, for example, does not know whether the $40 million it has received each year in revenue sharing will continue to be available.

This state of affairs—the failure of Congress for an entire year to act on this vital legislation—is inexcusable.

One of the many advantages of the revenue sharing program in the past has been the fact that State and local governments were aware in advance of the level of funding they were to receive from year to year. As a result, there was the opportunity to plan wisely for use of the money.

But now Congress is pulling the rug out from under the States and local governments of this Nation, leaving not only the future of the program—but also the welfare of millions of Americans—seriously in doubt. They need to know now whether the program will end or will be extended.

I cannot understand this foot-dragging. I think most of my colleagues would—if given a chance to vote—agree with me that revenue sharing has been a success. It should be extended under its present broad guidelines, as proposed by President Ford a year ago.

Since general revenue sharing was enacted in October 1972, more than $23 billion has been made available to States and local communities throughout the Nation. These funds have done much to strengthen the viability of our federal system of government, a system built on the shared exercise of powers and responsibilities. A strong working partnership between Federal, State, and local governments is necessary if our Republic is to respond effectively to the needs of its citizens.

Revenue sharing has contributed to a revitalization of our federal system by returning more resources to the governments closest to the people, where there is a clearer perception of the needs of citizens. Simply put, some tasks are better performed by State and local governments—a fact the framers of our constitutional system wisely recognized.

Revenue sharing has placed funds where needs exist. It has given significant assistance to our hard-pressed center cities. In my own State of Michigan, for example, the city of Detroit in 1974 received $27.79 in revenue sharing funds for each of its citizens. By contrast, the wealthy suburb of Grosse Pointe Farms received $3.83 per capita.

Likewise, the program has aided low-income States more than wealthier ones. A 1972 study found that governments in Mississippi received $39.90 per capita as compared with $28.05 for California.

The program has been free of much of the costly, often counterproductive, bureaucratic redtape associated with most categorical grant programs. Small and rural communities, which often benefit little from other forms of Federal assistance, have participated in revenue sharing without the need to engage in highly expensive "grantsmanship" competition with other communities—other communities which often are equally deserving.

Revenue sharing funds have helped States and communities maintain vital public services and stabilize crushing tax burdens—particularly real property and sales taxes that fall hardest on blue-collar workers and the elderly.

With shared revenues, State governments and almost 39,000 units of local government have been able to meet many urgent needs. Improved education, better police and fire protection, more extensive emergency health and accident assistance, and expanded local transportation systems have all resulted from the availability of shared revenues.

If revenue sharing payments were cut back or cut off, the impact on State and local governments would be severe and our efforts to assure economic recovery would be dealt a serious blow. Governments would be forced either to cut back further on services and public employment or to increase taxes and borrowing.

Every day we delay in renewing the general revenue sharing program increases the risk of future deprivation and suffering by those who have entrusted this Nation to our care.

It is past time for Congress to quit dallying on revenue sharing. Let us get about the business of passing this legislation.

ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a period for the conduct of morning business, with a time limitation of 3 minutes attached to statements therein.

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

Mr. MANSFIELD. Mr. President, I yield 3 minutes of my time to the distinguished Senator from North Carolina (Mr. HELMS).

Mr. HELMS. Mr. President, I thank the distinguished majority leader.

WISE COUNSEL FROM EDWIN GILL—A DISTINGUISHED TAR HEEL

Mr. HELMS. Mr. President, the other day I received a copy of an exceedingly sensible letter written by one of North Carolina's ablest and most dedicated public servants, the Honorable Edwin Gill, State treasurer.

I greatly respect Edwin Gill's judgment in fiscal matters—particularly those affecting the proper fiscal management of State governments. He believes in local responsibility, in sound management, and fiscal integrity.

Almost constantly, the Federal Government seeks to put roadblocks in the way of States wishing to follow the path of prudent, economical government. Such is the case with a bill that has been reported out of the House Ways and Means Committee, H.R. 12774. This is a bill which would allow a State or local government to issue taxable financial obligations, the interest on which would be included in the gross income of the buyer. The Secretary of the Treasury would then be required to pay a percentage of the yield on each obligation made taxable.

Obviously, Mr. President, such an arrangement would disrupt bond markets tremendously, driving capital out of those markets and increasing the net cost of local financing.

This arrangement would put the Federal Government up to its ears in the business of local debt financing. That involvement, as surely as the sun will rise tomorrow, will bring more and more Federal controls on the uses of that financing.

The Committee on Finance has never endorsed such a radical change in our Tax Code, and in 1969, the committee considered a House-passed bill similar to H.R. 12774, and voted against sending it to the full Senate. I certainly hope in the course of its deliberations on changes in the Internal Revenue Code, the Com-

mittee on Finance this year, will not recommend this legislation to the Senate.

North Carolina's State treasurer, Edwin Gill, has outlined the situation from the perspective of a man who must work with the bond market and see that State finances are in order. I ask unanimous consent that his letter to AL ULLMAN, the distinguished chairman of the House Ways and Means Committee, be printed in the RECORD at this time.

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

STATE OF NORTH CAROLINA,
DEPARTMENT OF THE TREASURER,
Raleigh, N.C., April 27, 1976.

Re: H.R. 12774.

Hon. AL ULLMAN,
Chairman, U.S. House Ways and Means Committee, Congress of the United States, Washington, D.C.

DEAR MR. ULLMAN: As Treasurer of North Carolina and ex officio Chairman of the Local Government Commission, I wish to express my opposition to the above bill.

This legislation, in my opinion, will serve to destroy the hard-earned credit of the state and local governments throughout the nation. The provision allowing for the taxable bond option compounds the destructive nature of this legislation in that it would place the state and local governments under heavy obligation to the United States government in connection with their financing.

I had hoped that we were entering a period in which there would be an independent partnership among the federal, state and local governments. Such a partnership becomes a mirage if the federal government assumes this dominant role in government financing. You will recall that in 1969 and again in 1973 attempts were made to repeal the exemption on state and local government bonds. Although the proposed legislation was defeated in each case, the threat of such legislation had a very disturbing effect upon the bond market for state and local securities.

The legislation now proposed, in my opinion, would tend to chill the initiative of state and local governments, especially those that have made a determined effort to refine and improve their fiscal policies.

I hope very much that after due consideration the House will reject this legislation as contrary to the great tradition of our country.

It is important that this legislation be disposed of as soon as possible for as long as it is pending, it could have an adverse effect on the state and municipal bond market.

With kindest regards, I am

Cordially yours,

EDWIN GILL,
State Treasurer and ex officio Director of Local Government.

ORDER FOR RECOGNITION OF SENATOR CULVER AND SENATOR MANSFIELD TOMORROW

Mr. MANSFIELD. Mr. President, may I inquire of the desk what Senators have been allowed special orders for tomorrow?

The ACTING PRESIDENT pro tempore. Senator PROXMIRE and Senator GOLDWATER.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that following those two, the Senator from Iowa (Mr. CULVER) and the Senator from Montana, now speaking, each be allowed to proceed for not to exceed 15 minutes.

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

TESTIMONY OF MR. WILLIAM MAGRUDER OF PIEDMONT AVIATION

Mr. GOLDWATER. Mr. President, I ask unanimous consent to have printed in the RECORD the testimony today of Mr. William Magruder, executive vice president of Piedmont Aviation, before the Subcommittee on Aviation and Transportation, Research and Development, House of Representatives.

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

TESTIMONY OF MR. W. M. MAGRUDER

I. INTRODUCTION

Mr. Chairman, I am most pleased with this opportunity to testify before the subcommittee on aviation and transportation R&D for a single reason—it offers great encouragement to those of us who have devoted our professional lives to this outstanding U. S. industry that our elected officials are probing this industry in order to find out what role our government can and should play; and just as significantly, what government should not do. To assist your successful accomplishment of this objective, I shall address two issues: first, the industry viewpoint of our situation today, a little about how we got to this point and where I think we could be headed; and, secondly, some economic and institutional issues related to how the U. S. Government can play a successful role in aviation R&D. All of this, from my background of 15 years as a member of the aerospace manufacturing industry as a designer, program manager, test pilot and engineer, 14 years as a government official involved in testing/program management and evaluation, and as a special consultant to the President of the United States, and for the past three years as an executive of a regional airline, Piedmont Aviation, serving major and small cities east of Chicago and Memphis.

II. MY OBSERVATIONS OF THE INDUSTRY VIEWPOINT REGARDING AERONAUTICAL R. & D.

(a) National goals are essential for the focusing of governmental and public attention and effort. There is no lack of stated goals in aeronautics in the U. S. Congress from the appropriate committees and subcommittees going back to World War II. But, today, among congressional leaders and the administration, within the U. S. communication system and among the public institutions, there is no clear mandate, support or goal. More importantly, there is very little understanding of the three most important ingredients necessary for this kind of support. There is no clear awareness of:

How our aeronautical system got to its present state of world-wide preeminence.

What the public and national benefits of this industry are, and could be.

What the proper justifications for governmental support of Aeronautical R & D in our Federal system are.

It is not hard to discern why a clear and cogent national aviation goal is missing from today's dialog in our Nation's Capital; aviation is hardly a popular subject in the national communication system. In 1971, during my assignment to the White House staff, I attempted to canvass the Congress about their national priorities. Using about a 50% response, here is what I found to be the 1972 election year congressional priorities (not including defense):

Priority No.:
1. Employment.
2. Health care.
3. Environment.
4. Education.
5. Law enforcement.
6. Urban transit.
7. Conservation of natural resources.
8. Community development.
9. Productivity.
10. Trade.

Today I would expect that we would add energy at least to this list, but only indirectly does aviation impact upon productivity, trade and employment. The reasons for the absence of such a critical industry from the top 10 is not difficult to understand; in fact, it was carefully pointed out in the 1970 national goals report preamble by Dr. Patrick Moynihan. In essence, Dr. Moynihan pointed out national goals are avoided by elected leaders, unless they are very popular issues, because they too quickly become standards by which political performance is measured. Even if the goals are attained, they are attained too late or at too great a cost when perceived in the public eyes. Therefore, they are avoided. Now, in the case of an unpopular issue, which aviation certainly is these days, ERGO, SST's cause cancer, C-5's, TFX's, Lockheed loan, overseas payoffs, election funds, etc., etc. The establishment of a popular mandate to support this industry becomes quite a monumental task. Our public relations has been terrible for the past decade. Nonetheless, we need a national goal; we need to be evaluated fairly and openly based upon the balance of good things we provide the Nation and the world so that these contributions to our society are not lost in the minute examination of the few warts that we, and all other institutions, exhibit in our failures to reach perfection.

Recently, at the annual American institute of Astronautics and Aeronautics, I was asked to develop a national aviation goal. Here is what I offered to that outstanding organization:

"To provide low-cost, economic, safe, quiet and clean transportation of people and goods readily convenient to all destinations within or without the continental U.S. that have a clear need, and to provide augmentation for our military airlift system."

The benefits of this goal could also be stated as:

"So as to encourage the communications and commerce of our citizens throughout the Nation and the world and then realize the benefits of this communication and commerce in conditions that promote peace, a healthy society and a strong U.S. economy able to compete in the world."

(b) *Current situation of the civil aviation industry*—Sometimes the clarity of an observation of what is currently going on can be enhanced by a quick glance back over one's shoulder. Let me glance back five years to 1971 when our Congress abandoned the SST experiment, an act which made the aviation and financial communities sit bolt upright and take stock of the situation. Something which "could never happen" had just occurred. Here is what was clearly stated to me by most of the aviation industry leaders and their major lenders in early 1971, when I surveyed the situation at the request of President Nixon:

Airline earnings had so diminished since the peak profit years of 1966 and 1967 that they were delaying acceptance of their options for new widebody airplanes even though the lower operating costs of the new airplane and their decreased noise and fuel consumption were needed.

Capital costs of new equipment and the "profit squeeze" for airlines were so severe that no new U.S. programs were likely to be financed for some time unless the Federal Government stepped in to help.

Foreign competition from British, French, Dutch, and German models existed in three markets where the U.S. was now excluded:

SST's—Concorde and Concordski.

Twin wide-body—A-300.

Short-range jets—F-28 and VFW-614.

U.S. manufacturers were excluded from joint civil programs by anti-trust statutes but joint overseas ventures were not excluded; therefore, our manufacturers were heading overseas for capital:

G.E.-Snecma talks for 10 ton engine.

Boeing-Italy—7x7 talks.

P&W-MTW and Rolls-Royce—Talks for 10 ton engine.

Boeing-USSR—Talks for an aviation community to be built in Russia.

Capital costs of new programs for major civil transports were in the $1 to $2 billion range and for SST's up to $5 billion, or two to five times the net worth of the manufacturers with the payback period from start to breakeven exceeding 10 years. No capital availability was foreseen by the lenders considering two factors:

Lack of government support for airlines as evidenced by poor cab support reflected in airline earnings.

Lack of government support for manufacturers as evidenced by the SST decision.

The past historical flow of technology from major military bomber and transport projects was no longer as direct nor well timed to aid major civil transport projects. The Radcap project (research and development contributions to aviation programs, 29 February 1972) prepared by DOD, DOT and NASA, verified these 1971 observations.

Even a casual examination of these 1971 projections will show that they were conservative. Things got a lot worse than the industry leaders of 1971 predicted:

Airlines total system profits from 1970 through 1975 have totalled a miserable $510 million for all U.S. certificated carriers compared to the cab 12% ROI standard of $4.8 billion—a $4.3 billion shortfall.

Not one single "new" U.S. civil project has been undertaken since 1971. Only the shortened Boeing 747-SP has actually been delivered as a "new" design. Lockheed and McDonnell-Douglas have likewise limited their "new" design efforts to derivatives of current models—neither with any success in the sales area.

Foreign subsidized competition has actually expanded;

The Concorde is in service.

The Concordski TU-144 is in limited service.

The A-300 is in service and is outselling U.S.wide-body jets overseas.

The F-28 is in service.

The VFW-614 is in service.

The Canadian DHC-7 STOL short-haul transport goes into service next year.

The Russian YAK-40 is being offered at $1.8 million (30 seats) through a Canadian outlet. German and Italian commuter lines are actually operating this Russian transport.

The Joint overseas projects have become a fact and are expanding each year:

G.E. and SNECMA are in production for a 10 ton jet engine.

P&W MTU and Rolls Royce are also producing a 10 ton engine.

Boeing, Italy and Japan are under contract for the B-7X7 family of airplanes.

Dehaviland of Canada has purchased the lear jet 600 featuring the U.S. invented super critical wing to be built in Canada.

The RADCAP investigation verified the restricted flow of military program benefits into civil aviation when published in February, 1972.

The insurance companies have, for the first time, "red lined" the airlines for new equipment. Airlines are being forced to lease new equipment.

Airline stocks are at all time lows, drying up the equity market.

Fuel prices have skyrocketed to three times the 1971 values, adding $2 billion per year to U.S. airline system costs.

The 1975 recession, greatest since the 1930's, stunted revenue and profit growths and severely curtailed purchase of new equipment from U.S. manufacturers.

The 1976 election year fever in Washington, D.C. for "regulatory reform" could not have developed at a worse time, fully eroding lender confidence and adding the greatest uncertainty to this industry since the original CAB Act was written in the 1930's.

Now, in spite of all that bad news, we in the industry see many silver linings to the clouds. For example.

Air traffic is projected to grow at from 5 to 8% annually while most other passenger transportation modes will slacken or grow at less robust levels.

The world-wide new air transport market through 1990 looks to be over $70 billion, or more than all the history of civil air transport to date.

These two statistics are more than enough reason for not being downhearted; also good reason for doing just what this committee is trying to do—investigate, understand, prepare and then to act. Notice that almost all of the industry's major problems are external to the industry—an exogenous function, to use a favorite term of the economists; one which often signifies justification for Federal assistance.

III. SOME POLICY ISSUES

(a) *Justification for Government support.*—The business community views expenditures for research and development as a business expense and they recover these costs from their sales. The independent research and development costs and bid and proposal costs for Government programs are likewise treated as normal, recoverable business expenses, as they should be.

In the administration's 1971–1973 overall evaluation of Federal R&D, with which I was associated while on the White House staff from 1971 to 1973, I attempted to better define the justification for Government investment in research and development.

I found that the in-dept economic analysis of this justification, while not voluminous, did exist. For example:

(a) *The economic reports of the President*, transmitted to the Congress in January, 1972 said, "it is widely agreed that the group of activities called research and development plays a central role in our economy. It has led to new products and industries; and it can contribute in important ways to solving today's complex economic and social problems. . . . The nature of R&D activities will help determine tomorrow's comparative cost conditions and the patterns of world trade."

(b) *Business economics, September*, 1971. "The Productivity Slowdown" by John W. Kendrick, professor of economics, the George Washington University. "If productivity had continued to rise at its average rate after 1966, the GNP in 1970 would have been $60 billion higher than it was. Instead, the loss in GNP from 1969 through 1970, because of the productivity slowdown, was close to $120 billion. This sum could have made a big contribution toward reversing the deterioration of the environment, financing the income maintenance program to overcome poverty; and, still had enough left over ot finance the SST development! . . . . All available evidence indicates that research and development is an important contribution to economic growth and productivity."

(c) *National Science Foundation*, "A Review of the Relationship Between R&D and Economic Growth/Productivity," February, 1971. "Research to date seeking to measure the relationship points in a single direction—the contribution of R&D to economic growth/productivity is positive, significant and high."

While this support may appear to be substantial and at a decision making level, there still remains the problem of providing specifics for guidelines regarding what conditions justify government involvement. To this end, I prevailed upon the President's council of economic advisors in 1973 to develop and forward to me these guidelines. Here is what we developed as criteria for government support:

(a) When the welfare of all citizens of the U.S. is affected and no one segment of the society can provide the right type of service. An example is our national defense establishment.

(b) When institutional restrictions, such as anti-trust laws, result in a clear impediment and government action is required to reduce friction or barriers. Examples are FHA mortgages, Federal Deposit Insurance Corporation and the S.E.C., which requires total disclosure of relevant facts of a firm issuing public securities.

(c) When externalities occur which are beyond an individual firm's control, such as the fuel embargo or the transition from peace to war and vice-versa.

(d) It is the position of the government that a surplus in the balance of trade account is necessary now and for future years if the United States is to finance its aid program to other nations and to meet its world commitments without further increases in its short-term obligations to official foreigners. The government has, through the Domestic International Sales Corporation (DISC) made available to exporters somewhat more favorable tax treatment, and the Export/Import Bank has increased its financing facilities. Generally, however, the government opposes direct or indirect subsidies to specific industries for two reasons:

(1) It is unwise to distort the national economy to change the trade balance.

(2) It is difficult to identify the specific industries which should be subsidized.

(b) *Aeronautical justification for Government support*—In the wake of the congressional vote against the SST in 1970–1971 it seemed to me to be wise to ask aviation experts in the industry, and in the Government, a single question, "How did our aerospace industry grow to a position of worldwide preeminence?" None could answer this in sufficient detail to offer guidance regarding Government support. On September 9, 1971, I initiated studies with the DOD, supported by DOT and NASA, the results of which became known as RADCAP (R&D Contribution to Aviation Progress), published by the DOD in August, 1972. This is what this intense investigation of the aeronautical industry since 1925 said:

"Government sponsorship, primarily military, has provided most of the significant technological advances that have been made in U.S. aviation.

Early military application of technological advances in accomplishing the defense mission has provided the basis for this acceptance and use in civil aviation.

Other bonus effects, or spin-off benefits, of military aeronautical R&D have been extensive, including manufacturing technology and techniques, production methods, tooling, and plant and test facilities.

The military aeronautical R&D program, in support of defense objectives, will continue to be substantial.

With the possible exceptions in the area of large, long-range transonic and supersonic cruising aircraft, the research and technology generated by the military R&D program will continue to be available for civil aviation application, essentially as in the past.

The benefits occurring to civil aviation from the military sponsored development and production base, however, have decreased in both reliance and importance.

In short-haul transportation, the downward trend in the hardware transfer process should reverse, and relevancy should begin to improve.

In long-haul transportation, little change

to the current "low to moderate" relevancy status is forecast."

Notice that much of the foundation for a "planned" military-civil partnership is already in place and either being tested, developed or about to be placed into project status. For example:

The USAF advanced medium STOL transport projects, Boeing YC-14 and the McDonnell-Douglas YC-15 civil STOL technology for a commercial program in the 1980's, if and when we can pull together the air traffic system, airports, financing, etc. for such such a downtown-to-downtown system.

The Navy's advanced carry-on-deck logistic transport project could produce a low-cost, quiet, clean and efficient short-haul jet transport for small city service in the 1980's, replacing our already obsolete propeller fleet.

The B-1 development program could be the proving ground for advanced dual cycle engines which will make a truly efficient and economic supersonic transport a practicable reality.

(c) Do the accepted criteria apply to aeronautics and how can they be improved?—Indeed they do and they can be improved, probably by this committee's activities. Look at the current application:

Aerospace is probably the single largest contributor to the national defense.

Almost all of the industry problems today eminate from "externalities" which are beyond individual firms' or even the total industry's control; e.g., fuel embargo, foreign subsidized competition, inflation, recession, cab fares and routes policies, State Department involvement in international air transport decisions, etc.

For the past decade, the aerospace foreign sales have been the difference between a positive and a negative balance of trade.

With respect to this last item, our trade balance, often maligned but seldom understood, let me offer this anecdote. During the great SST debate, I offered the following testimony in defense of the U.S. obligation to have a favorable trade balance. First, not all nations can have a positive trade balance since in the sum it must equal zero. Second, the U.S. has made commitments to help the under-developed nations and people of the free world, and need a positive trade balance to do this. I was not allowed, for political reasons, in 1971, to mention that the end result of a sustained negative trade balance could be a dollar devaluation. One year after that testimony, the U.S. had devalued the dollar twice and the international monetary system was in its most unstable status since 1932. We discovered, with a shock, that everything we bought overseas cost a lot more in dollars. Trade balance also helps to meet our international military obligations and no single industry can match aerospace for exports.

In addition, consider that aerospace is near the top as a U.S. industrial employer, over 700,000 in 1975 and with a conservative multiplier in terms of jobs of 2.5 (survey of current business, November, 1969), about 1.8 million total direct and indirect jobs.

We can improve upon these basic economic criteria without distorting market forces by using some or all of the criteria developed by Patrick Haggerty's report to the President's science advisory committee of September, 1971. Mr. Haggerty, of Texas Instruments, Inc., recommended consideration for federal involvement to add the following criteria to those already mentioned:

Exploratory research: as basic to the welfare of our entire society providing new knowledge and scientific and engineering training in our universities.

Whenever a major beneficial social impact can be determined, and:

(a) The private sector is fragmented: Agriculture is an example in the past and perhaps housing and mass urban transit are examples today.

(b) High risk, duration and size of investment exceeds private capability: an example could be satellites, nuclear power and now major air transport programs.

(c) Anti-trust law or the regulatory characteristics of the industry prevent R. & D.: Examples are pollution and auto safety R. & D. being inhibited by federal involvement.

When international competitiveness in world trade is threatened: Other nations' methods involve cartels, government subsidies and are not as open as U.S. industry, creating a disadvantage for U.S. firms.

(d) Some additional considerations for R. & D. stimuli—the primary need in the civil aerospace industry today is to "get well" as quickly as possible within the present system. To do this will require some and maybe all of the following:

(1) Stop the present "deregulation fever" in Washington, D.C. and establish reform within the present 1958 Federal Aviation Act in order to produce:

Confidence in the financial community, making capital available.

Faster CAB response on routes and fares.

An ROI standard that can be used, refined and adopted for long-range planning for capital needs.

More pricing flexibility.

Federal support for our international carriers in their negotiations with international competitors.

Renewed support for small city service to stimulate growth and commerce.

(2) Establish a trust fund (tax free and interest earning) based upon a ticket tax and to be used for new equipment acquisition and noise alleviation as well as fuel conservation. It will:

Have no budget input.

Be paid for by consumers.

Accelerate noise abatement.

Reduce fuel consumption.

Reduce costs through efficient equipment development.

(3) Allow replacement costs, not original costs, as the basis for corporate income taxation in times of inflation.

(4) Provide for Government procurement regulation to similarly recognize replacement costs in overhead costs and profit aims during Government contracting.

(5) Extending the investment tax credit and allowing its use as a tax rebate during times of severe inflation and/or depressed earnings from externalities.

(6) Adopt no fault insurance for operators and manufacturers in order to reduce risks, costs and still provide fair compensation.

(7) Reduce the current ticket tax, waybill tax and departure tax for the airport trust fund and stop efforts to penetrate this fund for reasons not originally intended.

(8) The provision of a focal point in the Federal Government for aviation. DOT—not so hot. NASA—supportive but restricted.

Once the restoration of the basic health of the industry is assured, some new and innovative ideas can also be considered for this critical industry. Some candidates could include the following, which were submitted to me in the Executive Office for consideration in 1972-1973:

(9) Tax incentives:

(a) An investment tax credit of 7% to be paid to professional R&D personnel as a means of countering potential disincentives of the capital goods tax upon the capital goods of R&D.

(b) A 25% tax credit to private firms for grants made to university R&D to provide a tie between industry and university R&D that does not now exist. What level are coop programs?

(c) Provide cash payments to private firms in the amount of unrealized benefits from tax provisions intended as incentives for R&D expenditures, thus providing stimulation to small firms and new ventures whose profit levels prevent incentives from tax credits and even tax deductions.

(d) Provide for tax deductions for R&D expenditures on products brought to successful commercial implementation, thus providing an incentive for successful R&D output where other incentives encourage R&D input.

(10) Broad base incentives:

(A) Provide for the use of IR&D funds for R&D on any problem of national interest since present use is restricted to mission-oriented military R&D.

(b) Experiments to be conducted to determine the means of stimulating industrial productivity.

(c) Use of matching grants to certain industrial associations as a means of stimulating research in certain areas.

(d) The use of national prizes and awards to stimulate inventions and innovation.

(11) A civil air transport financial assistance fund. This legislation was proposed by the aerospace industries association to the administration in 1973 and supported by the CAB. It offered the following:

Financial assistance to airframe/engine manufacturers for new civil ventures.

A civil air transport financial association fund committee of nine members which would assure:

Design—Significant advance.

Design—Meets public transportation needs.

Design—Competition with foreign designs, if any.

Design—Noncompetitive with privately funded U.S. designs.

Market—Adequate.

Operation—Independent of all departments and agencies.

Financing—For development and production.

(E) What is needed now?—The primary need today is to, with all deliberate haste, replace uncertainty with positive action. I hope, and believe, that the output of this committee could at least be to do as the 1971 Haggerty committee recommended for all Federal R&D:

(1) Assist in providing a more consistent approach to the support of research and development among agencies and programs.

(2) Make the decisionmaking process more orderly and traceable.

(3) Assist in identifying alternative course of action to present R&D policies. And,

(4) To uncover those factors that our decisionmakers consider to be relevant and important.

Thank you, Mr. Chairman, and good luck.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGE REFERRED

As in executive session, the Acting President pro tempore (Mr. LEAHY) laid before the Senate a message from the President of the United States submitting the nomination of George Henry Kuper, of the District of Columbia, to be Executive Director of the National Center for Productivity and Quality of Working Life, which was referred to the Committee on Government Operations.

REPORT ON THE ADMINISTRATION OF THE NATIONAL SICKLE CELL ANEMIA CONTROL ACT—MESSAGE FROM THE PRESIDENT

The ACTING PRESIDENT pro tempore (Mr. LEAHY) laid before the Senate

the following message from the President of the United States, which was referred to the Committee on Labor and Public Welfare:

To the Congress of the United States:

I am pleased to transmit to the Congress the Third Annual Report on the Administration of the National Sickle Cell Anemia Control Act (P.L. 92-294) in accordance with the requirements of Section 1106 of the Public Health Service Act.

Sickle cell anemia is the most common genetic blood disorder in the United States. It is found predominantly, but not exclusively, in the black population where it affects nearly 50,000 persons. The individual cost of sickle cell anemia is tremendous; in addition to medical care and loss of time from school or employment, the resulting psychosocial and educational problems makes advancement against this disorder of highest priority.

This year's report highlights the progress made in the implementation of the National Sickle Cell Disease Program and other related activities of the Public Health Service carried out by the National Institutes of Health, the Center for Disease Control, and the Health Services Administration. We have continued to move ahead in the areas of research, education and public awareness, screening and counseling, and rehabilitation.

Fifteen comprehensive Sickle Cell Centers have been established, bringing together all aspects of research—basic, clinical, clinical application, and clinical trials. Continuing education and community demonstration programs have been included as integral parts of this important effort. This combination will permit the Centers to develop new and innovative approaches to education, testing, counseling and rehabilitation.

Also, last year 25 Sickle Cell Screening and Education Clinics provided information to more than one million persons, screened approximately 233,000 individuals, counselled more than 16,000 and referred many for appropriate medical care.

This activity is extremely important because the sickle cell trait is found in approximately two and one-half million black people. Although the sickle cell trait is primarily a healthy state wherein one carries genes for both sickle hemoglobin and normal hemoglobin, the blood disorder occurs as a result of the presence of genes for sickle hemoglobin inherited from both parents.

The National Institutes of Health is conducting intense investigations into the mechanisms of sickling in sickle cell anemia and subsequent complications, as well as carrying out therapy trials to alter the sickling process.

We must continue to push ahead for new knowledge and methodologies for the diagnosis, control and treatment of sickle cell anemia, as well as carrying on and improving existing screening and counseling, information, and education and training activities.

The progress made in the last year is heartening and sickle cell anemia program activities will continue to be of the highest priority. I am pleased to present this report to the Congress.

GERALD R. FORD.

THE WHITE HOUSE, *May 5, 1976.*

MESSAGES FROM THE HOUSE

At 12:50 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bills in which it requests the concurrence of the Senate:

H.R. 1402. An act for the relief of John W. Hollis;

H.R. 1762. An act for the relief of Mrs. Lessie Edwards;

H.R. 8065. An act for the relief of Carmela Scudieri;

H.R. 9414. An act for the relief of TV Facts, Rochester, N.Y.;

H.R. 9965. An act for the relief of Boulder Daily Camera, Boulder, Colo.;

H.R. 12216. An act to amend the Domestic Volunteer Service Act of 1973 to extend the operation of certain programs by the ACTION Agency; and

H.R. 12704. An act to authorize appropriations for environmental research, development, and demonstration.

The message also announced that the House has passed the bill (S. 1699) for the relief of Mrs. Hope Namgyal, with an amendment in which it requests the concurrence of the Senate.

The message further announced that the Speaker has appointed as members on the part of the House of the U.S. Group of the North Atlantic Assembly Mr. HAYS of Ohio, chairman, Mr. RODINO, Mr. BROOKS, Mr. PHILLIP BURTON, Mr. ANNUNZIO, Mr. JARMAN, Mr. BOB WILSON, Mr. DEL CLAWSON, and Mr. EDWARDS of Alabama.

The message also announced that the Speaker has appointed as members from private life of the Commission on Executive, Legislative, and Judicial Salaries Mr. Edward H. Foley, of the District of Columbia, and Sherman Hazeltine, of Arizona.

ENROLLED BILL SIGNED

The message also announced that the Speaker has signed the enrolled bill (S. 3065) to amend the Federal Election Campaign Act of 1971 to provide that members of the Federal Election Commission shall be appointed by the President, by and with the advice and consent of the Senate, and for other purposes.

The enrolled bill was subsequently signed by the Acting President pro tempore (Mr. LEAHY).

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

SUPPLEMENTAL APPROPRIATIONS TO PAY CLAIMS AND JUDGMENTS—(S. DOC. NO. 94-180)

A communication from the President of the United States transmitting a proposed appropriation request of $19,431,229 to pay claims and judgments rendered against the United States (with accompanying papers); to the Committee on Appropriations, and ordered to be printed.

PROPOSED SUPPLEMENTAL APPROPRIATIONS FOR THE DEPARTMENT OF THE ARMY—(S. DOC. NO. 94-182)

A communication from the President of the United States transmitting a proposed appropriation request of $50 million for the Department of the Army, Corps of Engineers—Civil (with accompanying papers); to the Committee on Appropriations, and ordered to be printed.

PROPOSED TRANSFER OF FUNDS FOR THE ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION—(S. DOC. NO. 94-181)

A communication from the President of the United States transmitting a proposed transfer request in the amount of $12,630,000 for the Energy Research and Development Administration for the fiscal year 1976 (with accompanying papers); to the Committee on Appropriations, and ordered to be printed.

NOTICE OF MEETINGS RELATED TO THE INTERNATIONAL ENERGY PROGRAM

A letter from the Acting Assistant General Counsel of the Federal Energy Administration transmitting, pursuant to law, notice of certain meetings related to the International Energy Program (with accompanying papers); to the Committee on Interior and Insular Affairs.

PROPOSED LEGISLATION BY THE GENERAL SERVICES ADMINISTRATION

A letter from the Administrator of General Services transmitting a draft of proposed legislation to amend section 5726(c) of title 5, United States Code (with accompanying papers); to the Committee on Post Office and Civil Service.

ORDER OF THE IMMIGRATION AND NATURALIZATION SERVICE

A letter from the Commissioner of the Immigration and Naturalization Service transmitting, pursuant to law, copies of orders suspending deportation, together with a list of the persons involved (with accompanying papers); to the Committee on the Judiciary.

PROPOSED CONSTRUCTION PROJECTS FOR THE NAVAL AND MARINE CORPS RESERVE

A letter from the Deputy Assistant Secretary of Defense transmitting, pursuant to law, notification of seven construction projects to be undertaken by the Naval and Marine Corps Reserve (with accompanying papers); to the Committee on Armed Services.

SUPPLEMENTAL REQUEST FOR THE ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

A letter from the Administrator of Energy Research and Development transmitting a proposed supplemental request in the amount of $13 million (with accompanying papers); to the Committee on Appropriations.

PROSPECTUS OF THE GENERAL SERVICES ADMINISTRATION

A letter from the Administrator of General Services transmitting, pursuant to law, a prospectus for a succeeding lease for space occupied in Arlington, Va. (with accompanying papers); to the Committee on Public Works.

PETITIONS

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

Thirteen resolutions adopted by the Michigan Audubon Society relating to the Nation's wetlands, the proper use of land, the bounty law on coyotes, the energy problem, throwaway cans and bottles, the Nation's sand dunes and shoreland, 40,000 acres of land contiguous to the AuSable and Manistee Rivers, the laying of a grid of underground

cable, methods for recycling paper, additional nuclear powerplants, mosquito abatement districts, extending thanks to the Capitol Area Audubon Club, and a tribute to one of its members; ordered to lie on the table.

Three resolutions adopted by the Michigan Audubon Society relating to deterioration of our national park and wildlife refuge systems, the Garrison diversion unit in North Dakota, and the Natural Rivers Act; to the Committee on Interior and Insular Affairs.

A resolution adopted by the Michigan Aububon Society relating to PCB levels; to the Committee on Labor and Public Welfare.

A resolution adopted by the Michigan Audubon Society relating to soil fertility; to the Committee on Public Works.

A resolution adopted by the Michigan Audubon Society relating to expanding use of untested chemicals; to the Committee on Agriculture and Forestry.

Senate Resolution No. 338, adopted by the Senate of the State of Hawaii; to the Committee on Finance:

"SENATE RESOLUTION REQUESTING THE UNITED STATES CONGRESS TO ENACT A NEW SUGAR ACT

"Whereas, the Federal Sugar Act expired on December 31, 1974; and

"Whereas, the people of Hawaii are economically dependent on its sugar industry with sales now averaging one-half billion dollars annually; and

"Whereas, an act regulating the import and sale of sugar is necessary to assure the sugar industry the possibility of continued viability, stability, and growth; and

"Whereas, this industry is based on over 500 farms and plantations distributed throughout each county in the State; and

"Whereas, more than 200,000 acres are now devoted to the culture of sugar, with more than 6,000 non-managerial wage workers alone engaged in the growing of this crop, these workers constituting half of all persons in the State directly employed in agricultural pursuits; and

"Whereas, the expired Sugar Act embodied a stable forty-year-old method designed to supply the United States market with its annual sugar requirement of some twelve million tons by a system of allocation of 55 per cent of the sugar market to domestic producers of beet and cane sugars, and 45 per cent to 32 nations overseas; and

"Whereas, the enactment of this Act is absolutely necessary to provide Hawaii's economy with sufficient protection to permit the continued solvent operation of its total sugar agricultural endeavor which provides the State's largest single agricultural product—or 85 per cent of the State's total income from all agriculture, and an increase in dollar amount of 389 per cent over the past decade; now, therefore,

"*Be it resolved* by the Senate of the Eighth Legislature of the State of Hawaii, Regular Session of 1976, that the Congress of the United States is urgently requested to pass a Federal Sugar Act, specifically H.R. 14747–74, now pending before it; and

"*Be it further resolved* that certified copies of this Resolution be transmitted to the President of the Senate and the Speaker of the House of Representatives of the United States, to the United States Secretary of Agriculture, and to each member of the delegation to the Congress from the State of Hawaii."

House Resolution No. 473, House Resolution No. 23, and House Resolution No. 53 adopted by the House of Representatives of the State of Hawaii; to the Committee on Finance:

"H.R. No. 473

"House resolution requesting Congress to amend the Internal Revenue code to promote the sale of residential land subject to leaseholds

"Whereas, there are now over 26,000 outstanding residential leaseholds in this State, an increase of more than 100 per cent in seven years; and

"Whereas, the Legislature passed Act 307 in 1967 to encourage the sale or condemnation of such residential leaseholds in order to promote fee simple landholdings; and

"Whereas, Act 307 has not yet been implemented, in part because of constitutional questions, and in many areas older leases are now being renegotiated in large number with staggering increases in annual lease rentals; and

"Whereas, the concentrated ownership by large estates and the rental increases now taking place has made it almost impossible for the young people of Hawaii to build or buy a single family home and is causing those on fixed incomes to sell their homes, even those whose mortgages are paid up; and

"Whereas, one reason the large estates refuse to sell land to homeowners in this State is that the estate's value of the land as originally obtained is almost negligible but the land today is worth millions or billions of dollars and sale of land under these circumstances would result in a prodigious tax impact since if more than a small number of lots are sold during one tax year, the income therefrom would be taxed as ordinary income at a rate of 48 per cent; and

"Whereas, recently the Internal Revenue Service allowed Castle estate to sell certain residential lands to their tenants without taxing the sales as ordinary income, but this ruling only concerns a small number of units; and

"Whereas, amendment to the Federal Internal Revenue Code to alleviate this tax burden would encourage the sale of residential lands now leased, ameliorate the problems caused by substantial lease rent increases upon renegotiation, and further the public policy of more citizens owning their homes as is the case in the rest of America where residential leaseholds do not exist; and

Whereas, several of the large private landowners who currently lease property for residential purposes are charitable trusts and are restricted from investing funds from sales of leasehold land in other ventures by the fear of loss of tax-exempt status; now, therefore,

"*Be it resolved by* the House of Representatives of the Eighth Legislature of the State of Hawaii, Regular Session of 1976, that the United States Congress is urged to amend the appropriated Federal Internal Revenue Code insofar as it affects the treatment of the sale of lands within residential leasehold developments to enable real property sale transactions voluntarily and/or involuntarily under Act 307, Hawaii Revised Statutes, without the present prodigious tax impact that would now be imposed on landowners and to thereby enhance the opportunity of the citizens of Hawaii to own the lands upon which their homes are located; and

"*Be it further resolved* that certified copies of this Resolution be transmitted to the Speaker of the United States House of Representatives, the President of the United States Senate, each member of Hawaii's delegation to Congress, and the Secretary of the Treasury of the United States."

"H.R. No. 23—H.D. 1

"House resolution requesting the Congress of the United States to amend the Federal supplemental security income program to equalize Federal payments to, and States' costs of, benefits for the blind, aged, and disabled.

"Whereas, the federally administered supplemental security income program provides direct cash benefits to the aged, the blind and/or disabled; and

"Whereas, on an optional basis, Hawaii has supplemented federal SSI benefits; and has provided additional state supplements under Act 145 for those recipients whose needs exceed SSI federal-state supplements; and

"Whereas, under the federal hold harmless provision, Hawaii's liability for SSI expenditures is frozen at $3.5 million provided, the state supplemental payment level does not exceed the State's adjustment payment level or hold harmless level which is the average of cash payments made to SSI recipients who had no other income for January, 1972; and

"Whereas, in July, 1976, a federal cost of living adjustment will increase federal benefits to recipients by 7%, causing the average SSI payments for Hawaii recipients to exceed the hold harmless level, and placing the fiscal burden on the State; and

"Whereas, the State's failure to pass on the cost of living increase while maintaining the current level of state supplements would result in suffering on the part of recipients due to the escalating cost of living in Hawaii; and

"Whereas, failure on the part of the federal administration to enact increases to the state adjustment payment level in effect, penalizes recipients in states like Hawaii which provide higher levels of assistance to offset higher costs of living; now, therefore,

"*Be it resolved* by the House of Representatives of the Eighth Legislature of the State of Hawaii, Regular Session of 1976, that the House of Representatives requests and urges the Congress of the United States to amend the federal supplemental security income program to provide for corollary increases in the state adjustment payment level to offset any increase in federal benefits due to cost of living adjustments, thereby permitting Hawaii's recipients of the federal SSI to have the full dollar benefit of the annual cost of living increases; and

"*Be it further resolved* that certified copies of this Resolution be transmitted to the President of the Senate and the Speaker of the House of Representatives of the United States; the Secretary of the United States Department of Health, Education, and Welfare; each member of the delegation to the Congress from Hawaii; and the Director of the American Public Welfare Association."

"House resolution requesting the United States Department of Health, Education and Welfare to Review and amend Federal title XX regulations to eliminate those requirements related to eligibility and implementation which hinder and forestall state implementation and action.

"Whereas, Title XX of the federal Social Security Act provides that the United States Department of Health, Education, and Welfare make regulations governing the application of the Act and funds derived thereunder; and

"Whereas, many of the regulations promulgated under this title by the present administration are so stringent and time-consuming that in many instances timely delivery of services ostensibly provided by the Act is a physical impossibility; and

"Whereas, innumerable instances of such stringency serving to emasculate the Act can be cited; for example, in order to provide a minor with drug abuse clinical services, federal regulations require the minor to bring in each parent's last tax return and current paycheck stubs to permit eligibility for clinical services to be verified under the Act—an action few, if any, minors engaged in drug abuse are likely to tolerate; now, therefore,

"*Be it resolved* by the House of Representatives of the Eighth Legislature of the State of Hawaii, Regular Session of 1976, that the United States Department of Health, Education, and Welfare is requested to review and amend federal regulations governing Title XX of the Social Security Act so as to facilitate implementation of programs and delivery of social services at the state level; and

"*Be it further resolved* that special consideration be given to simplification of in-

come verification for means tested services; and greater flexibility with respect to the definition of family for purposes of sensitive services such as family planning, drug and alcohol abuse; and

"Be it further resolved that certified copies of this resolution be transmitted to the Secretary of the Department of Health, Education and Welfare; the President of the Senate and the Speaker of the House of Representatives of the United States; and to each member of the delegation to the Congress from the State of Hawaii."

House Resolution No. 351 adopted by the House of Representatives of the State of Hawaii; to the Committee on Interior and Insular Affairs:

"H.R. No. 351—H.D. 1

"House resolution requesting the U.S. Congress to enact legislation to compensate or to make reparation to Hawaiians for damages suffered by them at the time of annexation

"Whereas, prior ot the annexation of Hawaii by the United States of America, the administering of all lands of Hawaii was provided for by the monarchy; and

"Whereas, such lands were historically used by and for the benefit of all the Hawaiian people; and

"Whereas, the Hawaiian lifestyle is intertwined with the land and since the Hawaiian people have been deprived of the use of the land, the Hawaiian lifestyle has been seriously altered; and

"Whereas, after the overthrow of the monarchy, the government of the United States displayed a blatant disregard and disrespect for the Hawaiian heritage by acquiring lands which heretofore provided for the benefit, liberal use, and enjoyment of the aborigine or native Hawaiians; and

"Whereas, aborigine or native Hawaiians were deprived of certain property or property rights as the result of the annexation of these islands by the United States of America without compensation; now, therefore,

"Be it resolved by the House of Representatives of the Eighth Legislature, State of Hawaii, Regular Session of 1976, that the Congress of the United States of America be respectfully requested to enact legislation to compensate the aborigine or native Hawaiians, deemed entitled thereto, for damages suffered by them as a result of the annexation of the Hawaiian Islands to the United States of America; and

"Be it further resolved that duly certified copies of this Resolution be transmitted to the President of the United States of America; the Vice-President of the United States of America; the President Pro Tem of the Senate of the Congress of the United States of America; the Speaker of the House of Representatives of the Congress of the United States of America; to the Chairman of the Interior and Insular Affairs Committee of the Senate of the Congress of the United States of America; to the Chairman of the Interior and Insular Affairs Committee of the House of Representatives of the Congress of the United States of America; to the Honorable Hiram L. Fong, and the Honorable Daniel K. Inouye, Senators from the State of Hawaii, and to the Honorable Spark M. Matsunaga, and the Honorable Patsy T. Mink, Representatives from the State of Hawaii of its United States of America."

"H.R. No. 51—H.D. 1

"House resolution relating to Federal Reform of the Food Stamp Act

"Whereas, the Food Stamp Act of 1964 was originally designed to permit low income households to purchase a nutritionally adequate diet through normal channels of trade; and

"Whereas, the primary focus of previous program amendments appears to be on supplementation of incomes in order to increase food purchasing power rather than on improving nutritional levels; and

"Whereas, the Food Stamp program is responsive to the needs of both those who are persistently poor and those experiencing temporary poverty; and

"Whereas, 77% of food stamp recipients have gross incomes below $5,000 a year and 92% below $7,000 a year; and

"Whereas, Food Stamp participation increased by 5 million recipients from 14 million to 19 million in the period between August, 1974 to June, 1975; and

"Whereas, one result of increased participation and the consequent changes in the composition of the food stamp program has been to raise new questions about its scope and costs; and

"Whereas, certain structural features of the food stamp law are clearly a source of problems and of some abuse; and

"Whereas, the Administration and Congress are seeking reform of the Food Stamp Act; and

"Whereas, major legislative proposals to reform the program are currently under consideration by Congress; now, therefore,

"Be it resolved by the House of Representatives of the Eighth Legislature of the State of Hawaii, Regular Session of 1976, that the Congress of the United States is requested to give speedy and favorable consideration to the major reforms embodied in the Dole-McGovern Food Stamp Reform Act (S2541); in particular, the establishment of a standard deduction for eligibility determination, varied by region and adjusted semi-annually to reflect changes in the consumer price index; and the elimination of the purchase requirement to ensure that all poor families are able to benefit from the program; and

"Be it further resolved that Congress seriously consider the adequacy of the present level of benefits in permitting low income households to purchase nutritionally adequate diets; and

"Be it further resolved that Congress is requested to address concerns related to program administration such as limiting the frequency of amendments to federal rules and regulations to twice annually; increasing the federal share of funds for program administration to 100%; and extending the definition of outreach to include recipients of other income maintenance programs; and

"Be it further resolved that any reform measure given favorable consideration by Congress address the following program concerns: eligibility determination, equity of benefits, adequacy of the benefit structure, and administrative efficiency; and

"Be it further resolved that certified copies of this House Resolution be transmitted to members of Hawaii's Congressional Delegation, the President of the United States Senate, the Speaker of the United States House of Representatives, and the respective committees on Agriculture of the Senate and House of Representatives."

Senate Resolution No. 725 adopted by the Senate of the Commonwealth of Puerto Rico; to the Committee on Agriculture and Forestry:

"RESOLUTION FOR THE SENATE OF PUERTO RICO TO TRANSMIT TO THE SENATE OF THE UNITED STATES ITS SATISFACTION FOR THE DISAPPROVAL OF THE AMENDMENT INTRODUCED BY SENATOR JAMES ALLEN CONCERNING THE FOOD STAMPS PROGRAM

"STATEMENT OF MOTIVES

"It is of general knowledge the impact that the federal Stamps Program has on the Puerto Rico's economy.

"About seventy percent of the Puerto Rican families are benefited by same, contributing thereto to the social and political stability of the Island as well as to its economic progress.

"The amendment of Senator James Allen was overwhelmingly defeated in the Senate of the United States. If same had been approved, it would have had a devastating effect on the poor families of Puerto Rico and on the economy in general.

"Be it resolved by the Senate of Puerto Rico:

"SECTION 1.—To express its satisfaction to the Senate of the United States for its resolution of defeating the amendment of the Senator from Alabama, Mr. James Allen, aimed at substantially reducing the economic assistance received by the poor families of Puerto Rico through the distribution of food stamps.

"SEC. 2.—This resolution shall take effect immediately after its approval.

"Thus, I have the honor to transmit it to you for the purposes as may be proper.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

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

S.J. Res. 163. A joint resolution to authorize and request the President to issue a proclamation designating the week beginning May 9, 1976, as "National Small Business Week" (Rept. No. 94–776).

S.J. Res. 182. A joint resolution to authorize and request the President to issue a proclamation designating the period of May 9, 1976, through May 15, 1976, as "National Horse Week" (Rept. No. 94–777).

S.J. Res. 150. A joint resolution to authorize and request the President to issue a proclamation designating July 4 of each year as "Independence Day" (Rept. No. 94–778).

H.R. 6512. A bill for the relief of certain postmasters charged with postal deficiencies (Rept. No. 94–779).

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

S. Res. 436. A resolution supporting the new United States policy toward Africa (Rept. No. 94–780).

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

S. Con. Res. 115. An original concurrent resolution authorizing the printing of background information on the Foreign Relations Committee as a Senate document (Rept. No. 94–781) (Referred to the Committee on Rules and Administration).

EXECUTIVE REPORTS OF COMMITTEES

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

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

William D. Keller, of California, to be U.S. attorney for the central district of California.

Eldon L. Webb, of Kentucky, to be U.S. attorney for the eastern district of Kentucky.

Ermen J. Pallanck, of Connecticut, to be U.S. marshal for the district of Connecticut.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

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

Robert M. Takasugi, of California, to be U.S. district judge for the central district of California.

Morey L. Sear, of Louisiana, to be U.S. district judge for the eastern district of Louisiana.

Ross N. Sterling, of Texas, to be U.S. district judge for the southern district of Texas.

George C. Pratt, of New York, to be U.S.

district judge for the eastern district of New York.

Charles Schwartz, Jr., of Louisiana, to be U.S. district judge for the eastern district of Louisiana.

Harlington Wood, Jr., of Illinois, to be U.S. circuit judge for the seventh circuit.

Phil M. McNagny, Jr., of Indiana, to be U.S. district judge for the northern district of Indiana.

Mr. THURMOND. Mr. President, as in executive session, from the Committee on Armed Services, I report favorably the nomination of Vice Adm. Emmett H. Tidd, U.S. Navy, for appointment to the grade of vice admiral on the retired list. Also, Lt. Gen. William A. Knowlton, U.S. Army, to be general as Commanding General, Allied Land Forces, Southeastern Europe. I ask that these nominations be placed on the executive calendar.

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

Mr. THURMOND. In addition, Mr. President, there are 790 in the Naval Reserve for temporary appointment to the grade of captain and below (list beginning with Donald T. Adams). Also there are 61 in the Navy to be permanent ensigns in the line or staff corps (list beginning with Jean M. Cackowski). Since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of April 9, 1976, at the end of the Senate proceeding.)

HOUSE BILL JOINTLY REFERRED

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when H.R. 12704, to authorize appropriations for environmental research, development, and demonstration, is received from the House, it be referred jointly to the Committees on Public Works, Commerce, Labor and Public Welfare, and Agriculture and Forestry.

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

HOUSE BILLS REFERRED

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

H.R. 1402. An act for the relief of John W. Hollis; to the Committee on the Judiciary.

H.R. 1762. An act for the relief of Mrs. Lessie Edwards; to the Committee on Veterans' Affairs.

H.R. 8065. An act for the relief of Carmela Scudieri; to the Committee on the Judiciary.

H.R. 9414. An act for the relief of TV Facts, Rochester, N.Y.; to the Committee on the Judiciary.

H.R. 9965. An act for the relief of Boulder Daily Camera, Boulder, Colo.; to the Committee on the Judiciary.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that today, May 5, 1976, he presented to the President of the United States the following enrolled bill:

S. 3065. An act to amend the Federal Election Campaign Act of 1971 to provide that members of the Federal Election Commission shall be appointed by the President, by and with the advice and consent of the Senate, and for other purposes.

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. TAFT:

S. 3378. A bill to amend section 303 of the Internal Revenue Code of 1954 to facilitate certain stock redemptions for the purpose of paying estate taxes. Referred to the Committee on Finance.

By Mr. CHURCH (for himself, Mr. CLARK, and Mr. PEARSON):

S. 3379. A bill to require reporting and analysis of contributions, payments, and gifts made in the conduct of international business, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs and the Committee on Foreign Relations, jointly; and, if and when reported, to the Committee on Finance for not to exceed 30 days, by unanimous consent.

By Mr. SPARKMAN (by request):

S. 3380. A bill for the relief of Mary Vance Trent. Referred to the Committee on Foreign Relations.

By Mr. BUCKLEY:

S. 3381. A bill to accelerate the formation and accumulation of the investment capital required to expand both job opportunities and productivity in the private sector of the economy. Referred to the Committee on Finance.

By Mr. SCHWEIKER:

S. 3382. A bill to amend the Federal Reports Act, and for other purposes. Referred to the Committee on Government Operations.

By Mr. PEARSON (for himself and Mr. BELLMON):

S. 3383. A bill to authorize and direct the Secretary of Commerce to develop a national policy on weather modification, and for other purposes. Referred to the Committee on Commerce.

By Mr. PEARSON:

S. 3384. A bill to assure that the Federal Government discharges its present constitutional and statutory responsibilities in such manner as to protect and serve the interests of consumers, and for other purposes. Referred to the Committee on Government Operations.

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

S. 3385. A bill to authorize construction of power generating facilities at the Libby Reregulating Dam, Kootenai River, Montana; and

S. 3386. A bill to amend the River Basin Monetary Authorization and Miscellaneous Civil Works Amendment Act of 1970 with respect to the project for Libby Dam, Mont. Referred to the Committee on Public Works.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. TAFT:

S. 3378. A bill to amend section 303 of the Internal Revenue Code of 1954 to facilitate certain stock redemptions for the purpose of paying estate taxes. Referred to the Committee on Finance.

Mr. TAFT. Mr. President, today I am proposing legislation to amend section 303 of the Internal Revenue Code of 1954 to facilitate certain stock redemptions by small family firms for the purpose of paying estate taxes.

At a time when the country is becoming increasingly concerned about the effects of lack of competition in business, it is proper for us to examine ways in which we might strengthen small independent firms which are in danger of being acquired by larger concerns. One way of preserving the small family firm is to raise the exemption from estate taxes. This step, long overdue, has been proposed in several bills now before the Congress. The added step I call for today would liberalize the tax treatment of the sale of stock of a closely held firm back to that firm by the estate of the owner for the purpose of paying estate taxes.

At the present time, under section 303 of the Internal Revenue Code of 1954, certain stock redemptions of stock in closely held corporations are treated as sales of stock to the corporation. Under this section, if the value of the stock has been included in the gross estate of the decedent, for purposes of the Federal estate taxes, and if the value of the stock included in the estate was either more than 35 percent of the decedent's gross estate or 50 percent of the decedent's taxable estate, then the redemption of the stock of the decedent will be treated as a sale of the stock by the decedent to the corporation. Capital gains treatment is available on the difference between the distributed sum of money and the basis of the decedent in the shares. This treatment is available whether all or part of the stock is to be redeemed.

The apparent underlying purpose of section 303 of the Code, as stated by the House Committee on Ways and Means in its report on the enactment of the section in 1950, was to remove the strain on many estates of paying estate taxes where the estate is comprised largely of closely held stock. Because such stock is not widely marketable, the corporation itself was frequently forced to redeem the stock to pay the estate taxes. The committee stated, in its report:

> It has been brought to the attention of your Committee that the problem of financing the estate tax is acute in the case of estates consisting largely of shares in a family corporation. The market for such shares is usually very limited, and it is frequently difficult, if not impossible, to dispose of a minority interest. If, therefore, the estate tax cannot be financed through the sale of the other assets in the estate, the executors will be forced to dispose of the family business . . ."

House Report No. 2319, 81st Congress, 2d session (1950). The remedy adopted by the committee was the enactment of section 303. Now, where the estate is largely comprised of closely held stock, the stock may be redeemed by the corporation and the estate will have a lower tax on that redemption. Furthermore, the receipts of the redemption may be used to pay the estate taxes.

My proposal is that the restrictions that the closely held stock comprise either 35 percent of the decedent's gross estate or 50 percent of the decedent's taxable estate be lowered to 20 percent and 40 percent respectively. Since this would facilitate stock redemptions in more cases than at present, thus assisting the individual's estate to pay the

estate taxes, it would act to encourage the continued operation of small businesses, rather than their sale to larger concerns to raise estate tax funds.

This bill restricts this liberalization to a certain class of firms.

First, there is an asset test; the firm must have equity capital of less than $2.5 million. This makes llowances for family firms which are large enough to provide jobs for the founder and several of his children with families to support, while keeping firms of substantial size from participating in this special treatment.

Second, there is an "important block" test; 20 percent or more of the value of the voting stock of the firm must be in the estate. Small blocks of stock could either be sold outside the family with little risk of depressed prices, or of loss of control of the firm, or perhaps be picked up by several of the family members with little or no borrowing.

Third, there is a 10-shareholder limit; the firm must have had 10 or fewer shareholders immediately before the date of death of the decedent. This special treatment is not to be available to firms which are so broadly held that they no longer resemble family businesses, nor by firms with a sufficient number of shareholders to make a ready market for the decedent's shares.

In the credit crunch of the last recession, it would have been difficult for the estates, or the heirs, of many major stockholders in family firms which did not quite qualify for section 303 treatment to borrow the funds they needed to meet estate taxes or to purchase the decedent's shares. By insuring the favorable tax treatment of section 303 for a broader range of small family firms, we can prevent the forced liquidation of these companies, and help to preserve them as a stimulus to competition.

I have recently received a moving letter from a constituent detailing the adverse impact of the heavy estate tax burden on small businesses. It illustrates the planning nightmare that many families face, and goes on to describe the adverse burden on cash flow and employment that heavy insurance premiums, on policies taken out in anticipation of estate taxes, can produce. He says:

We employ, at the moment, seventy people in a plant of some eighty thousand square feet with a great deal of wood-working equipment in it. Our costs are typical: about twenty thousand dollars to create a job. This has grown since 1926 when my father started the company with three employees and some thirty-five dollars in capital. He has, through the years, given away some of his stock to me and to the children simply because he knew that it was what he should do. As you can appreciate, this hasn't been an easy thing for him to do—this company is his whole life—absolutely, especially since the death of my mother, who also worked in the company. I graduated from college in 1951, the first of my family to do so, having worked during the summers here during school vacations since I was ten, and I have continued here. My eldest daughter is being married in June to a young man who came to work here shortly after they became engaged. My son aspires to nothing other than working here. This is, I think, a pretty typical pattern of the people you met during our stay in Washington; and of small businesses in general.

So we've worked hard and saved, and we've paid our taxes. We've paid taxes on the profit that the company made after it paid all the property, intangible, franchise and so forth taxes. Then we paid taxes on the dividends that our company paid to us and another tax just for the privilege of holding the stock. But we still managed to save, not easily, enough to be where we are now.

But where are we now? Should my father die within the next three years after he gives away all of his stock (paying at that time more in gift taxes than we are able to show as net profit in a year), we will be faced with having to raise (I don't know how to express this abstractly) $260,000.00, just to pay the tax. Of course, we don't have that sort of money available, so we will either have to sell the company under distress, or mortgage it. Then, of course, one of these days, I will die and the whole process will start all over again. Dad never bought enough insurance to cover these contingencies because when he was young enough to get insurance, he couldn't afford it, and now he's too old to get it.

As I told you, I have recently bought an additional policy to provide (hopefully) enough money to pay my estate taxes. Now, remember, insurance premiums are paid with money on which the income tax has already been paid, so it's the hard kind to find. But with what these premiums cost my company, we could hire an additional three people for the year and pay their income, social security and all the other related taxes. You'll recall that we employ seventy. If we hired three more, that would increase our employment by about 4¼%, which just happens to be about the difference between the national rate of unemployment now and the lowest it has got to since the war, isn't it. I don't propose that altering the estate tax program would correct our unemployment, but rather giving an example.

So, that's taken the estate through my father and me. When my wife dies, and then my children, the same process will be repeated over and over again until the government has taken it all—there's no alternative. It is the business of ghouls which, though legal, can't be very moral. It does not, from what I can learn, bring in enough revenue to justify the above. It is an evil thing. I hope it can be changed.

Mr. President, I ask that the bill be printed in the RECORD at this point.

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

S. 3378

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 303(b)(2) of the Internal Revenue Code of 1954 (relating to limitations on distributions in redemption of stock to pay death taxes) is amended by adding at the end thereof the following new subparagraph:

"(C) Special rule for distributions by certain corporations.—Notwithstanding the provisions of subparagraphs (A) and (B), in the case of a distribution under subsection (a) by a corporation—

"(i) which has equity capital of less than $2,500,000 (determined on the date of death of the decedent),

"(ii) 20 percent or more in value of the voting stock of which is included in determining the gross estate of the decedent, and

"(iii) which has 10 or less shareholders immediately before the date of death of the decedent, the term '20 percent' shall be substituted for the term '35 percent' each time it appears in subparagraphs (A) and (B) and the term '40 percent' shall be substituted for the term '50 percent' each time it appears in such subparagraphs. For purposes of clause (i), the equity capital of a corporation is the sum of money and other property (in an amount equal to the adjusted basis of such property for determining gain), less the amount of its indebtedness (other than indebtedness to shareholders).".

(b) The amendment made by this Act applies with respect to redemptions of stock included in the estate of decedents who die after the date of enactment of this Act.

By Mr. SPARKMAN (by request):

S. 3380. A bill for the relief of Mary Vance Trent. Referred to the Committee on Foreign Relations.

Mr. SPARKMAN. Mr. President, by request I introduce for appropriate reference a bill for the relief of Mary Vance Trent, a retired Foreign Service officer.

The bill has been requested by the Department of State and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when it is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill and an explanation be printed in the RECORD at this point, together with the letter from the Assistant Secretary of State for Congressional Relations to the President of the Senate dated April 30, 1976.

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

S. 3380

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the annuity payable from the Foreign Service Retirement and Disability Fund pursuant to title VIII of the Foreign Service Act of 1946, as amended (22 U.S.C. 1061–1116), to Mary Vance Trent, a retired Foreign Service officer, shall be adjusted and paid from its commencing date in the amount that would be payable if it had commenced April 1, 1974 disregarding service and salary earned on and after such date but basing the credit for unused sick leave on Miss Trent's sick leave balance on her actual date of separation.

DEPARTMENT OF STATE,
Washington, D.C., April 30, 1976.

Hon. NELSON A. ROCKEFELLER,
President of the Senate.

DEAR MR. PRESIDENT: The Department recommends the attached draft bill for the relief of Mary Vance Trent, a retired Foreign Service officer, to the Congress for early and favorable consideration. Relief is required because Miss Trent, through no fault on her part, was not notified of the cost-of-living increase that became effective on April 1, 1974, until after that date and consequently did not retire in time to benefit by that annuity adjustment.

Miss Trent was serving in Saipan in 1974, which is not a Foreign Service post and not a place where information on the U.S. Consumer Price Index is available in the local press. Despite repeated requests, Miss Trent did not receive regular administrative notices addressed to all employees abroad by the Department during the period in question. As a result, she did not learn of the Foreign Service cost-of-living adjustment effective April 1, 1974 until after the fact and thus did not retire until later that year. Because the Foreign Service did not and still does not have the "fall-back" annuity computation

formula in effect for the Civil Service, she is losing over $450 per year in annuity and the loss will increase with every subsequent cost-of-living increase.

The Foreign Service Grievance Board has rendered a decision favorable to Miss Trent. The Board found that the problem arose because of a communications failure which was in no way the fault of Miss Trent. Notices intended for distribution to all employees about the April, 1974 cost-of-living increase were not forwarded to Saipan and, consequently, Miss Trent had no way of knowing about the increase. The Board also accepted Miss Trent's position that she would have elected retirement on March 31, 1974 had she been aware of the April 1 increase. Since Miss Trent was nearing mandatory retirement age, we see no reason to doubt this conclusion.

The Board formally advised the Department that it has a responsibility actively to seek a means of redress for Miss Trent and that this includes supporting necessary legislation. The Department concurs with the Grievance Board finding and is accordingly recommending favorable action on the attached draft bill.

We are advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this legislation to the Congress. We are sending a similar letter to the Speaker of the House of Representatives.

Respectfully,

ROBERT J. MCCLOSKEY,
Assistant Secretary for Congressional Relations.

Enclosure: Draft bill and explanation.

EXPLANATION

This bill would provide relief to Mary Vance Trent, a retired Foreign Service officer. Relief is required because Miss Trent through no fault on her part was not notified of the cost-of-living increase that became effective on April 1, 1974 until after that date and consequently did not retire in time to benefit by that annuity adjustment. Miss Trent did retire in August 1974, but on a lower annuity than she would have received if she had retired prior to April 1, 1974.

Miss Trent was assigned to the Office of Micronesian Status Negotiations, an interagency group with headquarters in offices of the Interior Department in Washington. The officer, however, worked in Saipan in Micronesia which is well off the beaten track especially with respect to news about the U.S. Consumer Price Index and related Foreign Service cost-of-living increases.

Micronesia, the Trust Territory of the Pacific, is under the jurisdiction of the Department of Interior. Saipan is not a Foreign Service post. Unfortunately during the time in question, it was not on anyone's mailing list for distribution of general departmental notices. The Department of State has since corrected that. Despite complaints from the officer, she did not receive any copies of the Department's Newsletter from October, 1973 to May, 1974, some of which contained information about the April cost-of-living increase, nor any other communications concerning that adjustment. She learned about the increase after its effective date from another Foreign Service officer traveling through Saipan.

Miss Trent was nearing retirement age and would have retired no later than March 31, 1974 if she had received any of several notices sent to all Foreign Service posts advising employees considering retirement of the advantages of retiring prior to April 1 to benefit from the 6.3% cost-of-living increase effective on that date. The officer did retire in August, 1974, but her annuity today is some $450 per year less than it would be if she had retired in March, 1974. She will suffer a continuing and increasing financial loss that over a period of years will amount to several thousand dollars, unless some action is taken to remedy the situation.

Miss Trent presented her case to the Foreign Service Grievance Board. The Board, then chaired by William E. Simkin, made a finding in favor of Miss Trent on March 11, 1975. The Board concluded "that the Department has a responsibility actively to seek a means of redress for the grievance in this case, and that it should do everything in its power to bring about a means of redress." The Department lacks authority to redress this wrong. Accordingly, it strongly recommends enactment of this bill which would provide appropriate redress.

The Foreign Service retirement system does not contain a provision similar to one contained in the Civil Service retirement system (Public Law 93-136), which allows annuities of employees who retire after the effective date of a CPI increase to be computed on the basis of that previous adjustment when such computation would produce a higher annuity than one computed as of the actual retirement date. If it did contain such a provision, this bill would be unnecessary.

This bill would authorize a recomputation of Miss Trent's annuity exactly as if such a provision had been a part of the Foreign Service Act at the time she actually retired. Such an amendment of the Foreign Service Act was included in S. 1791, as passed by the Senate in 1974, and is included in similar draft legislation now pending in the Congress. However, this legislation would apply only to persons who retire in the future.

Miss Trent had a unique assignment to a remote area far outside the U.S. where Foreign Service personnel were not customarily assigned. The Department knows of no other employee in similar circumstances who did not receive notification about upcoming cost-of-living increases.

It is estimated that enactment of the bill would increase the unfunded liability of the Foreign Service retirement system by $6,000.

By Mr. CHURCH (for himself, Mr. CLARK, and Mr. PEARSON):

S. 3379. A bill to require reporting and analysis of contributions, payments, and gifts made in the conduct of international business, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs and the Committee on Foreign Relations, jointly; and, if and when reported, to the Committee on Finance for not to exceed 30 days, by unanimous consent.

THE INTERNATIONAL CONTRIBUTIONS, PAYMENTS AND GIFTS DISCLOSURE ACT

Mr. CHURCH. Mr. President, today I am introducing a bill entitled the International Contributions, Payments and Gifts Disclosure Act that comprehensively deals with the problem of bribes, kickbacks, and questionable payments made by U.S.-based corporations operating abroad.

Over the past year, the Subcommittee on Multinational Corporations has held extensive hearings on the subject of political contributions and agents' fees, questionable payments and outright bribes paid by U.S.-based corporations to persons in other countries. The results of our investigations, unfortunately, have been very fruitful. Lockheed Aircraft Corp. alone spent hundreds of millions of dollars attempting to sell planes around the world. Bribes were paid high government officials in Italy and in the Netherlands; over a hundred million dollars were spent in the Middle East on agents who may very well have passed the money on to those in influential positions. In Japan millions were paid to the prime supporter of the ultra-right-wing militarists in Japanese political life. Obviously, we are not talking about a little "grease" to some petty clerk to speed documents through a bureaucracy.

Further, as we all know, the Lockheed affair has been indicative of the behavior of many other U.S.-based corporations. The Multinational Subcommittee alone held hearings on overseas payments by such companies as Northrop, Exxon, Gulf, and Mobil. The Senate Banking Committee has also produced days of testimony in this area. Scores of corporations have voluntarily disclosed such payments to the Securities and Exchange Commission; others have done so under duress of court order. The record is replete with examples of these practices.

And it is not just a way of doing business abroad. In fact, James Akins, previously Ambassador to Saudi Arabia, stated in sworn testimony before the Multinational Subcommittee that bribery was unnecessary, and in fact, detrimental to good business relations in Saudi Arabia. His warning to U.S. corporations went unheeded.

While corporations frequently argued that these are practices common and accepted in other cultures, those same corporations have engaged in intricate machinations to conceal the existence of these payments. Double bookkeeping, "off-the-books accounts," Swiss bank accounts, dummy or shell corporations set up in Switzerland or Lichenstein, numerous agents or intermediaries, whose existence is often kept secret, code names, and code books dispute the credibility of the "common and accepted practice" argument. There is no country in the world where bribes and kickbacks are either legal or publicly "accepted."

Yet, these very practices have extremely serious consequences both for the conduct of U.S. foreign policy and the reception U.S. business receives abroad.

U.S.-based corporations should not be allowed to weaken a friendly government through bribery and corruption while the United States is relying on that government as a stable sure friend supporting our policies. U.S.-based corporations should not be supporting political factions antithetical to those supported by the U.S. Government. Nor do we want, as was revealed in Multinational Subcommittee hearings, the defense priorities of our allies distorted by corporate bribery.

Further, when these payments become known, and they will and do, whether it be through revelations by Senate subcommittees or through the common knowledge that leads to revolution and the downfall of such governments as the Idris regime in Libya, the repercussions are often international and the foreign policy implications for the United States severe. Payments by Lockheed alone may very well advance the communists in Italy. In Japan, a mainstay of our foreign policy in the Far East, the government is reeling as a consequence of payments by Lockheed. Inquiries have begun in many other countries. The Communist bloc chortles with glee at the

sight of corrupt capitalism. But let us not forget that there are costs to the business community, too, for these short-sighted practices. There is no question these payments have had a detrimental effect on the "investment climate" for U.S.-based corporations in certain countries.

This is not to say that only the corporations are at fault. For every giver there is a taker. And often the initiative comes from the foreign government official. Indeed, in some cases, this initiative amounts to extortion. But too often the corporate response has been passive acquiescence, a shrug of the shoulders, passing the added cost on to the consumer.

Moreover, our Government has initiated no real concern with this problem. Rather, aside from some statements of a cosmetic nature, it prefers to stick its head in the sand and hear no evil, see no evil, and pretend there is no problem. But there is a problem, a problem of cancerous dimensions which is eating away at the vitals of democratic society. So there is a need for action, and action now.

Let's not forget that these payments seriously injured competitors and damaged competition. The perfect example again is Lockheed. It sold its planes through payment of millions of dollars over more than a decade. Yet its competitors for the wide-bodied aircraft sale in Japan were only other American companies. Lockheed's payments may very well have distorted the marketplace and injured its competitors.

These business practices are antithetical to the U.S. foreign policy objective of open, nondiscriminatory world trade. They complicate and often are detrimental to our foreign policy objectives. Yet, ironically, the American taxpayer unknowingly subsidizes these practices. Corporations commonly illegally deducted bribes, kickbacks, and questionable payments as costs of doing business thus relieving part of their U.S. tax liability.

Senator PERCY and I have introduced an amendment to the Foreign Military Sales Act requiring disclosure of such contributions, payments and gifts to the Department of State and upon request to the Congress, the SEC, and the IRS. This is a necessary first step, but only a beginning. There is a need for more comprehensive legislation, which I am introducing today. The bill contains the following provisions:

The Securities and Exchange Commission is directed to collect significant information on international contributions, payments and gifts, which will be made public unless the President determines that it will severely impair the conduct of foreign policy. The Secretary of State will provide annually—or more frequently if necessary—a comprehensive review and foreign policy analysis of these payments to Congress. To insure that complete and accurate information is reported to the SEC, an independent audit committee is mandated within corporations and given certain rights and responsibilities including the responsibility for the internal audit of contributions, payments, and gifts. Additional provisions encourage corporate personnel to submit complete and accurate information to the audit committee. All payments illegal under U.S. or foreign laws will be nondeductible for U.S. tax purposes. To encourage the private sector to police itself, shareholders and competitors are insured rights of action when damaged. Finally, the President is encouraged to obtain international agreements to prohibit such practices wherever possible.

To solve this problem on a global scale, an international agreement or treaty is necessary. Yet, that must not prevent us from taking strong affirmative steps on our own part. We have identified the problem and proposed a legislative solution which is carefully drawn to recognize the existence and sovereignty of foreign law. The burden now will shift to other countries. We are cleaning house here; now other countries must either act or bear responsibility for their inaction.

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

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

S. 3379

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 "International Contributions, Payments, and Gifts Disclosure Act".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress of the United States, after extensive examination of facts presented in public hearings, by the Securities and Exchange Commission and in public statements made by major United States companies and foreign governments, finds that certain United States based companies have made, and may continue to make contributions, payments, or gifts or convey other benefits upon foreign individuals, foreign governmental employees, foreign politicians, and foreign political entities, which may be illegal in the country where made or of a questionable nature and that when these payments are discovered and become publicly known they create substantial foreign policy problems for the United States. Specifically, these contributions, payments, and gifts can allow, and in some instances have allowed, corporate interests to take precedence over United States foreign policy objectives and can create and foster an anti-American sentiment in individual foreign countries.

(b) Therefore, it is the purpose of the Congress of the United States to insure availability of adequate information about such payments to the Department of State and the Congress of the United States. To this end, the Department of State is charged with providing Congress with a comprehensive review and analysis of such contributions, payments, and gifts and their foreign policy implications.

(c) The Congress of the United States also finds that certain contributions, payments, and gifts, which were made, and may continue to be made, have an adverse impact on the long- and short-term operations of United States business abroad. The payments have had detrimental effects on the "investment climate" for some United States based corporations in certain countries, resulting in threats or actual expropriation, halting compensation for corporate property previously expropriated, cancellation of investment contracts and concessions, loss of prospective sales in a country and damage to the reputation of United States based corporations. These payments, therefore, are damaging to United States foreign economic policy objectives. Furthermore, certain contributions, payments, and gifts were made for the purpose of acquiring an unfair competitive advantage over either United States or foreign companies. As such, they are antithetical to the United States foreign economic policy objective of open, nondiscriminatory world trade and are acts in restraint of trade and unfair methods of competition. In a number of cases, the boards of directors of the corporations making such payments were not notified of such contributions, payments, and gifts; in no case were shareholders or the investing public informed.

(d) Therefore, it is the purpose of Congress to insure availability of adequate information to the boards of directors of corporations and to existing and potential investors. To this end, mechanisms are established to insure discovery of such information during the audit process and its transmittal to the board of directors and shareholders. The Securities and Exchange Commission is charged with collecting and providing such information to the investing public.

(e) The Congress of the United States also finds that contributions, payments, and gifts, illegal either under United States law or under foreign law are being used to reduce United States tax liability. Therefore, it is the purpose of Congress to insure the nondeductibility of such contributions, payments, and gifts.

(f) Finally, the Congress of the United States realizes that such practices by corporations also must be dealt with on an international scale. Provisions of this Act are designed to encourage the President of the United States to seek pertinent international agreements.

PAYMENTS TO FOREIGN PERSONS

SEC. 3. Subsection (a) of section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended, by adding at the end thereof, the following new paragraphs:

"(40) The term 'agent' when used in the context of payments to foreign persons by a company subject to the reporting requirements of this title, means any person retained or employed by such company to perform such services on behalf of the company as the Commission may, by rule, define, including, but not limited to, promoting, selling, soliciting, or securing indications of interest for any product or service produced, sold, distributed, or performed by that company or any of its subsidiaries or affiliates.

"(41) The term 'foreign government' means the government of a country other than the United States, any political or local subdivision thereof, any agency or instrumentality of such a government or subdivision, and any politician, political party, or political association within a foreign country.".

SEC. 4. Subsection (a) of section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a)) is amended, by adding after paragraph 2 thereof, the following new paragraphs:

"(3) a sworn disclosure statement containing such information and documents (and such copies thereof), certified by independent public accountants, as the Commission shall deem necessary or appropriate to provide a complete accounting of any offer or agreement of any agent or employee of a company or its parent, to make any contribution, pay any fee or give anything of significant value in connection with—

"(A) direct and indirect political contributions to foreign governments;

"(B) direct and indirect payments and gifts to employees of foreign governments which are intended to influence the decisions of such employees and which are made either

with or without the consent of their sovereign; and

"(C) direct and indirect payments and gifts to employees of foreign, nongovernmental purchasers and sellers which are intended to influence normal commercial decisions of their employer and which are made without the employer's knowledge or consent.

"(4) the disclosure statement required to be filed by paragraph (3) above shall be filed annually and shall include—

"(A) the name and address of each person who made such contributions, payment, or gift;

"(B) the date and amount of such contribution, payment, or gift;

"(C) the name and address of each recipient and beneficiary, direct and indirect, of each contribution, payment, or gift;

"(D) a description of the purpose for which such contribution, payment, or gift was furnished;

"(E) a statement whether the contribution, payment, or gift was legal where made;

"(F) identification of relevant foreign law when foreign law prevents filing information required by this Act, as stated in paragraphs (8) and (9); and

"(G) such other information as the Securities and Exchange Commission may by rule or regulation require as necessary or appropriate in furtherance of the purposes of the International Contributions, Payments and Gifts Disclosure Act.

"(5) any company making contributions, payments, and gifts reported pursuant to paragraph (3) shall maintain related books and records for not less than five years.

"(6) no such contribution, payment, or gift may be made in connection with any transaction described in paragraph (3) through or by any agent or other person who has not first agreed to maintain, for not less than five years, copies of such books and records in the United States or to make available upon request by the company such books and records relevant to said company to show the ultimate recipient of each such contribution, payment, or gift, whether furnished to such ultimate recipient directly or through another agent, subagent, or other intermediary.

"(7) the Securities and Exchange Commission shall promulgate such rules and regulations as it may deem necessary to carry out the provisions of the International Contributions, Payments, and Gifts Act.

"(8) whoever, unless prevented by foreign law, (a) knowingly fails to file a statement required by this section, (b) knowingly files a false statement, or (c) knowingly fails to obtain from any agent all information required for any disclosure statement under paragraph 3 of this Act, shall, upon conviction, be fined not more than $25,000 and imprisoned for not less than one month and not more than two years.

"(9) any person who signed the disclosure statement required by paragraph 3, any person who is a director of or partner in the company required to file such disclosure statement and any other person who, with his consent, has been named as having prepared or certified any part of such disclosure statement, or as having prepared or certified any statement or evaluation used in connection with the disclosure statement and who, unless prevented by foreign law, (a) knowingly fails to file a statement, (b) knowingly fails to obtain information required by this subsection, or (c) knowingly files a false statement, shall, upon conviction, be fined not more than $25,000 and imprisoned for not less than one month and not more than two years.

"(10) all information provided pursuant to paragraph 3 above shall be made available to the public unless the President determines public disclosure will severely impair the conduct of United States foreign policy. If the President makes this determination, this information shall be placed in a separate report and submitted to the Committee on Foreign Relations of the Senate and the International Relations Committee of the House. The fact that information has been deleted from the public record shall be noted on the public record.".

FOREIGN POLICY ANALYSIS

SEC. 5. (a) The Secretary of State shall provide annually to the Committee on Foreign Relations of the Senate and the International Relations Committee of the House of Representatives a comprehensive review and foreign policy analysis by country, concerning companies'—

(1) direct and indirect political contributions to foreign governments;

(2) direct and indirect payments and gifts to employees of foreign governments which are intended to influence the decisions of such employees either with or without the consent of their sovereign; and

(3) direct and indirect payments and gifts to employees of foreign, nongovernmental purchasers and sellers which are intended to influence normal commercial decisions of their employer and which are made without the employer's knowledge or consent.

(b) The report required by paragraph (a) shall contain—

(1) the aggregate value of such contributions, payments and gifts, if the total amount equals or exceeds a value determined by the Secretary of State as having significant foreign policy consequences, identification of the companies involved, and an analysis of foreign policy implications;

(2) a description and analysis of specific transactions whose effects are directly or indirectly detrimental to the interests of the United States;

(3) a statement of whether the Department of State was aware of such contributions, payments and gifts prior to their making; and

(4) such other information as the Secretary of State deems necessary to provide a complete analysis of the foreign policy implications for the United States of the transactions involved.

(c) The Secretary of State shall have access to all information from the Securities and Exchange Commission he determines is relevant to the formulation of this report. Further, the Secretary of State may suggest to the Securities and Exchange Commission additional rules and regulations, for promulgation by the Securities and Exchange Commission, designed to obtain information for the Secretary's report. The Secretary of State may also request that the Securities and Exchange Commission seek supplementary information to enable the Secretary to provide as complete a report as possible.

(d) Nothing shall prevent the Secretary of State from making more frequent reports or briefings, partial or complete when deemed necessary by either the Secretary of State or the Committee on Foreign Relations of the Senate or the International Realtions Committee of the House.

DISCLOSURE OF INFORMATION ON ANNUAL REPORTS TO SHAREHOLDERS

SEC. 6. (a) Each company reporting pursuant to this Act shall disclose in its annual report—

(1) the aggregate values of contributions, payments and gifts reported under each of subparagraphs (A), (B), and (C) of paragraph 3 of section 13(a) of the Securities and Exchange Commission Act of 1934, as amended above;

(2) a statement whether any of these payments, contributions, or gifts were illegal where made; and

(3) a statement that the information on specific transactions is publicly available at the Securities and Exchange Commission.

NONDEDUCTIBILITY OF ILLEGAL PAYMENTS BY FOREIGN CORPORATIONS AND DISCS

SEC. 7. (a) IN GENERAL.—Section 162(c) of part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to illegal deductions) is amended by adding the following as a new paragraph (3) and redesignating present paragraph (3) as paragraph (4):

"(3) FOREIGN CORPORATIONS.—The provisions of paragraphs (1) and (2) shall apply in computing the earnings and profits of a foreign corporation for any taxable year.".

(b) DISCS.—Part VI of subchapter N (relating to Domestic International Sales Corporations) is amended by adding at the end thereof the following new section:

"SEC. 998. NONDEDUCTIBILITY OF ILLEGAL PAYMENTS.

"The provisions of paragraphs (1), (2), and (3) of section 162(c) shall apply in computing the taxable income and earnings and profits of a DISC or former DISC for any taxable year.".

(c) CONFORMING AMENDMENTS.—

(1) Section 901(g) (relating to foreign tax credit cross references) is amended by adding at the end thereof the following new paragraph (5):

"(5) For nondeductibility of illegal payments in computing earnings and profits of foreign corporations and DISCS, see section 162(c)(3) and section 998.".

(2) Section 964(a) (relating to earnings and profits of controlled foreign corporations) is amended by adding after the words "section 312(m)(3)" and before the first comma the following new words "and section 162(c)(3)".

(3) The table of sections for part IV of subchapter N is amended by adding at the end thereof the following new item:

"SEC. 998. Nondeductibility of Illegal Payments.".

(d) EFFECTIVE DATE.—The amendments made by this Act shall apply to taxable years beginning after December 31, 1976.

BOARD OF DIRECTORS, THE AUDIT COMMITTEE AND AUDITS

SEC. 8. (a) At least one-third, or three members, of each company's board of directors shall be composed of independent outside directors—individuals having no direct or indirect financial ties with the company. These independent outside directors shall be elected by the shareholders.

(b) Among these responsibilities as full members of the board of directors, independent, outside board members shall constitute the audit committee of the board. The audit committee shall have the responsibility for initiating and pursuing internal investigations of company operations arising from this Act and may initiate and pursue other internal investigations. It shall report the results of any investigation to the board of directors and at the audit committee's discretion, to the shareholders, the Securities and Exchange Commission and other relevant bodies. The audit committee shall hire independent auditors for the company and can hire counsel and other staff necessary to fulfill its responsibility. Those hired by the audit committee shall report to that committee.

(c) It is the responsibility of any independent auditor hired to inquire fully into any illegal, unusual or questionable activities.

(d) Each member of the board of directors must provide the independent auditors with a signed, sworn statement that (1) he knows of no illegal or unusual payment that has not been reported to the independent auditors nor of any books or records of the company whose existence is not known by the independent auditors, and (2) he has no knowledge of any irregularities in areas of the firm's business that are difficult to audit.

(e) Independent auditors shall have civil recourse for actual damage against persons or companies who withhold or misrepresent information necessary for the auditor to carry out its responsibilities.

SHAREHOLDER'S RIGHT OF ACTION

SEC. 9. (a) Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended, by designating existing section 27 as subsection (a) thereof, and adding, at the end thereof, the following new subsections:

"(b) Any person who can demonstrate actual damage in connection with the actual or proposed purchase or sale of any security or waste of assets resulting from—

"(1) the contributions, payments, or gifts described in the report required by paragraph 3 of subsection (a) of section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a)); or

"(2) the failure of compliance with any part of the International Contributions, Payments, and Gifts Disclosure Act or the rules and regulations thereof—

may maintain an action, at law or in equity in accordance with subsection (a) of this section.

"(c) In the case of any successful action to enforce liabilities described in subsection (b) above, the court shall determine any liability for the costs of the action, and reasonable attorneys' fees.".

PRIVATE RIGHT OF ACTION

SEC. 10. Any person who can establish actual damage to his business resulting from illegal (as determined by United States law or the laws of the country in which the contribution, payment, or gift was made) contributions, payments, or gifts, made by a competitor and who has not made such illegal payments himself in a relevant time period, may maintain a cause of action against that competitor and, if successful, can recover—

(a) treble the actual damage accruing to his business activity; and

(b) costs of the action and reasonable attorney's fees as determined by the court.

INTERNATIONAL EFFORTS

SEC. 11. (a) All efforts should be made by the President to obtain international agreements in as many forums as appropriate concerning the reporting and exchange of this information and the establishment of international standards and codes of conduct for the operations of companies.

(b) The President shall make all efforts to obtain international rules and regulations for international government procurement and sales.

ABBREVIATED SUMMARY OF THE INTERNATIONAL CONTRIBUTIONS, PAYMENTS AND GIFTS DISCLOSURE ACT

The attached International Contributions, Payments and Gifts Disclosure Act aims at accomplishing six distinct, but related goals. The rationale for these objectives is explained in the "Findings and Purposes" which is based on an extensive Congressional hearing record as well as other sources.

First, the Securities and Exchange Commission is directed to collect significant information on international contributions, payments and gifts, which will be made public unless the President determines that it will severely impair the conduct of foreign policy.

Second, the Secretary of State will provide annually (or more frequently if necessary) a comprehensive review and foreign policy analysis of these payments to Congress.

Third, to insure that complete and accurate information is reported to the SEC, an independent audit committee is mandated within corporations and given certain rights and responsibilities including the responsibility for the internal audit of contributions, payments and gifts. Additional provisions encourage corporate personnel to submit complete and accurate information to the audit committee.

Fourth, all payments illegal under U.S. or foreign laws will be non-deductible for U.S. tax purposes.

Fifth, to encourage the private sector to police itself, shareholders and competitors are insured rights of action when damaged.

Finally, the President is encouraged to obtain as many international agreements as appropriate.

SYNOPSIS OF THE MAJOR PROVISIONS OF THE INTERNATIONAL CONTRIBUTIONS, PAYMENTS AND GIFTS DISCLOSURE ACT

Section 4 amends the SEC Act to include:

Subparagraph (3)—which requires the Securities and Exchange Commission to collect annual information on significant international contributions, payments and gifts;

Subparagraph (4)—which lists the minimum information on contributions, payments and gifts that must be included;

Subparagraphs (5) and (6)—which insures maintenance of adequate books and records by companies and their agents;

Subparagraph (7)—which allows the SEC to promulgate rules and regulations as necessary to carry out its responsibilities;

Subparagraphs (8) and (9)—which provide fines and criminal penalties for knowingly failing to file required reports, knowingly filing false reports, and knowingly failing to obtain information required to be reported;

Subparagraph (10)—which provides that all such information will be made public unless the President determines that disclosure will severely impair the conduct of U.S. foreign policy.

Section 5 requires the Secretary of State to provide the Senate Committee on Foreign Relations and the House International Relations Committee an annual comprehensive review and foreign policy analysis of the contributions, payments and gifts information collected by the SEC. The report can be more frequent at the discretion of the Secretary or at the request of the Committee on Foreign Relations or International Relations Committee.

Section 6 requires that each company disclose aggregate contributions payments and gifts information on its annual report.

Section 7 insures that contributions, payments and gifts illegal under U.S. law or under foreign law are non-deductible for U.S. tax purposes.

Section 8 establishes an independent audit committee on each company's Board of Directors, composed of independent outside directors, who will have the responsibility for pursuing internal company investigations ensuing from this Act. They may initiate and pursue other internal investigations, shall hire independent auditors, and may hire other relevant personnel who will be responsible to them.

The independent auditors must inquire fully into illegal, unusual or questionable activities and must obtain from each member of the Board a signed, sworn statement that he knows of no unreported illegal or unusual payments, no books or records whose existence is not known by the auditors and no irregularities in those areas of the firm difficult to audit. Independent auditors will have civil recourse against those persons or companies withholding or misrepresenting information necessary for the auditors to carry out their responsibilities.

Section 9 insures a shareholder's right of action for actual damage in connection with the actual or proposed sale of any security or waste of assets resulting from contributions, payments and gifts.

Section 10 establishes a private right of action for competitors whose business has been damaged by illegal (under U.S. or foreign law) contributions, payments and gifts, but only if the complaining party himself has not made such contributions, payments and gifts in a relevant time period.

Section 11 encourages the President to seek relevant international agreements and, in particular, international rules and regulations for international government procurement and sales.

Mr. ROBERT C. BYRD subsequently said: Mr. President, I ask unanimous consent that a bill introduced earlier relative to contributions and gifts made by American companies in international business be referred to the Committ es on Banking, Housing and Urban Affairs, and Foreign Relations jointly, and, if and when reported by those committees, it then be referred to the Committee on Finance for not to exceed 30 days.

The PRESIDING OFFICER. Is there objection?

Mr. GRIFFIN. Mr. President, reserving the right to object, though I do not know that I shall, is it possible to ask the Chair where this bill would be referred in the absence of such a request.

The PRESIDING OFFICER. It would be referred to the Banking, Housing and Urban Affairs Committee.

Mr. GRIFFIN. Not to the Committee on Finance?

The PRESIDING OFFICER. That is correct.

Mr. GRIFFIN. Under those circumstances, I shall not object. As I have indicated before, I do not like the practice of limiting a committee on time to consider the bill. It would be exceptionally objectionable if we were limiting the committee with primary jurisdiction. With that statement by the Chair that it would not have primary jurisdiction in this case, I will not object.

The PRESIDING OFFICER. Is there objection? The Chair hears none. It is so ordered.

By Mr. BUCKLEY:

S. 3381. A bill to accelerate the formation and accumulation of the investment capital required to expand both job opportunities and productivity in the private sector of the economy. Referred to the Committee on Finance.

Mr. BUCKLEY. Mr. President, I know of no one who disagrees with the absolute importance of restoring conditions of full employment in this country. While it is true that we are gradually cutting back on the rate of unemployment, the naked, obstinate fact remains that there are today millions of Americans who want to work but cannot find jobs.

The debate, and it is perhaps the most important debate in economic matters we face today, is not over the goal of full employment but over how to go about achieving it. Can we assure Americans of full employment and a high standard of living through centralized planning and reliance on massive Federal "make work" programs such as public service jobs or should we take measures to harness the energies of the private economy in order to assure ourselves of what ought to be our goal of steady economic growth with full employment?

I am firmly convinced that our recent severe economic troubles have been the direct result of trying to manipulate our complex economy through mistaken fiscal and monetary policies.

Now that we are so clearly in the midst of a significant recovery, it is particularly important that we discard the disproven remedies of recent years and start thinking once again about such fundamentals as capital formation and investment, and the creation of the private, productive jobs that we require.

To put it another way, this is precisely the wrong time to be siphoning huge amounts of capital away from productive private investment into nonproductive public make-work programs. Those who are at this stage urging still larger public efforts are in fact prescribing inflationary policies that can blunt the recovery and discourage job-producing investment in the private sector.

Mr. President, the choice is clear. We can continue to attempt to solve the unemployment problem through direct governmental intervention in competition with the private sector, or we can attempt to create long-term productive jobs by restoring incentives to save and to invest. The latter approach has been incorporated in an imaginative tax reform bill introduced in the House of Representatives by Congressman JACK KEMP, of New York, under the title, the Jobs Creation Act. I am today introducing that bill in the Senate as I believe that it represents as intelligent and constructive an approach to job creation as I have seen, and I commend it to the Finance Committee for its careful study.

In introducing the bill, I do not necessarily endorse every one of its provisions, as I have not yet had the opportunity of examining all of them in sufficient detail. I wholeheartedly agree, however, with the basic principle that we can only create the large number of production jobs we need now and in the years ahead by restoring the necessary incentives for capital formation and private investment. I also share the view that properly structured tax reductions will in short order result in larger returns to the Treasury.

Mr. President, I ask unanimous consent that the tabulation of the econometric study prepared by Dr. Norman Ture concerning the economic and revenue effects of the Jobs Creation Act be printed in the RECORD together with the text of the bill.

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

ECONOMIC EFFECTS OF THE JOBS CREATION ACT OF 1975

[Money amounts in billions of 1974 dollars]

Jobs Creation Act section, proposal, and years after enactment	Increases in			
	Private GNP	Employment (thousands)	Capital outlays	Federal revenue
§ 3 Savings tax credit of 10 percent, up to $1,000 ($2,000 for joint returns), not exceeding tax due:				
1	$31.0	1,780	$22.3	$1.9
2	40.2	2,100	23.3	4.8
3	50.1	2,430	24.3	7.9
§ 5 Exclusion of domestic corporate dividends from adjusted gross ncome:				
1	20.9	1,200	15.5	.6
2	28.7	1,510	16.3	3.1
3	35.7	1,740	17.0	5.3
§ 6 Exclusion of $1,000 of capital gain per year:				
1	9.0	520	6.8	1.6
2	12.7	920	7.1	2.8
3	15.6	760	7.4	3.7
§ 9 Reduction of normal corporate tax rate from 22 22 to 20 percent (with no change in surtax):				
1	11.0	630	7.7	1.1
2	13.7	710	8.1	2.0
3	17.7	860	8.4	3.2
§ 10 Reduction of surtax rate from 26 to 22 percent (no change in normal tax rate of surtax exemption):				
1	20.0	1,150	14.1	2.0
2	25.0	1,300	14.8	3.7
3	82.3	1,570	15.3	5.8
§ 11 Increase in surtax exemption from $25,000 to $100,000 (with present normal and surtax rates):				
1	$11.0	$630	$7.7	$1.1
2	13.7	710	8.1	2.0
3	17.7	860	8.4	3.2
§ 12 Increase in investment credit from 7 percent with limitations to 15 percent for all sec. 1245 property:				
1	23.9	1,370	17.4	4.3
2	31.7	1,660	18.2	6.8
3	39.9	1,940	18.9	9.4
§ 13 Increase in asset depreciation range (ADR) from 20 percent to 40 percent:				
1	12.9	760	7.0	2.3
2	22.2	1,250	7.4	1.8
3	28.2	1,520	7.7	1.6
§ 14 Optional capital recovery allowances:				
1	55.6	3,400	16.7	8.7
2	70.3	4,070	17.4	11.5
3	82.4	4,550	18.0	14.2
Combined effect:				
1	151.4	7,180	74.6	5.2
2	200.6	9,020	77.9	14.6
3	248.9	10,910	81.1	25.2

Note: The estimates with respect to any combination of these proposals are not necessarily equal to the sum of the individual estimates. An estimate will be forthcoming for provisions of the bill which are not included above if adequate data become available.

Estimates for certain of these proposals may differ from previous estimates for similar or identical proposals because of revisions in Government data and underlying assumptions. Assumptions used in this table are consistent among alternatives.

Where exact qualification of variables was impossible, conservative assumptions about the values of those variables were employed. A full documentation of the estimating procedure is available upon request.

Estimates are based on changes with respect to the law in 1974 rather than the temporary provisions enacted in 1975. Effects for year 1 are for 1975 and assume that the proposal would have been operative since Jan. 1, 1975. Effects for years 2 and 3 refer to 1976 and 1977 levels of GNP, employment, etc., relative to their assumed trend values had the 1974 law remained unchanged. Note that employment effects are not cumulative; the 40 percent ADR, for instance, would lead to an increase of 1,520,000 full-time equivalent employees in year 3 over the number of such employees in the absence of this tax change, not 760 plus 1,250 plus 1,520 equals 3,530,000.

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Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Jobs Creation Act".

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

SEC. 2. TABLE OF CONTENTS.—

Sec. 1. Short title; amendment of 1954 Code.
Sec. 2. Table of contents.
Sec. 3. Tax credits for qualified savings and investments.
Sec. 4. Individual retirement savings, accounts, and bonds.
Sec. 5. Exclusion from gross income of amounts received by an individual as dividends from domestic corporations.
Sec. 6. Limited exclusion of certain capital gains.
Sec. 7. Deferral of gain on sale or exchange of certain small business property.
Sec. 8. Extension of time for payment of estate tax where estate consists largely of interest in closely held business and farms.
Sec. 9. Adjustment of corporate normal tax rates.
Sec. 10. Adjustment of corporate surtax rate.
Sec. 11. Increase in corporate surtax exemption.
Sec. 12. Graduated and increased investment tax credit.
Sec. 13. Increase in class life variance for purposes of depreciation.
Sec. 14. Capital recovery allowances.
Sec. 15. Alternative amortization period for pollution control facilities.
Sec. 16. Increase in exemption from industrial development bond treatment.

TAX CREDITS FOR QUALIFIED SAVINGS AND INVESTMENTS

SEC. 3. (a) IN GENERAL.—Subpart A (relating to credits allowable) of part IV of subchapter A of chapter 1 of subtitle A is amended by adding at the end thereof the following new section:

"SEC. 43. INCREASED SAVINGS AND INVESTMENTS BY INDIVIDUALS.

"(a) IN GENERAL.—There shall be allowed to an individual, as a credit against the tax imposed by this chapter for the taxable year, an amount equal to 10 percent of the increase in the total amount of qualified savings deposits and investments such individual held at the end of such year over the amount of total qualified savings deposits and investments of the individual held at the end of the prior year.

"(b) LIMITATION.—The credit allowed by subsection (a) for a taxable year shall not exceed $1,000 ($2,000 in the case of a joint return under section 6013).

"(c) DEFINITIONS.—For the purposes of this section—

"(1) QUALIFIED SAVINGS DEPOSITS AND INVESTMENTS.—The term 'qualified savings deposits and investments' means—

"(A) amounts deposited in a savings deposit or withdrawable savings account in a financial institution;

"(B) amounts used to purchase common or preferred stock in a domestic corporation;

"(C) amounts used to purchase a bond or other debt instrument issued by a domestic corporation;

"(D) (1) with respect to any life insurance contract, the increase in the surrender value of the life insurance during the taxable year;

"(2) with respect to any annuity, the consideration paid, less any amount withdrawn, during the taxable year; and

"(E) with respect to any mutual fund, the consideration paid, less any amount withdrawn, during the taxable year.

"(2) FINANCIAL INSTITUTION.—The term 'financial institution' means—

"(A) a commercial or mutual savings bank whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or otherwise insured under State law;

"(B) a savings and loan, building and loan, or similar association the deposits and accounts of which are insured by the Federal Savings and Loan Insurance Corporation or otherwise insured under State law;

"(C) a credit union the deposits and accounts of which are insured by the National Credit Union Administration Share Insurance Fund or otherwise insured under State law;

"(D) any company duly chartered by a State, territory, or possession of the United States, or the District of Columbia, and in good standing therein, which issues life insurance or annuity contracts; and

"(E) any investment company, as defined by section 80a-3(a) of title 15, United States Code.".

(b) TECHNICAL AMENDMENT.—The table of sections for such subpart A is amended by adding at the end thereof the following:

"Sec. 43. Increased savings and investments by individuals.".

(c) EFFECTIVE DATE.—The amendments made by section (a) of this section shall apply to qualified savings deposited and investments made after December 31, 1975.

INDIVIDUAL RETIREMENT SAVINGS, ACCOUNTS, AND BONDS

SEC. 4. (a) Part VII of subchapter B of chapter 1 is amended by striking out section 219 (relating to the maximum deduction for retirement savings) and inserting in lieu thereof the following:

"SEC. 219. RETIREMENT SAVINGS.

"(a) DEDUCTION ALLOWED.—In the case of an individual, there is allowed as a deduction amounts paid in cash during the taxable year by or on behalf of such individual for his benefit—

"(1) to an individual retirement account described in section 408(a),

"(2) for an individual retirement annuity described in section 408(b),

"(3) for a retirement bond described in section 409 (but only if the bond is not redeemed within 12 months of the date of its issuance),

"(4) to a trust described in section 401(a) which is exempt from tax under section 501 (a), but only if the payment of such amount is made by the individual, or

"(5) for the purchase of an annuity contract described in section 403(b).

Paragraph (4) shall not apply to any governmental plan (within the meaning of section 414(d)), unless such plan has made an election under section 410(e). For purposes of this title, any amount paid by an employer to such a retirement account or for such a retirement annuity or retirement bond constitutes payment of compensation to the employee (other than a self-employed individual who is an employee within the meaning of section 401(e)(1) includible in his gross income, whether or not a deduction for such payment is allowable under this section to the employee after the application of subsection (b).

"(b) LIMITATIONS AND RESTRICTIONS.—

"(1) MAXIMUM DEDUCTION.—The amount allowable as a deduction under subsection (a) to an individual for any taxable year may not exceed an amount equal to 15 percent of the compensation includible in his gross income for such taxable year, or $2,000, whichever is less.

"(2) REDUCTION ON ACCOUNT OF EMPLOYER CONTRIBUTIONS TO QUALIFIED PENSION, ETC., PLANS.—The amount of the limitation otherwise determined under this subsection for any taxable year shall be reduced by the amount (determined in accordance with regulations prescribed by the Secretary or his delegate) of contributions paid on behalf of the individual by his employer (including an employer within the meaning of section 401 (c)(4)) for the individual's taxable year—

"(A) to a trust described in section 401(a) which is exempt from tax under section 501 (a), or

"(B) for the purchase of an annuity contract described in section 403(b).

In the case of any plan other than a defined contribution plan, under regulations prescribed by the Secretary or his delegate, the amount of contributions described in subparagraphs (A) and (B) of the preceding sentence paid on behalf of an individual by his employer for his taxable year shall be deemed to be an amount equal to the percent arrived at by dividing the employer's aggregate contribution to the plan for the taxable year by the aggregate compensation paid or accrued during the taxable year to employees covered by such plan multiplied by the compensation paid or accrued to such individual for such taxable year attributable to the performance of personal services for such employer.

"(3) REDUCTION APPLICABLE TO CERTAIN PUBLIC AND OTHER EMPLOYEES.—If a taxpayer has earned income for the taxable year which is not subject to tax under chapter 2, 21, or 22—

"(A) the limitation otherwise determined under this subsection for such taxable year shall be reduced by the Social Security equivalency amount; and

"(B) in determining the amount paid by such individuals under subsection (a)(4) for purposes of subsection (a) (but not for purposes of computing the limitation under this subsection), so much of the amount paid by such individual under such subsection (a)(4) as does not exceed the social security equivalency amount shall not be taken into account.

For purposes of this paragraph, the term 'social security equivalency amount' means an amount equal to the tax (or the increase in the tax) that would be imposed upon such earned income under section 3101 for such taxable year if the personal services from the performance of which such income is derived constituted employment (within the meaning of section 3121(b)).

"(4) CONTRIBUTIONS AFTER AGE 70 1/2.—No deduction is allowed under subsection (a) with respect to any payment described in subsection (a) which is made during the taxable year of an individual who has attained age 70½ before the close of such taxable year.

"(5) RECONTRIBUTED AMOUNTS.—No deduction is allowed under this section with respect to a rollover contribution described in section 402(a)(5), 403(a)(4), 408(d)(3), or 409(b)(3)(C).

"(6) AMOUNTS CONTRIBUTED UNDER ENDOWMENT CONTRACTS.—In the case of an endowment contract described in section 408(b), no deduction is allowed under subsection (a) for that portion of the amounts paid under the contract for the taxable year properly allocable, under regulations prescribed by the Secretary or his delegate, to the cost of life insurance.

"(c) DEFINITIONS AND SPECIAL RULES.—

"(1) COMPENSATION.—For purposes of this section, the term 'compensation' includes earned income as defined in section 401 (c)(2).

"(2) MARRIED INDIVIDUALS.—The maximum deduction under subsection (b)(1) shall be computed separately for each individual, and this section shall be applied without regard to any community property laws.".

(b) Section 410(d) of such Code is amended by adding the following new subsection at the end thereof:

"(e) ELECTION BY GOVERNMENT TO HAVE PARTICIPATION, VESTING, FUNDING, ETC., PROVISIONS APPLY.—

"(1) IN GENERAL.—If the governmental entity which maintains any governmental plan (within the meaning of section 414(d)) makes an election under this subsection (in such form and manner as the Secretary or his delegate may by regulations prescribe), then the provisions of this title relating to participation, vesting, funding, etc. (as in effect from time to time) shall apply to such plan as if such provisions did not contain an exclusion for governmental plans.

"(2) ELECTION IRREVOCABLE.—An election under this subsection with respect to any governmental plan shall be binding with respect to such plan, and, once made, shall be irrevocable.".

(c) Section 408 (relating to individual retirement accounts) of subpart A of part I of subchapter D of chapter 1 of subtitle A is amended by striking out "$1,500" in the three instances in which said figure appears and by inserting in lieu thereof "$2,000".

(d) Section 409(a) (relating to retirement bonds) of subpart A of part I of subchapter D of chapter 1 of subtitle A is amended by striking out "$1,500" and by inserting in lieu thereof "$2,000".

(e) The amendments made by subsections (a), (b), (c) and (d) of this section shall apply to taxable years beginning after December 31, 1975.

EXCLUSION FROM GROSS INCOME OF AMOUNTS RECEIVED BY AN INDIVIDUAL AS DIVIDENDS FROM DOMESTIC CORPORATIONS

SEC. 5. (a)(1) Subsection (a) of section 116 (relating to partial exclusion of dividends received by individuals) of part III of subchapter B of chapter 1 is amended to read as follows:

"(a) EXCLUSION FROM GROSS INCOME.—Gross income does not include amounts received by an individual as dividends from domestic corporations.".

(2) The section heading of such section 116 is amended by striking out "PARTIAL EXCLUSION" and inserting in lieu thereof "EXCLUSION".

(3) The table of sections for part III of subchapter B of chapter 1 of such Code is amended by striking out the item relating to section 116 and inserting in lieu thereof the following:

"Sec. 116. Exclusion of dividends received by individuals.".

(4) Section 643(a)(7) of such Code is amended by striking out "partial exclusion" and inserting in lieu thereof "exclusion".

(b) The amendments made by the first subsection of this section shall apply to taxable years beginning after December 31, 1975.

LIMITED EXCLUSION OF CERTAIN CAPITAL GAINS

SEC. 6. IN GENERAL.—Part III (relating to items specifically excluded from gross income) of subchapter B of chapter 1 is amended by—

(1) redesignating section 124 as section 125, and

(2) inserting immediately after section 123 the following new section:

"SEC. 124. LIMITED EXCLUSION OF CERTAIN CAPITAL GAINS.

"(a) GENERAL RULE.—In the case of a taxpayer other than a corporation, gross income for the taxable year does not include an amount equal to the net section 1201 gain

resulting solely from the sale or exchange of securities, to the extent that such amount does not exceed $1,000.

"(b) EXCEPTION.—Subsection (a) does not apply to a taxpayer who is subject to the tax imposed under section 1201(b).

"(c) DEFINITIONS.—

"(1) NET SECTION 1201 GAIN.—The term 'net section 1201 gain' has the same definition it has under section 1222(11).

"(2) SECURITIES.—The term 'securities' has the same meaning it has under section 165 (g)(2).".

(b) TECHNICAL AMENDMENTS.—

(1) Section 1202 of such Code (relating to deductions for capital gains) is amended by adding at the end thereof the following new sentence: "No amount of such excess shall be allowed as a deduction under this section to the extent such amount is excluded from gross income under section 124.".

(2) The table of sections for part III of subchapter B of chapter 1 of such Code is amended by striking out the item relating to section 124 and inserting in lieu thereof the following:

"Sec. 124. Limited exclusion of certain capital gains.

"Sec. 125. Cross references to other Acts.".

(c) EFFECTIVE DATE.—The amendments made by this section apply to sales or exchanges of securities occurring after December 31, 1975.

DEFERRAL OF GAIN ON SALE OR EXCHANGE OF CERTAIN SMALL BUSINESS PROPERTY

SEC. 7. (a) GENERAL RULE.—Part III (relating to common nontaxable exchanges) of subchapter O of chapter 1 is amended by adding at the end thereof the following new section:

"SEC. 1040. EXCHANGE OF QUALIFIED SMALL BUSINESS PROPERTY.

"(a) NONRECOGNITION OF GAIN.—If any individual sells or exchanges qualified small business property, at the election of the taxpayer, gain from such sale or exchange shall be recognized only to the extent that the amount realized on such sale or exchange exceeds the cost of any qualified small business property purchased by the individual during the reinvestment period. An election under this subsection shall be made at such time and in such manner as the Secretary or his delegate may prescribe by regualtions.

"(b) REINVESTMENT PERIOD.—The reinvestment period referred to in subsection (a) shall be the period beginning 1 year before the date of the sale or exchange of the qualified small business property and ending 1 year after such date.

"(c) QUALIFIED SMALL BUSINESS PROPERTY.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified small business property' means—

"(A) property which—

"(i) is held by an individual for productive use in a trade or business carried on by the individual; and

"(ii) is real property or is personal property if such personal property is of a character subject to the allowance for depreciation; and

"(B) any interest held by an individual in a qualified partnership or a qualified corporation.

"(2) QUALIFIED PARTNERSHIP.—For purposes of paragraph (1), the term 'qualified partnership' means any partnership—

"(A) which does not have more than 10 partners;

"(B) which does not have as a partner a person (other than estate) who is not an individual;

"(C) which does not have a nonresident alien as a partner; and

"(D) not more than 50 percent of the gross receipts of which for its last taxable year ending before the sale or exchange is passive investment income (as defined in section 1372 (e)(5)(C)).

"(3) QUALIFIED CORPORATION.—For purposes of paragraph (1), the term 'qualified corporation' means any corporation—

"(A) which does not have more than 10 shareholders;

"(B) which does not have as a shareholder a person (other than an estate) who is not an individual;

"(C) which does not have a nonresident alien as a shareholder;

"(D) which does not have more than one class of stock; and

"(E) not more than 50 percent of the gross receipts of which for its last taxable year ending before the sale or exchange is passive investment income (as defined in section 1372(e)(5)(C)).

"(4) WHEN DETERMINATION IS MADE.—For purposes of this section the determination of whether a partnership is a qualified partnership or of whether a corporation is a qualified corporation shall be made as of the time immediately before the sale or exchange.

"(d) BASIS ADJUSTMENT.—If the purchase of any qualified small business property results in the nonrecognition of gain under subsection (a), the basis of such property shall be reduced by the amount of gain which is not recognized under subsection (a).

"(e) ASSESSMENT OF DEFICIENCIES.—If the taxpayer has made an election under subsection (a) with respect to a sale, then notwithstanding any other provision of law or rule of law the statutory period for the assessment of any deficiency (including interest and additions to the tax) shall not expire until 3 years from the date the Secretary or his delegate is notified by the taxpayer (in such manner as the Secretary or his delegate may by regulation prescribe) of the purchase of qualified small business property or the failure to timely purchase such property. Such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) or the provisions of any other law or rule of law which would otherwise prevent such assessment.".

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter O of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Sec. 1040. Exchange of qualified small business property.".

(c) TECHNICAL AMENDMENTS.—

(1) Section 1245(b)(4) of such Code (relating to like kind exchanges; involuntary conversions, etc.) is amended by striking out "1031 or 1033" and inserting in lieu thereof "1031, 1033, or 1040".

(2) Section 1250(d)(4)(A) of such Code (relating to like kind exchanges; involuntary conversions etc.) is amended by striking out "1031 or 1033" and inserting in lieu thereof "1031, 1033, or 1040".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or exchanges after December 31, 1975.

EXTENSION OF TIME FOR PAYMENT OF ESTATE TAX WHERE ESTATE CONSISTS LARGELY OF INTERESTS IN CLOSELY HELD BUSINESS AND FARMS

SEC. 8. (a) GENERAL RULE.—Section 6166 (relating to extension of time for payment of estate tax where estate consists largely of interest in closely held business) is amended to read as follows:

"SEC. 6166. EXTENSION OF TIME FOR PAYMENT OF ESTATE TAX WHERE ESTATE CONSISTS LARGELY OF INTEREST IN CLOSELY HELD BUSINESS AND FARMS.

"(a) FIVE-YEAR DEFERRAL; 20-YEAR INSTALLMENT PAYMENT.—

"(1) IN GENERAL.—If the value of an interest in a closely held business which is included in determining the gross estate of a decedent who was (at the date of his death) a citizen or resident of the United States exceeds either—

"(A) 35 percent of the value of the gross estate of such decedent, or

"(B) 50 percent of the taxable estate of such decedent,

the executor may elect to pay part or all of the tax imposed by section 2001 in 2 or more (but not exceeding 20) equal installments.

"(2) DATE FOR PAYMENT OF INSTALLMENTS.—If an election is made under paragraph (1), the first installment shall be paid on or before the date which is 5 years after the date prescribed by section 6151(a) for payment of the tax, and each succeeding installment shall be paid on or before the date which is 1 year after the date prescribed by this paragraph for payment of the preceding installment.

"(3) LIMITATION.—The maximum amount of tax which may be paid in installments under this subsection shall be an amount which bears the same ratio to the tax imposed by section 2001 (reduced by the credits against such tax) as—

"(A) the qualified small business amount reduced (but not below zero) by the excess (if any) of such amount over $300,000, bears to

"(B) the value of the gross estate.

"(b) TEN-YEAR INSTALLMENT PAYMENT WHERE QUALIFIED SMALL BUSINESS AMOUNT EXCEEDS $300,000.—

"(1) IN GENERAL.—If the qualified small business amount exceeds $300,000, the executor may elect to pay all or a portion of the tax imposed by section 2001 in 2 or more (but not exceeding 10) equal installments.

"(2) DATE FOR PAYMENT OF INSTALLMENTS.—If an election is made under paragraph (1), the first installment shall be paid on or before the date prescribed by section 6151(a) for payment of the tax, and each succeeding installment shall be paid on or before the date which is 1 year after the date prescribed by this paragraph for payment of the preceding installment.

"(3) LIMITATION.—The maximum amount of tax which may be paid in installments under this subsection shall be equal to the excess (if any) of—

"(A) the amount which bears the same ratio to the tax imposed by section 2001 (reduced by the credits against such tax) as the qualified small business amount bears to the value of the gross estate; over

"(B) the amount of such tax which is payable in installments under subsection (a).

"(c) DEFINITIONS.—For purposes of this section—

"(1) CLOSELY HELD BUSINESS.—The term 'interest in a closely held business' means—

"(A) an interest as a proprietor in a trade or business carried on as a proprietorship;

"(B) an interest as a partner in a partnership carrying on a trade or business, if—

"(i) 20 percent or more of the total capital interest in such partnership is included in determining the gross estate of the decedent, or

"(ii) such partnership had 10 or less partners, or

"(C) stock in a corporation carrying on a trade or business, if—

"(i) 20 percent or more in value of the voting stock of such corporation is included in determining the gross estate of the decedent, or

"(ii) such corporation had 10 or less shareholders.

For purposes of this subsection, determinations shall be made as of the time immediately before the decedent's death.

"(2) QUALIFIED SMALL BUSINESS AMOUNT.—The term 'qualified small business amount' means the aggregate of the value of any interest in a closely held business which qualifies under subsection (a)(1).

"(3) VALUE.—Value shall be value determined for purposes of chapter 11 (relating to estate tax).

"(d) SPECIAL RULE FOR INTERESTS IN 2 OR MORE CLOSELY HELD BUSINESSES.—For purposes of subsections (a), (b), and (h)(1), interests in 2 or more closely held businesses with respect to each of which there is included in determining the value of the decedent's gross estate more than 50 percent of the total value of each such business, shall be treated as an interest in a single closely held business. For purposes of the 50 percent requirement of the preceding sentence, an interest in a closely held business which represents the surviving spouse's interest in property held by the decedent and the surviving spouse as community property shall be treated as having been included in determining the value of the decedent's gross estate.

"(e) EDUCATION.—Any election under subsection (a) or (b) shall be made not later than the time prescribed by section 6075(a) for filing the return of tax under section 2001 (including extensions thereof), and shall be made in such manner as the Secretary or his delegate shall by regulations prescribe. If an election under subsection (a) or (b) is made, the provisions of this subtitle shall apply as though the Secretary or his delegate were extending the time for payment of the tax.

"(f) PRORATION OF DEFICIENCY TO INSTALLMENTS.—If an election is made under subsection (a) or (b) to pay any part of the tax imposed by section 2001 in installments and a deficiency has been assessed—

"(1) the deficiency shall (subject to the limitation provided by subsection (a)(3)) be prorated to the installments (if any) payable under subsection (a); and

"(2) to the extent that the deficiency is not prorated under paragraph (1), the deficiency shall (subject to the limitation provided by subsection (b)(3)) be prorated to the installments (if any) payable under subsection (b).

The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as a part of, such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary or his delegate. This subsection shall not apply if the deficiency is due to negligence, to international disregard of rules and regulations, or to fraud with intent to evade tax.

"(g) TIME FOR PAYMENT OF INTEREST.—If the time for payment of any amount of tax has been extended under this section, interest payable under section 6601 on any unpaid portion of such amount shall be paid annually at the same time as, and as a part of, each installment payment of the tax. Interest, on that part of a deficiency prorated under this section to any installment the date for payment of which has not arrived, for the period before the date fixed for the last installment preceding the assessment of the deficiency, shall be paid upon notice and demand from the Secretary or his delegate.

"(h) ACCELERATION OF PAYMENT.—

"(1) WITHDRAWAL OF FUNDS FROM BUSINESS; DISPOSITION OF INTEREST.—

"(A) If—

"(i) aggregate withdrawals of money and other property from the trade or business, an interest in which qualifies under subsection (a)(1), made with respect to such interest, equal or exceed 50 percent of the value of such trade or business, or

"(ii) 50 percent or more in value of an interest in a closely held business which qualifies under subsection (a)(1) is distributed, sold, exchanged, or otherwise disposed of,

then the extension of time for payment of tax provided in subsection (a) or (b) shall cease to apply, and any unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary or his delegate.

"(B) In the case of a distribution in redemption of stock to which section 303 (or so much of section 304 as relates to section 303) applies—

"(i) subparagraph (A)(i) does not apply with respect to withdrawals of money and other property distributed; and for purposes of such subparagraph the value of the trade or business shall be considered to be such value reduced by the amount of money and other property distributed, and

"(ii) subparagraph (A)(ii) does not apply with respect to the stock redeemed; and for purposes of such subparagraph the interest in the closely held business shall be considered to be such interest reduced by the value of the stock redeemed.

This subparagraph shall apply only if, on or before the date prescribed by subsection (a)(2) or (b)(2g), as the case may be, for payment of the first installment which becomes due after the date of the distribution, there is paid an amount of the tax imposed by section 2001 not less than the amount of money and other property distributed.

"(C) Subparagraph (A)(ii) does not apply to an exchange of stock pursuant to a plan of reorganization described in subparagraph (D), (E), or (F) of section 368(a)(1) nor to an exchange to which section 355 (or so much of section 356 as relates to section 355) applies; but any stock received in such an exchange shall be treated for purposes of such subparagraph as an interest qualifying under subsection (a)(1).

"(D) Subparagraph (A)(ii) does not apply to a transfer of property of the decedent by the executor to a person entitled to receive such property under the decedent's will or under the applicable law of descent and distribution.

"(2) UNDISTRIBUTED INCOME OF ESTATE.—

"(A) If an election is made under this section and the estate has undistributed net income for any taxable year after its fourth taxable year, the executor shall, on or before the date prescribed by law for filing the income tax return for such taxable year (including extensions thereof), pay an amount equal to such undistributed net income in liquidation of the unpaid portion of the tax payable in installments. Any amount paid under the preceding sentence shall be applied first against the unpaid portion of the tax which is payable in installments under subsection (b).

"(B) For purposes of subparagraph (A), the undistributed net income of the estate for any taxable year is the amount by which the distributable net income of the estate for such taxable year (as defined in section 643) exceeds the sum of—

"(i) the amounts for such taxable year specified in paragraphs (1) and (2) of section 661(a) (relating to deduction for distributions, etc.);

"(ii) the amount of tax imposed for the taxable year on the estate under chapter 1; and

"(iii) the amount of the tax imposed by section 2001 (including interest) paid by the executor during the taxable year (other than any amount paid pursuant to this paragraph).

"(3) FAILURE TO PAY INSTALLMENT.—If installment under this section is not paid on or before the date fixed for its payment by this section (including any extension of time for the payment of such installment), the unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary or his delegate.

"(i) REGULATIONS.—The Secretary or his delegate shall prescribe such regulations as may be necessary to the application of this section.

"(j) CROSS REFERENCES.—

"(1) Security.—

"For authority of the Secretary or his delegate to require security in the case of an extension under this section, see section 6165.

"(2) Period of limitation.—

"For extension of the period of limitation in the case of an extension under this section, see section 6503(d).

"(3) Interest.—

"For provisions relating to interest on tax payable in installments under subsection (a), see subsections (b)(1) and (j) of section 6601."

(b) FIVE-YEAR EXEMPTION FROM INTEREST.—Paragraph (1) of section 6601(b) of such Code (relating to last date prescribed for payment) is amended by striking out the period at the end thereof and inserting in lieu thereof ", except that the late date prescribed for payment of any tax payable in installments under section 6166(a) shall be the last date prescribed for payment of the first installment of such tax.".

(c) FOUR-PERCENT INTEREST RATE.—Section 6601 of such Code (relating to interest on underpayment, non-payment, or extension of time for payment, or tax) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new section:

"(j) EXTENSION OF TIME FOR PAYMENT OF ESTATE TAX.—If the amount of any tax imposed by section 2001 is payable in installments under section 6166(a), interest on such amount shall be paid at the rate of 4 percent, in lieu of the annual rate established under section 6621 as provided in subsection (a). For purposes of this subsection and subsection (b)(1), the amount of any deficiency which is prorated to installments payable under section 6166(a) shall be treated as an amount of tax payable in installments under such section.".

(d) TECHNICAL AMENDMENT.—Paragraph (2) of section 6161(a) of such Code (relating to extension of time for paying estate tax) is amended by striking out the period at the end thereof and inserting in lieu thereof "or, if later, in the case of an installment payable under section 6166(a), not in excess of 6 months from the date fixed for the payment thereof.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents with respect to which the date for the filing of the estate tax return (including extensions thereof) prescribed by section 6075(a) of the Internal Revenue Code of 1954 is after the date of the enactment of this Act.

ADJUSTMENTS OF CORPORATE NORMAL TAX RATE

SEC. 9. (a) ADJUSTMENTS OF CORPORATE NORMAL TAX RATE.—Section 11(b) (relating to the normal tax imposed on corporations) of part II of subchapter A of chapter 1 of subtitle A is amended to read as follows:

"(b) NORMAL TAX.—The normal tax is equal to 20 percent of the taxable income, in the case of a taxable year beginning after December 31, 1975. For purposes of applying the percentage of tax set forth in the preceding table in the case of a corporation which is a component member of a controlled group of corporations (within the meaning of section 1563), the taxable income of the other component members of such group shall, under regulations prescribed by the Secretary or his delegate, be taken into account.".

(b) The amendments made by this section shall apply to taxable years beginning after December 31, 1975.

ADJUSTMENT OF CORPORATE SURTAX RATE

SEC. 10. (a) ADJUSTMENT OF CORPORATE SURTAX RATE.—Section 11(c) (relating to surtax imposed on corporations) of part II of subchapter A of chapter 1 of subtitle A is amended to read as follows:

"(c) SURTAX.—The surtax is equal to 22 percent of the amount by which the taxable income exceeds the surtax exemption for the taxable year, in case of a taxable year beginning after December 31, 1975.".

(b) The amendment made by this section shall apply to taxable years beginning after December 31, 1975.

INCREASE IN CORPORATE SURTAX EXEMPTION

SEC. 11. (a) IN GENERAL.—Section 11(d) (relating to surtax exemption) of part II of subchapter A of chapter 1 is amended by striking out "$50,000" and inserting in lieu thereof "$100,000".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 1561(a) (as in effect for taxable years beginning after December 31, 1974) (relating to limitations on certain multiple tax benefits in the case of certain controlled corporations) or part II of subchapter B of chapter 6 is amended by striking out "$50,000" and inserting in lieu thereof "$100,000".

(2) Paragraph (7) of section 12 (relating to cross-references for tax on corporations) of part II of subchapter A of chapter 1 is amended by striking out "$50,000" and inserting in lieu thereof "$100,000".

(3) Section 962(c) (relating to surtax exemption for individuals electing to be subject to tax at corporate rates) of subpart F of part III of subchapter N of chapter 1 is amended by striking out "$50,000" and inserting in lieu thereof "$100,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1975.

GRADUATED AND INCREASED INVESTMENT TAX CREDIT

SEC. 12. (a) GENERAL RULE.—Paragraphs (1) section 46(a) (relating to determination of amount of credit) is amended to read as follows:

"(1) GENERAL RULE.—The amount of the credit allowed by section 38 for the taxable year shall be equal to the sum of—

"(A) 25 percent of the qualified investment to the extent that the qualified investment does not exceed $25,000;

"(B) 20 percent of the qualified investment to the extent that the qualified investment exceeds $25,000 and does not exceed $50,000; plus

"(C) 15 percent of the qualified investment to the extent that the qualified investment exceeds $50,000.".

(b) TECHNICAL AMENDMENTS.—

(1) Section 46(a) of such Code (relating to determination of amount of credit) is amended by striking out paragraphs (4) and (5) and inserting in lieu thereof the following:

"(4) MARRIED INDIVIDUALS.—In the case of a husband or wife who files a separate return—

"(A) paragraph (1) shall be applied by substituting for each dollar amount contained in such paragraph an amount equal to one-half of such dollar amount; and

"(B) subparagraphs (A) and (B) of paragraph (2) shall be applied by substituting '$12,500' for '$25,000' each place it appears. This paragraph shall not apply if the spouse of the taxpayer has no qualified investment for, and no unused credit carryover or carryback to, the taxable year of his spouse which ends within or with the taxpayer's taxable year.

"(5) CONTROLLED GROUPS.—In the case of a controlled group, each dollar amount contained in paragraph (1) and the $25,000 amount specified in paragraph (2) shall each be reduced by being apportioned among the component members of such group in such manner as the Secretary or his delegate shall by regulations prescribe. For purposes of the preceding sentence the term 'controlled group' has the meaning assigned to such term by section 1563(a).".

(2) Section 46(e)(1) of such Code (relating to limitations with respect to certain persons) is amended by striking out "the qualified investment and" and inserting in lieu thereof "the qualified investment, each dollar amount contained in subsection (a)(1), and".

(3) Section 48(f)(3) of such Code (relating to estates and trusts) is amended—

(A) by striking out "the $25,000 amount" and inserting in lieu thereof "each dollar amount contained in section 46(a)(1) and the $25,000 amount"; and

(B) by striking out "same ratio to $25,000" and inserting in lieu thereof "same ratio to the dollar amount contained in section 46(a)(1) or $25,000, as the case may be,".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

INCREASE IN CLASS LIFE VARIANCE FOR PURPOSES OF DEPRECIATION

SEC. 13. (a) IN GENERAL.—Section 167(m)(1) (relating to class lives for purposes of depreciation) of part VI of subchapter B of chapter 1 is amended by striking out "20" and inserting in lieu thereof "40".

(b) EFFECTIVE DATE.—The amendment made by this section applies to property acquired or the construction of which is begun after December 31, 1975.

CAPITAL RECOVERY ALLOWANCES

SEC. 14. (a) Part VI of subchapter B of chapter 1 is amended by adding after section 188 the following new section:

"SEC. 189. CAPITAL RECOVERY ALLOWANCE.

"(a) GENERAL RULE.—In lieu of the deduction provided by section 167 the taxpayer may elect, in accordance with regulations prescribed by the Secretary or his delegate, to take a reduction for captial recovery with respect to any section 189 property. Such election may not be revoked except with the consent of the Secretary or his delegate.

"(b) SECTION 189 PROPERTY.—For purposes of this section, the term 'section 189 property' means—

"(1) tangible personal property, or

"(2) other tangible property (including a building and its structural components) but only if such property—

"(A) is used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, or

"(B) constitutes a research facility used in connection with any of the activities referred to in subparagraph (A) or

"(C) constitutes a warehouse or storage facility used in connection with any of the activities referred to in subparagraph (A), or

"(D) constitutes a pollution control facility which is used to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, or storing of pollutants, contaminants, wastes, or heat.

Such term includes only property with respect to which a deduction for depreciation (or for amortization in lieu of depreciation) would be allowable if the taxpayer did not make an election under this section. The preceding sentence shall not be construed to limit or deny a deduction under this section for any taxable year prior to the taxable year in which a deduction for depreciation (or for amortization in lieu of depreciation) would first become allowable with respect to any property.

"(c) AMOUNT OF DEDUCTION.—The deduction allowed for any taxable year with respect to property which is the subject of an election under subsection (a) shall be any amount elected by the taxpayer which does not exceed—

"(1) in the case of secton 1245 property (as defined in section 1245(a)(3)) or property described in subsection (b)(2)(D) of this section, the amount determined by applying to the acquisition costs of such property the applicable percentage set forth in the following schedule:

"For the year which is—	The applicable percentage is—
The first taxable year after such costs tion costs were paid or incurred	40
The first taxable yead after such costs were paid or incurred	24
The second taxable year after such costs were paid or incurred	18
The third taxable year after such costs were paid or incurred	12
The fourth taxable year after such costs were paid or incurred	6

"(2) in the case of section 1250 property (as defined in section 1250(c)) other than property described in subsection (b)(2)(D) of this section, the amount determined by applying to the acquisition costs of such property the applicable percentage set forth in the following schedule:

"For the year which is—	The applicable percentage is—
The taxable year in which the acquisition costs were paid or incurred	20
The first taxable year after such costs were paid or incurred	16
The second taxable year after such costs were paid or incurred	14
The third taxable year after such costs were paid or incurred	13
The fourth taxable year after such costs were paid or incurred	11
The fifth taxable year after such costs were paid or incurred	9
The sixth taxable year after such costs were paid or incurred	7
The seventh taxable year after such costs were paid or incurred	5
The eighth taxable year after such costs were paid or incurred	3
The ninth taxable year after such costs were paid or incurred	2

"(d) ACQUISITION COSTS.—For purposes of this section, the term 'acquisition costs' means any costs paid or incurred to acquire section 189 property which would be taken into acocunt in determining the basis of such property under section 1012. The taxable year in which such costs or any portion thereof are paid or incurred shall be the first year in which the taxpayer either obtains title to the property, or has the incidents of ownership such as possession, use, and risk, even though legal title for security purposes remains in the vendor or another. If the acquisition costs of an item of section 189 property are paid or incurred in more than one taxable year, the maximum deduction under subsection (c) shall be computed separately with respect to each portion of such costs which are paid or incurred in a different taxable year.

"(e) CARRYOVER OF UNUSED DEDUCTIONS.—If in any taxable year the taxpayer elects to deduct less than the maximum amount deductible under subsection (c), the excess shall be carired forward and be deductible in any succeeding taxable year.

"(f) CROSS REFERENCE.—

"For special rule with respect to certain gain derived from the disposition of property the adjusted basis of which is determined with regard to this section, see sections 1245 and 1250.".

(b) Section 46(c)(2) (relating to the investment credit) is amended by adding at the end thereof the following new sentence: "The useful life of any property which is the subject of an election under section 189(a) shall, for purposes of this subpart, be the useful life that would otherwise have been used in computing the allowance for depreciation under section 167 had the taxpayer not made such an election.".

(c) Section 57 (relating to tax preference items) is amended by adding at the end thereof the following new subsection:

"(d) EXCEPTION.—Notwithstanding any other provision of this section, no part of any amount allowed as a deduction for capital recovery under section 189 shall be considered an item of tax preference.".

(d) Paragraph (2) of section 1016(a) (relating to adjustments to basis) is amended by inserting "capital recovery," before "and depletion.".

(e) Paragraph (2) of section 1245(a) (relating to recomputed basis) is amended by inserting "or for capital recovery under section 189" after "or for amortization under section 168, 169, 184, 185, 187, or 188" each time such phrase appears therein.

(f) Paragraph (3) of section 1245(a) (relating to the definition of section 1245 property) is amended by inserting "or to the allowance or capital recovery provided in section 189" after "the allowance of amortization provided in section 185".

(g) Paragraph (3) of section 1250(b) (relating to depreciation and adjustments) is amended by inserting "capital recovery," after "obsolescence,".

(h) Paragraph 1250(c) (relating to the definition of section 1250 property) is amended by inserting "or to the allowance for capital recovery provided in section 189" after "the allowance for depreciation provided in section 167".

(i) The amendments made by this Act shall take effect on January 1, 1976, and the amendment made by subsection (b) shall apply only to acquisition costs paid or incurred on or after such effective date.

ALTERNATIVE AMORTIZATION PERIOD FOR POLLUTION CONTROL FACILITIES

SEC. 15. (a) IN GENERAL.—Section 169 (relating to amortization of pollution control facilities) of part VI of subchapter B of chapter 1 is amended by—

(1) striking out "60 months" in subsection (a) and inserting in lieu thereof "60 months or 12 months",

(2) striking out "60-month period" in subsection (a) and inserting in lieu thereof "60-month or 12-month period", and

(3) striking out "60-month period" in subsection (b) and inserting in lieu thereof "60-month or 12-month period".

(b) EFFECTIVE DATE.—The amendments made by this section apply to any new identifiable treatment facility (as defined in section 169(d)(4) of such Code) acquired or the construction, reconstruction, or erection of which is begun after December 31, 1975.

INCREASE OF EXEMPTION FROM INDUSTRIAL DEVELOPMENT BOND TREATMENT

SEC. 16. (a) Paragraph (6) of section 103 (c) (relating to exemption from industrial development bond treatment for certain small issues) is amended—

(1) by striking out "$1,000,000" in subparagraph (A) and inserting in lieu thereof "$10,000,000"; and

(2) by striking out subparagraphs (D), (E), (F), (G), and (H).

(b) The amendments made by subsection (a) shall apply to obligations issued after December 31, 1975.

By Mr. SCHWEIKER:

S. 3382. A bill to amend the Federal Reports Act, and for other purposes. Referred to the Committee on Government Operations.

Mr. SCHWEIKER. Mr. President, I send to the desk a measure entitled "The Federal Reports Act Amendments of 1976," to establish strict standards to cut back on Federal paperwork and to permit Congress to take an active role in overseeing the preparation of such forms.

As documented by the Federal Paperwork Commission, individuals, small businesses and major corporations in this country are being virtually buried under an avalanche of paperwork required by the Federal Government. Last year alone, at a cost of $18 billion, the Federal Government turned out and processed about 10 billion sheets of paper to be completed by U.S. businesses. It cost small business alone another $18 billion to complete these forms.

The Federal paperwork burden has become one of the major headaches of the business community. Although the Federal Government has a legitimate need for information, this seemingly never-ending demand for more and more information has now reached the point where it drains an estimated $40 billion a year from the national economy.

Businesses and institutions have been forced to hire unbelievable numbers of people simply to fill out Federal forms. Many small businesses simply do not have the expertise needed to fill out forms as they are now written. They are forced to spend excessive amounts of time and money to complete the scores of forms required each year.

Storage of the necessary records to meet Federal reporting requirements is another major expense. Official records stored around the country total 11.6 million cubic feet—or a volume 11 times greater than the Washington Monument.

In 1942, Congress passed the Federal Reports Act in an effort to limit the red tape which had arisen with the contemporary expansion of the Federal Government's role. Although this measure has been updated since 1942, it has been ineffective for a number of reasons. For example, the Internal Revenue Service, which generates 35 percent of all Federal paperwork, was exempted from the review process. Moreover, the review process itself seldom amounted to anything more than a "rubberstamp" of decisions of the agencies it was supposed to oversee.

Congress created the Federal Paperwork Commission in 1974 in another attempt to deal with this problem. Unfortunately, however, the Commission's final report and recommendations won't be issued until the fall of 1977. I do not think we should or can wait that long—we already know enough about the paperwork problem to start solving it.

My bill today would require General Accounting Office approval of all new forms prepared by Federal agencies, including the Internal Revenue Service, for use by any person outside of the Federal Government. In effect, GAO will act as the agent of the Congress to insure Federal agencies do not exceed their statutory mandate in requiring unnecessary or extraneous information from the American people. GAO would approve the form only if:

First. It requires information essential to implement the legislation passed by Congress to which the form relates, without requiring extraneous information;

Second. It can be easily understood;

Third. It does not require excessive time or money to complete, considering the resources of the persons to whom it applies and the value of the information sought;

Fourth. It does not unnecessarily duplicate information already available through another Federal agency.

Additionally, those forms intended for use by persons or groups which do not ordinarily have the full time assistance of lawyers, accountants, or other professionals must be susceptible to completion without such assistance.

If GAO rejects any form, on any of these grounds, it would then be returned to the originating agency with a written list of deficiencies, and those congressional committees having jurisdiction over that agency would be advised by GAO of its action. This provision will give the committees of Congress a clear indication of any agency attempt to exceed its authority, and oversight hearings could then be conducted.

Mr. President, this measure would seek to assure that only those forms absolutely essential to the efficient operation of the Federal Government are required of the American public. I discussed this problem when GAO officials testified before the Appropriations Committee recently, and I know GAO is deeply concerned about the paperwork problems, and will have very definite views about how to solve it. I believe we should utilize fully the expertise of GAO, the Paperwork Commission and the other experts in this field, but I also believe we must move now to solve this problem.

I ask unanimous consent that the text of my bill, and the Commission on Federal Paperwork's fact sheet, "Bits and Pieces of the Paperwork Problem," be printed in the RECORD.

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

S. 3382

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Reports Act Amendments of 1976".

SEC. 2. (a) Chapter 35 of title 44, United States Code, is amended by adding at the end thereof the following new section:

"§ 3513. Supervision of Federal forms

"(a) The head of a Federal agency or independent Federal reulatory agency may require the completion of a form or otherwise collect information upon identical items from 10 or more persons, other than Federal employees, only with the prior approval of the Comptroller General of the United States. For the purposes of this subsection, the Comptroller General shall require the submission of forms or other descriptions of the information collection systems involved together with such supporting documents or other information as the Comptroller General determines to be appropriate.

"(b) The Comptroller General may approve a form or description submitted pursuant to subsection (a) only if such form or description—

"(1) requires only information essential to implement a function or duty of the Federal agency or Federal independent regulatory agency which is a statutory responsibility of any such Federal agency or Federal independent regulatory agency and to which the form or system relates, without requiring extraneous information;

"(2) is easy to understand;

"(3) is reasonably susceptible to completion without professional assistance, including lawyers and accountants, by persons who do not ordinarily have the financial resources

to obtain such full-time assistance or otherwise have access to such assistance;

"(4) does not require the expenditure of excessive time, effort, or money to complete, considering the financial and other resources of the persons who are subject to the use of such forms and the value of the information sought; and

"(5) does not unnecessarily duplicate information already available through another Federal agency or Federal independent regulatory agency.

"(c) If any form or description of a system for the collection of information submitted pursuant to subsection (a) is not approved, such form or description together with all supporting documents and information, shall be returned by the Comptroller General to the requesting Federal agency or Federal independent regulatory agency and shall be accompanied by a written statement of the reasons why approval was withheld. At the same time that any such form or description is returned to the originating requesting Federal agency or Federal independent regulatory agency, the Comptroller General shall inform all congressional committees having legislative jurisdiction or oversight responsibilities with respect to the subject matter contained in the original form or of the Federal agency or of the Federal independent regulatory agency of his action with respect to any such form.

"(d) Notwithstanding any other provision of law no person shall incur any civil or criminal liability for failure to complete any form subject to the provisions contained in this section and which does not bear a clear and conspicuous legend indicating the approval required under this section and the file reference number of any such approval from the Comptroller General and the date such approval was given and the date of the expiration of such approval.".

(b) The table of sections of chapter 35 of title 44, United States Code, is amended by adding at the end thereof the following:

"3512. Information for independent regulatory agencies.

"3513. Supervision of Federal forms.".

(c) The amendments made by this section apply to any form or system first prescribed on or after the date of enactment of this Act or to any revision or modification made on or after such date to any form or system.

SEC. 3. Section 3507 of title 44, United States Code, is amended by striking out "the Internal Revenue Service,".

COMMISSION ON FEDERAL PAPERWORK,
Washington, D.C.

BITS AND PIECES OF THE PAPERWORK PROBLEM

Government agencies print about 10 billion sheets of paper a year to be completed by U.S. businesses—enough to fill more than 4 million cubic feet of space.

Paperwork stemming from Federal, State and local governments averages to about 10 forms for every man, woman, and child in the United States.

Each year:

The U.S. public spends about $40 billion on paperwork;

The Federal government spends about $15 billion to process paperwork;

U.S. government spends about $1 billion for forms;

U.S. government spends about $1 billion for directives accompanying forms;

U.S. spends about $1.7 billion to file and store forms.

Businesses with 50 employees or less complete approximately 75 to 80 types of forms.

A company with 40,000 employees maintains about 125 file drawers of records to meet Federal reporting requirements.

A company operating three small TV stations filed 45 pounds of forms for a license renewal application.

A radio station in New Hampshire paid $26 in postage to mail an application to Washington.

A big oil company files 409 reports to 45 different Federal agencies, excluding tax reports.

Another big oil company spends $17 million and uses 475 persons full time to file reports to the Federal government, excluding all tax reporting.

Each year the Federal government issues a 2-mile high stack of quarterly wage report forms.

Harvard University employs 26 people full time to complete paperwork at a cost of $300,000.

A typical small business with gross income under $30,000 is required to file 53 tax forms.

The State of Maryland refused a $60,000 HEW grant for a consumer education program because costs of completing forms would approximate 75 percent of the grant.

The Department of Agriculture has on hand 989,224 feet of records, including an increase of 64,631 cubic feet or almost 36,500 file drawers in the last year. The Department spends $150 million yearly on forms, reports and supporting systems.

A stack of all census forms measures 6 feet.

Official records stored around the country total 11.6 million cubic feet or an amount 11 times larger than the volume of the Washington monument.

Costs of Federal paperwork in 1973 totaled more than Federal government costs for health, education, welfare, saving the environment, community development and housing combined.

By Mr. PEARSON (for himself and Mr. BELLMON):

S. 3383. A bill to authorize and direct the Secretary of Commerce to develop a national policy on weather modification, and for other purposes. Referred to the Committee on Commerce.

Mr. PEARSON. Mr. President, I am introducing today for appropriate reference with the distinguished Senator from Oklahoma, Mr. BELLMON, the National Weather Modification Policy Act of 1976, a bill to authorize and direct the Secretary of Commerce to develop a comprehensive and coordinated national weather modification policy and a national program of weather modification research and development.

Mr. President, I need hardly elaborate on the magnitude of the devastation of drought and flood conditions experienced this year in the West and Midwest and in particular my own State of Kansas. These and similar weather-related disasters and hazards affect virtually all Americans and annually cause untold human suffering and loss of life and result in billions of dollars of economic loss to crops and other property. While weather modification projects have been operational for upward of 25 years and have been shown to have significant potential for preventing, diverting, moderating, or ameliorating the adverse effects of such weather related disasters and hazards, I am concerned regarding the lack of a coordinated Federal weather modification policy and a coordinated and comprehensive program for weather modification research and development. As has been pointed out by reports and studies conducted by such diverse organizations as the National Academy of Sciences, the National Advisory Committee on Oceans and Atmosphere, the General Accounting Office, and the Domestic Council, the lack of a comprehensive Federal weather modification policy and research and development program, the fact that there is no lead agency for weather modification activities responsible to the Congress and the President and the anemic Federal funding of such efforts, have resulted in both slow progress in a scientific area that promises to have a high benefit to cost ratio and less than optimal benefits from existing weather modification projects.

Senator BELLMON, who has long been concerned with seeking solutions to these problems, introduced early in this Congress three bills, S. 2705, S. 2706, and S. 2707, that were designed to increase both the level and intensity of Federal involvement in the field of weather modification. On February 16, 1976, I chaired a hearing of the Oceans and Atmosphere Subcommittee that considered his proposed legislation. During that hearing, both Senator BELLMON and myself heard testimony from governmental, scientific, and user group representatives who agreed that the establishment of a comprehensive and coordinated Federal weather modification policy and a Federal commitment to an expanded weather modification research and development program could yield important scientific and economic advances in such areas as rain enhancement, hail suppression, fog dissipation, hurricane dispersal, and other weather phenomena.

Building upon the legislation introduced earlier by Senator BELLMON, the testimony received at the hearings that I chaired on this subject, and follow-up discussions with interested parties, Senator BELLMON and I are introducing the National Weather Modification Act of 1976. The bill reflects our strong view that it is imperative that a comprehensive national weather modification policy be developed as soon as possible and a recommended program for weather modification research and development be presented to the Congress for its consideration.

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

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

The National Weather Modification Policy Act of 1976 would—

SEC. 2(a).—make findings that weather modification projects have significant potential for preventing, diverting, moderating or ameliorating the adverse effects of weather-related disasters and hazards and enhancing crop production and the availability of water; also that Federal action is required to prevent or alleviate such disasters and hazards.

SEC. 2(b).—declare that the purpose of Congress in this Act is to develop a comprehensive and coordinated national weather modification policy and a national program of weather modification research and experimentation.

SEC. 4.—require the Secretary of Commerce to conduct a comprehensive investigation and study of the state of scientific knowledge concerning weather modification, the present state of development of weather modification technology, the problems impeding effective implementation of weather modification technology, and other related matters.

SEC. 5(a).—require the Secretary to submit within one year a final report on the findings, conclusions, and recommendations of the study conducted pursuant to Sec. 4, including a statement of a recommended national policy on weather modification and a description of a recommended national weather modification research and development program, recommendations for levels of Federal funding sufficient to support adequately a national weather modification research and development program, recommendations for any changes in the organization and involvement of Federal departments and agencies in weather modification which may be needed to implement effectively the recommended national policy on weather modification and the recommended research and development program, and recommendations for any legislation which may be required to implement such policy and program.

SEC. 5(b).—specifically require the Secretary to solicit and consider the views of State agencies, private firms, institutions of higher learning, and other interested persons and governmental entities in the conduct of the study required by Sec. 4.

SEC. 6.—authorize to be appropriated to the Secretary for the purposes of carrying out the provisions of this Act not to exceed $1 million.

S. 3383

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 "National Weather Modification Policy Act of 1976".

SEC. 2. DECLARATION OF POLICY.

(a) FINDINGS.—The Congress finds and declares the following:

(1) Weather-related disasters and hazards, including drought, hurricanes, tornadoes hail, lightning, fog, floods, and frost, result in substantial human suffering and loss of life, billions of dollars of annual economic losses to owners of crops and other property, and substantial financial loss to the United States Treasury;

(2) Weather modification projects have significant potential for preventing, diverting, moderating, or ameliorating the adverse effects of such disasters and hazards and enhancing crop production and the availability of water; and

(3) The interstate nature of climatic and related phenomena, the severe economic hardships experienced as the result of occasional drought and other adverse meteorological conditions, and the existing role and responsibilities of the Federal Government with respect to disaster relief, require appropriate Federal action to prevent or alleviate such disasters and hazards.

(b) PURPOSE.—It is therefore declared to be the purpose of the Congress in this Act to develop a comprehensive and coordinated national weather modification policy and a national program of weather modification research and experimentation—

(1) to determine the means by which deliberate weather modification can be used at the present time to decrease the adverse impact of weather on agriculture, economic growth, and the general public welfare, and to determine the potential for weather modification;

(2) to conduct research into those scientific areas considered most likely to lead to practical techniques for drought prevention or alleviation and other forms of deliberate weather modification;

(3) to develop practical methods and devices for weather modification;

(4) to make weather modification research findings available to interested parties; and

(5) to assess the economic, social, environmental, and legal impact of an operational weather modification program.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) The term "Secretary" means the Secretary of Commerce.

(2) The term "State" means any State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(3) The term "weather modification" means any activity performed with the intention and expectation of producing changes in precipitation, wind, fog, lightning, and other atmospheric phenomena.

SEC. 4. STUDY.

(a) The Secretary shall conduct a comprehensive investigation and study of the state of scientific knowledge concerning weather modification, the present state of development of weather modification technology, the problems impeding effective implementation of weather modification technology, and other related matters. Such study shall include—

(1) a review and analysis of the present and past research efforts to establish the degree of development of practical weather modification technology, particularly as it relates to reducing loss of life and crop and property destruction;

(2) a review and analysis of research needs in weather modification to establish areas in which more research could be expected to yield the greatest return in terms of practical weather modification technology;

(3) a review and analysis of existing studies to establish the probable economic importance to the United States in terms of agricultural production, energy, and related economic factors if the present weather modification technology were to be effectively implemented;

(4) an assessment of the legal, social, and ecological implications of expanded and effective research and operational weather modification projects;

(5) recommendations concerning legislation desirable at all levels of government to implement a national weather modification policy and program;

(6) a review of the international importance and implications of weather modification activities by the United States;

(7) a review and analysis of present and past funding for weather modification from all sources to determine the sources and adequacy of funding in the light of the needs of the Nation; and

(8) a review and analysis of the purpose, policy, methods, and funding of the Federal departments and agencies involved in weather modification and of the existing interagency coordination of weather modification research efforts.

SEC. 5. REPORT.

(a) IN GENERAL.—The Secretary shall prepare and submit to the President and the Congress, within 1 year after the date of enactment of this Act, a final report on the findings, conclusions, and recommendations of the study conducted pursuant to section 4. Such report shall include:

(1) a summary of the findings made with respect to each of the areas of investigation specified in section 4;

(2) other findings which are pertinent to the determination and implementation of a national policy on weather modification;

(3) a statement of a recommended national policy on weather modification and a description of a recommended national weather modification research and development program which is consistent with, and likely to contribute to, achieving the objectives of such policy;

(4) recommendations for levels of Federal funding sufficient to support adequately a national weather modification research and development program;

(5) recommendations for any changes in the organization and involvement of Federal departments and agencies in weather modification which may be needed to implement effectively the recommended national policy on weather modification and the recommended research and development program; and

(6) recommendations for any legislation which may be required to implement such policy and program. Each department, agency, and other instrumentality of the Federal Government is authorized and directed to furnish the Secretary any information which the Secretary deems necessary to carry out his functions under this Act.

(b) OPERATION AND CONSULTATION.—The Secretary shall solicit and consider the views of State agencies, private firms, institutions of higher learning, and other interested persons and governmental entities in the conduct of the study required by section 4, and in the preparation of the report required by subsection (a).

SEC. 6. AUTHORIZATION FOR APPROPRIATIONS.

There is authorized to be appropriated to the Secretary for the purposes of carrying out the provisions of this Act not to exceed $1,000,000.

By Mr. PEARSON:

S. 3384. A bill to assure that the Federal Government discharges its present constitutional and statutory responsibilities in such manner as to protect and serve the interests of consumers, and for other purposes. Referred to the Committee on Government Operations.

CONSUMER PROTECTION ACT OF 1976

Mr. PEARSON. Mr. President, I introduce for appropriate reference a bill entitled the "Consumer Protection Act of 1976." I ask unanimous consent that the text of my bill be included in the RECORD immediately following these remarks.

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

Mr. PEARSON. Mr. President, this legislation is based upon S. 200, a bill to establish an independent, nonregulatory Agency for Consumer Advocacy within the executive department of the Federal Government. Although S. 200 has passed the Senate and comparable legislation has passed the House, the bill faces an uncertain future, to say the least.

Under the bill I am today offering, there would be established within the Department of Justice a new Division for Consumer Protection, with an Assistant Attorney General at its head. The Assistant Attorney General for Consumer Protection would coordinate the efforts of independent consumers counsel in the various Federal agencies and departments. Thus, under my bill, consumers would have the dual advantage of coordinated Federal representation and expert representation within each of the respective agencies.

Mr. President, this legislation vests in the independent consumer counsels those powers contemplated for the ACA under S. 200. However, the "dragnet" authority for information gathering under S. 200 would be limited under my bill.

Mr. President, there is no reason to abandon our efforts to improve consumer representation in the Federal

Establishment. The bill that I am offering, which is substantially similar to S. 200, would achieve effective consumer advocacy without the attendant disadvantages of a new "superagency." The secret to effective representation of consumer interests in the Government is knowledgeable advocacy by specialized independent consumers counsel within each of the various agencies.

This bill would achieve this objective.

S. 3384

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 "Consumer Protection Act of 1976".

SEC. 2. DECLARATION OF POLICY.

(a) The Congress finds and declares the following:

(1) The interests of consumers are inconsistently, incompletely, and/or inadequately represented within the Federal Government.

(2) Regulations have been promulgated, and policies have been adopted, by agencies of the Federal Government without such agencies have first developed available information as to the impact on consumers, and the potential and probable costs and benefits, of such regulations and policies.

(3) Vigorous representation of the interests of consumers is necessary for and conducive to the efficient and fair functioning of a free-market economy and to the economic welfare of the United States.

(4) In the execution of its present constitutional and statutory responsibilities, the Federal Government and the agencies thereof should consistently, completely, and adequately represent the interests of consumers and should not promulgate regulations or adopt policies wtihout first developing such information, and should act in such manner as to protect and serve the interests of consumers.

(b) The purposes of the Congress in this Act are as follows:

(1) Effective consumer advocacy before and within Federal agencies would help such agencies to exercise more fully and effectively their statutory responsibilities, in a manner consistent with the public interest and with effective and responsive government. It is the purpose of this Act to protect and promote the interests of the people of the United States, as consumers of goods and services that are made available through commerce, by establishing independent Offices of Consumer Counsel within the executive branch and certain agencies of the Federal Government, and by establishing a new Consumer Protection Division within the Department of Justice to coordinate and assist such Offices.

(2) It shall be the purpose of each Office of Consumer Counsel to represent the interests of consumers before and within the Federal agency of which it is a part and before the Federal courts in matters relating to such agency; to receive and transmit consumer complaints; to develop and disseminate information of interest to consumers; and to perform other functions to protect and promote the interests of consumers. In the exercise of its functions, powers, and duties, each such Office shall be independent of all other offices and officers of the agency of which it is a part.

(3) It is the purpose of this Act to promote the protection of consumers with respect to the—

(A) safety, quality, purity, potency, healthfulness, durability, performance, repairability, effectiveness, dependability, availability, and cost of any real or personal property or tangible or intangible goods, services, or credit;

(B) preservation of consumer choice and a competitive market;

(C) prevention of unfair or deceptive trade practices;

(D) maintenance of truthfulness and fairness in the advertising, promotion, and sale by a producer, distributor, lender, retailer, or other supplier of such property, goods, services, and credit;

(E) provision of full, accurate, and clear instructions, warnings, and other information by any such supplier concerning such property, goods, services, and credit;

(F) protection of the legal rights and remedies of consumers; and

(G) provision of estimates of the costs and benefits of programs and activities established by regulations and laws of the Federal Government.

SEC. 3. DEFINITIONS

As used in this Act, unless the context otherwise requires—

(1) "agency action" includes the whole or any part of an agency "rule," "order," "license," "sanction," or "relief" (as defined in section 551 of title 5, United States Code), or the equivalent thereof, the denial thereof, or the failure to act;

(2) "agency activity" means any agency process, or phase thereof, conducted pursuant to any authority or responsibility under law;

(3) "agency proceeding" means agency "rulemaking", "adjudication", or "licensing" (as defined in section 551 of title 5, United States Code);

(4) "commerce" means trade, traffic, commerce, or transportation, within the jurisdiction of the United States, (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, commerce, or transportation described in clause (A);

(5) "consumer" means any individual who uses, purchases, acquires, attempts to purchase or acquire, or is offered or furnished any real or personal property, tangible or intagible goods, services, or credit for personal, family, agricultural or household purposes;

(6) "Consumer Counsel" means, with respect to a Federal agency, as defined in this section, the officer who is appointed pursuant to this Act to represent the interest of consumers in accordance with this Act;

(7) "Federal agency" or "agency" means the Departments of Agriculture, Defense, Commerce, Health, Education, and Welfare, Housing and Urban Development, Interior, Justice, Labor, Transportation, and Treasury, the Civil Aeronautics Board, the Consumer Product Safety Commission, the Energy Research and Development Administration, the Environmental Protection Agency, the Federal Communications Commission, the Federal Energy Administration, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the National Aeronautics and Space Administration, the National Transportation Safety Board, the Securities and Exchange Commission, and the Small Business Administration;

(8) "Federal court" means any court of the United States, including the Supreme Court of the United States, any United States court of appeals, any United States district court established under chapter 5 of title 28, United States Code, the District Court of Guam, the District Court of the United States Customs Court, the United States Court of Customs and Patent Appeals, the United States Court of Claims;

(9) "interest of consumers" means any health, safety, or economic concern of consumers involving real or personal property, tangible or intangible goods, services, or credit, or the advertising or other description thereof, which is or may become the subject of any business, trade, commercial, or marketplace offer or transaction affecting commerce, or which may be related to any term or condition of such offer or transaction. Such offer or transaction need not involve the payment or promise of a consideraton;

(10) "participation" includes any form of submission;

(11) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Canal Zone, Guam, American Samoa, and the Trust Territory of the Pacific Islands; and

(12) "submission" means participation through the presentation or communication of relevant evidence, documents, arguments, or other information.

SEC. 4. ESTABLISHMENT

There is hereby established within each Federal agency an independent Office of Consumer Counsel. Each such Office shall be directed and administered by a Consumer Counsel. Each Consumer Counsel shall be appointed by the President, by and with the advice and consent of the Senate, for a term not to exceed four years and shall be compensated at a rate not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code. Each Consumer Counsel shall be an individual who, by reason of training, experience, and attainments, is qualified to represent effectively and independently the interests of consumers. Upon the expiration of his term, each Consumer Counsel shall continue in office until he is reappointed and qualifies. A Consumer Counsel may be removed by the President for neglect of duty or malfeasance in office.

SEC. 5. POWERS AND DUTIES OF CONSUMER COUNSEL

(a) Each Consumer Counsel shall be responsible for the exercise of the powers and the discharge of the duties of the Office, and shall have the authority to direct and supervise all personnel and activites thereof.

(b) In addition to any other authority conferred upon him by this Act, each Consumer Counsel may, in carrying out his functions under this Act and to the extent funds are appropriated—

(1) select, appoint, employ, and fix the compensation (subject to the civil service and classification laws) of such officers and employees as are necessary to carry out the provisions of this Act, and shall prescribe the authority and duties of such officers and employees;

(2) employ experts and consultants, in accordance with section 3109 of title 5, United States Code, Each Consumer Counsel may compensate individuals so employed for each day (including travel time) at rates not in excess of the maximum rate of pay for Grade GS–18, as provided in section 5332 of title 5, United States Code, and may, while such experts and consultants are so serving away from their homes or regular place of business, pay them travel expenses and per diem in lieu of subsistence at rates authorized, by section 5703 of title 5, United States Code, for persons in Government service employed intermittently;

(3) promulgate, in accordance with the applicable provisions of the Administrative Procedure Act, title 5, United States Code, such rules, regulations, and procedures as may be necessary to carry out the provisions of this Act, and to assure fairness to all persons affected by the actions of the Office, and to delegate authority for the performance of any function to any officer or employee under his direction and supervision;

(4) utilize, with their consent, the services, personnel, and facilities of State, regional, local, and private agencies and instrumentalities;

(5) accept voluntary uncompensated services, notwithstanding the provisions of sec-

tion 3679(b) of the Revised Statutes (31 U.S.C. 665(b));

(6) conduct conferences and hearings and otherwise secure data and expression of opinion;

(7) accept unconditional gifts or donations of services, money or property, real, personal, or mixed, tangible or intangible;

(8) designate representatives to serve or assist on such committees as he may determine to be necessary to maintain effective liaison with other Offices of Consumer Counsel and with State and local agencies carrying out programs and activities related to the interests of consumers;

(9) appoint such advisory committees as he deems necessary or appropriate to assist him with respect to his functions under this Act. Each Consumer Counsel may compensate the members of any such advisory committees (other than those who are regularly employed by the Federal Government) in the manner provided under paragraph (2) of this subsection. All meetings of such committees shall be open to the public, and interested persons shall be permitted to attend, appear before, or file statements with any such committee, subject to such reasonable rules or regulations as the Consumer Counsel involved may prescribe; and

(10) perform such other administrative activities as may be necessary for the effective fulfillment of his duties and functions.

(c) Each Consumer Counsel shall prepare and submit a monthly report, on the activities of his Office of Consumer Counsel, to the head of the Federal agency of which such Office is a part, and he shall prepare and submit to the President and to the Congress simultaneously, not later than April 1 of each year beginning April 1, 1976, an annual report on such activities. Each such annual report shall include a description and analysis of—

(1) the activities of his Office, including its representation of the interests of consumers;

(2) the relevant Federal agency actions and Federal court decisions affecting the interests of consumers;

(3) the appropriation by Congress for the Office, the distribution of appropriated funds for the current fiscal year, and a general estimate of the resource requirements of the Office for each of the next three fiscal years; and

(4) the extent of participation by consumers in the activities of his Office, and the effectiveness of the representation of consumers before the agency of which his Office is a part.

(d) Each office and officer of the agency of which an Office of Consumer Counsel is a part shall provide such Office with such information and data as the Consumer Counsel requests, except as provided in section 11 of this Act. The budget requests and budget estimates of each Office of Consumer Counsel shall be submitted by the agency of which it is a part directly to the Congress, and moneys appropriated for the use of such an Office shall not be used by the agency of which it is a part for any other purpose.

SEC. 6. OFFICE FUNCTIONS

Each Consumer Counsel shall—

(1) represent the interests of consumers within and before the agency of which his Office is a part and before the courts, to the extent authorized by this Act;

(2) conduct and support research, and studies, to the extent authorized by section 10 of this Act;

(3) submit recommendations annually to the appropriate committees of the Congress and the head of the agency of which his Office is a part, on measures to improve the operation of such agency and of the Federal Government in general in the protection and promotion of the interests of consumers, including, but not limited to, any reorganization recommendations;

(4) receive, transmit to appropriate officials, and make publicly available consumer complaints, to the extent authorized in section 8 of this Act;

(5) conduct conferences, surveys, and investigations, including economic surveys, concerning the needs, interests, and problems of consumers: *Provided*, That such conferences, surveys, or investigations are not duplicative in significant degree of similar activities conducted by other Federal officials or agencies;

(6) cooperate with State and local governments and encourage private enterprise in the promotion and protection of the interests of consumers;

(7) keep the appropriate committees of Congress fully and currently informed of all the activities of his Office, when asked or on his own initiative;

(8) encourage the adoption and expansion of effective consumer education programs;

(9) encourage the application and use of new technology, including patents and invention, for the promotion and protection of the interests of consumers;

(10) encourage the development of informal dispute settlement procedures involving consumers;

(11) encourage meaningful participation by consumers in the activities of his Office;

(12) publish information and material obtained and developed in carrying out his responsibilities under this Act, including, but not limited to, a consumer register of matters that may be useful to consumers; and

(13) perform such other related activities as he deems necessary for the effective fulfillment of his duties and functions.

SEC. 7. REPRESENTATION OF CONSUMERS.

(a)(1) Whenever a Consumer Counsel determines that the result of a relevant proceeding or activity of the agency of which his office is a part may substantially affect an interest of consumers, he may as of right intervene as a party or otherwise participate for the purpose of representing an interest of consumers, as provided in paragaph (2) of this subsection. The Consumer Counsel shall refrain from intervening in any proceeding as a party, unless he determines that such intervention is necessary to represent adequately an interest of consumers. The Consumer Counsel shall comply with the relevant Federal agency statutes and rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with laws and agency rules of procedure of general applicability governing the conduct thereof. The intervention or participation of a Consumer Counsel in any proceeding or activity in accordance with this subsection shall not affect the obligation of the Federal agency conducting such proceeding or activity to assure procedural fairness to all participants.

(2) Whenever a Consumer Counsel determines, with respect to the agency of which his Office is a part, that the result of any relevant Federal agency proceeding—

(A) which is subject to the provisions of section 553, 554, 556, or 557 of title 5, United States Code;

(B) which involves a hearing pursuant to the administrative procedural requirements of any other statute, regulation, or practice;

(C) which is conducted on the record after opportunity for an agency hearing; or

(D) which provides for public notice and opportunity for comment;

may substantially affect an interest of consumers, he may as of right intervene as a party or otherwise participate for the purpose of representing an interest of consumers in such proceeding.

(b) At such time as a Consumer Counsel determines to intervene or participate in a proceeding under subsection (a)(2) of this section, he shall issue publicly a written statement setting forth his findings under subsection (a)(1) of this section and stating concisely the specific interest of consumers to be protected. Upon intervening or participating, he shall file a copy of such statement in the proceeding.

(c) To the extent that any person, if aggrieved, would by law have such right, a Consumer Counsel shall have the right, in accordance with the following provisions of this subsection, to initiate or participate in any Federal court proceeding that involves an action of the agency of which his Office is a part:

(1) A Consumer Counsel may, as of right, and in the manner prescribed by law, initiate a civil action in a Federal court for the review of a relevant Federal agency action that the Consumer Counsel determines may substantially affect an interest of consumers. If the applicable Consumer Counsel did not intervene or otherwise participate in such Federal agency proceeding or activity out of which such agency action arose, the Consumer Counsel, before initiating a proceeding to obtain judicial review, shall petition such agency for rehearing or reconsideration thereof, if the statutes or rules governing such agency specifically authorize rehearing or reconsideration. Such a petition shall be filed within 60 days after the Federal agency action involved, or within such longer period as may be allowed by applicable procedures. The Consumer Counsel may initiate a judicial review proceeding immediately if the Federal agency does not finally act upon such a petition within 60 days after the filing thereof, or at such earlier time as may be necessary to preserve the Consumer Counsel's right to obtain effective judicial review of the Federal agency action. If the applicable Consumer Counsel did not intervene or otherwise participate in the relevant Federal agency proceeding or activity, the court shall determine whether the Consumer Counsel's initiation of a judicial proceeding pursuant to this subsection would impede the interests of justice. When the Consumer Counsel initiates a judicial proceeding arising out of a relevant agency proceeding or activity in which he did not intervene or otherwise participate, he shall file a statement setting forth the reasons for such failure, for the court's consideration in connection with its determination as to whether the initiation of such a proceeding would impede the interests of justice.

(2) A Consumer Counsel may, as of right, and in the manner prescribed by law, intervene or otherwise participate in any civil action in a Federal court if such civil action involves the review or enforcement of an action of the agency of which his Office is a part, if he determines that such civil action may substantially affect an interest of consumers.

(3) The initiation, or other participation of, by a Consumer Counsel in a judicial proceeding pursuant to this subsection shall not alter or affect the scope of review otherwise applicable to the agency action involved.

(d) Whenever a Consumer Counsel determines it to be in the interest of consumers, he may request the relevant Federal agency to initiate a judicial proceeding for review, or to take such other action, as may be authorized by law with respect to such agency. If such Federal agency fails to take the action requested, it shall promptly notify the Consumer Counsel of its reasons therefor, and such notification shall be a matter of public record.

(e) Appearances by an Office of Consumer Counsel under this Act shall be in its own name and shall be made by qualified repre-

sentatives designated by the respective Consumer Counsel.

(f) In any Federal agency proceeding in which a Consumer Counsel is intervening or participating pursuant to subsection (a)(2) of this section, such Consumer Counsel is authorized to request such Federal agency to issue, and such agency shall issue, such orders as are authorized pursuant to its statutory powers for the copying of documents, papers, and records, for the summoning of witnesses and the production of books and papers, and for the submission of information in writing. Such orders shall only be issued by a Federal agency upon a statement or showing by the Consumer Counsel of general relevance and reasonable scope of the evidence sought, if such a statement or showing is required by the general rules of procedure of such agency.

(g) A Consumer Counsel is not authorized to intervene in proceedings or actions before State or local agencies and courts.

(i) Each Federal agency shall review its rules of procedure of general applicability, and, after consultation with its Consumer Counsel, shall issue any additional rules which may be necessary to provide for such Consumer Counsel's orderly intervention or participation, in accordance with this section, in its proceedings and activities which may substantally affect the interests of consumers.

(j) Each Consumer Counsel is authorized to represent an interest of consumers which is presented to him for his consideration upon petition in writing by a substantial number of persons or by any organization which includes a substantial number of persons. Each Consumer Counsel shall notify the principal sponsors of any such petition, within a reasonable time after receipt of any such petition, of the action taken or intended to be taken by him with respect to the interest of consumers presented in such petition. If a Consumer Counsel declines or is unable to represent such interest, he shall notify such sponsors and shall state his reasons therefor.

SEC. 8. CONSUMER COMPLAINTS.

SEC. 8. (a) Whenever a Consumer Counsel receives from any person any complaint or other information which discloses—

(1) an apparent violation of law, agency rule or order, or a judgment decree, or order of a Federal court relating to an interest of consumers; or

(2) a commercial, trade, or other practice which is detrimental to an interest of consumers;

he shall, unless he determines that such complaint or information is frivolous or outside the jurisdiction of the agency of which his Office is a part, promptly transmit such complaint or information to the Federal official which has the authority to enforce any relevant law or to take appropriate action. Each Federal agency shall keep its Consumer Counsel informed to the greatest practicable extent of any action which it is taking on complaints transmitted by him.

(b) Each Consumer Counsel shall promptly notify producers, distributors, retailers, lenders, or suppliers of goods, services, and credit of all complaints of any significance concerning them received or developed under this section, unless such Consumer Counsel determines that to do so is likely to prejudice or impede an action, investigation, or prosecution concerning an alleged violation of law.

(c) Each Consumer Counsel shall maintain a public document room for public inspection and copying (without charge or at a reasonable charge, not to exceed cost), containing an up-to-date listing of all consumer complaints of any significance which he has received, arranged in meaningful and useful categories, together with annotations of actions taken in response thereto. Unless a Consumer Counsel, for good cause, determines not to make any specific complaint available, complaints listed shall be made available for public inspection and copying: *Provided*, That—

(1) the party complained against has had a reasonable time to comment on such complaint and such comment, when received, is displayed together with the complaint;

(2) the Federal official to whom the complaint has been referred has had a reasonable time to notify the Consumer Counsel what action, if any, he intends to take with respect to the complaint; and

(3) no unsigned complaints shall be placed in the public document room.

SEC. 9. CONSUMER INFORMATION AND SERVICES.

(a) In order to carry out the purposes of this Act each Consumer Counsel shall develop on his own intiative, and shall, subject to the other provisions of this Act, gather from other offices and officers of the agency of which his Office is a part and from any other source, and shall disseminate to the public (in such manner, at such times, and in such form as he determines to be most effective), information, statistics, and other data, including, but not limited to, any matter over which his agency has jurisdiction concerning—

(1) the functions and duties of his Office;

(2) consumer products and services;

(3) problems encountered by consumers generally or conditions, situations, developments, or practices which may adversely affect consumers; and

(4) notices of hearings, proposed and final rules and orders, and other pertinent activities of the agency of which his Office is a part that affect consumers.

(b) All Federal agencies which possess information which would be useful to consumers are authorized and directed to cooperate with their respective Consumer Counsels in making such information available to the public.

SEC. 10. STUDIES.

Each Consumer Counsel is authorized to conduct, support, and assist research, studies, plans, investigations, conferences, and surveys concerning the interests of consumers: *Provided*, That such activities are not duplicative of other efforts of the respective agencies.

SEC. 11. ACCESS TO INFORMATION.

(a) Upon written request by the Consumer Counsel, each Federal agency is authorized and directed to furnish or allow access to all documents, papers, and records, in its possession which such Consumer Counsel deems necessary for the performance of his functions and to furnish at cost copies of specified documents, papers, and records. Notwithstanding this subsection, a Federal agency may deny its Consumer Counsel access to and copies of—

(1) information classified in the interest of national defense or national security by an individual authorized to classify such information under applicable Executive order or statutes, and restricted data whose dissemination is controlled pursuant to the Atomic Energy Act (42 U.S.C. 2011 et seq.);

(2) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(3) information which such Federal agency is expressly prohibited by law from disclosing to another Federal agency, including, but not limited to, such expressly prohibited information contained in or related to examination, operating, or condition reports concerning any individual financial institution prepared by, on behalf of, or for the use of an agency responsible for regulations or supervision of financial institutions;

(4) information which would disclose the financial condition of individuals who are customers of financial institutions; and

(5) trade secrets and commercial or financial information described in section 552(b)(4) of title 5, United States Code—

(A) obtained prior to the effective date of this Act by such Federal agency, if the agency had agreed to treat and has treated such information as privileged or confidential and states in writing to the Consumer Counsel that taking into account the nature of the assurances given, the character of the information requested, and the purpose, as stated by the Consumer Counsel, for which access is sought, to permit such access would constitute a breach of faith by the agency; or

(B) obtained subsequent to the effective date of this Act by the Federal agency, if the agency has agreed in writing as a condition of receipt to treat such information as privileged or confidential, on the basis of its reasonable determination set forth in writing that such information was not obtainable without such an agreement and that failure to obtain such information would seriously impair performance of the agency's function.

(b) Before granting a Consumer Counsel access to trade secrets and commercial or financial information described in section 552(b)(4) of title 5, United States Code, the agency shall notify the person who provided such information of its intention to do so and the reasons therefor, and shall, notwithstanding section 18(b) of this Act, afford him a reasonable opportunity, not to exceed 10 days, to comment or seek injunctive relief. Where access to information is denied to its Consumer Counsel by a Federal agency pursuant to this subsection, the head of the agency and the Consumer Counsel shall seek to find a means of providing the information in such other form, or under such conditions, as will meet the agency's objections.

SEC. 12. LIMITATIONS ON DISCLOSURE.

(a) Except as provided in this section, section 552 of title 5, United States Code, shall govern the release of information by a Consumer Counsel or any employee or agent of his Office.

(b) No officer or employee of an Office of Consumer Counsel shall disclose to the public any information which was received solely from its Federal agency when such agency has notified the Consumer Counsel that the information is within the exceptions stated in section 552(b) of title 5, United States Code, and the Federal agency has determined that the information should not be made available to the public; except that if such Federal agency has specified that such information may be disclosed in a particular form or manner, such information may be disclosed in such form or manner.

(c) The following additional provisions shall govern the release of information by a Consumer Counsel pursuant to any authority conferred by this Act, except information released through the presentation of evidence in a Federal agency or court proceeding pursuant to section 7 of this Act:

(1) A Consumer Counsel, in releasing information concerning consumer products and services, shall determine that (A) such information, so far as practicable, is accurate, and (B) no part of such information is prohibited from disclosure by law. A Consumer Counsel shall comply with any notice by his Federal agency pursuant to section 11(b) of this Act that such information should not be made available to the public or should be disclosed only in a particular form or manner.

(2) In the dissemination of any test results or other information which directly or indirectly disclose product names, it shall be made clear that (A) not all products of a competitive nature have been tested, if such is the case, and (B) there is no intent or purpose to rate products tested over those not tested or to imply that those tested are

superior, inferior, or preferable in quality over those not tested.

(3) Notice of all changes in, or any additional information which would affect the fairness of information previously disseminated to the public shall be promptly disseminated in a similar manner.

"(4) Where the release of information may cause substantial injury to the reputation or good will of a person, the Consumer Counsel shall notify such person of the information to be released and afford him a reasonable opportunity, not to exceed 10 days, to comment or seek injunctive relief, unless immediate release is necessary to protect the health or safety of the public. The district courts of the United States shall have jurisdiction over any action brought for injunctive relief under this subsection, or under section 11(a)(5) of this Act.

SEC. 13. NOTICE AND CONSTRUCTION.

(a) Each Federal agency considering any action which may substantially affect an interest of consumers shall, upon request by its Consumer Counsel, notify him of any proceeding or activity at such time as public notice is given.

(b) Nothing in this Act shall be construed to limit the right of any consumer or group or class of consumers to initiate, intervene in, or otherwise participate in any Federal agency or court proceeding or activity, nor to require any petition or notification to the appropriate Consumer Counsel as a condition precedent to the exercise of such right, nor to relieve any Federal agency or court of any obligation, or affect its discretion, to permit intervention or participation by a consumer or group or class of consumers in any proceeding or activity.

SEC. 14. CONSUMER PROTECTION DIVISION OF THE DEPARTMENT OF JUSTICE.

(a) Chapter 31 of title 28, United States Code, is amended by adding immediately after section 507 thereof the following new section 507a:

"§ 507a. Assistant Attorney General for Consumer Protection

The President shall appoint, by and with the advice and consent of the Senate, an Assistant Attorney General for Consumer Protection, who shall coordinate and assist the Offices of Consumer Counsel established pursuant to the Consumer Protection Act of 1976 and who shall perform such other duties as the Attorney General may prescribe.".

(b) The analysis of chapter 31 of title 28, United States Code, is amended by adding at the appropriate place the following new item:

"507a. Assistant Attorney General for Consumer Protection.

(a) Paragraph (19) of section 5315 of title 5, United States Code, is amended by striking out "(9)" and inserting in lieu thereof "(10)".

SEC. 15. EXEMPTIONS

(a) This Act shall not apply to the Central Intelligence Agency, the Federal Bureau of Investigation, or the National Security Agency, the national security or intelligence functions (including related procurement) of the Departments of State and Defense (including the Departments of the Army, Navy, and Air Force), the military weapons program of the Energy Research and Development Administration, and the broadcast license renewal proceedings of the Federal Communications Commission.

SEC. 16. AUTHORIZATION OF APPROPRIATIONS

For purposes of this Act, existing appropriated funds should be utilized to the greatest extent possible. However, there are authorized to be appropriated such sums as are necessary, not to exceed $500,000 for each Office of Consumer Counsel for the fiscal year ending June 30, 1976, $125,000 for the fiscal year transition period from July 1, 1976, through September 30, 1976, and $500,000 for the fiscal year ending September 30, 1977.

SEC. 17. EVALUATION BY THE COMPTROLLER GENERAL

(a) The Comptroller General of the United States shall audit, review, and evaluate the implementation of the provisions of this Act.

(b) Not less than 30 months nor more than 36 months after the effective date of this Act, the Comptroller General shall prepare and submit to the Congress a report on his study conducted pursuant to subsection (a) of this section, which shall contain, but not be limited to, the following:

(1) an evaluation of the effectiveness of consumer representation activities authorized by this Act;

(2) an evaluation of the effect of the activities of the Consumer Counsels on the efficiency, effectiveness, and procedural fairness of affected Federal agencies in carrying out their assigned functions and duties;

(3) recommendations concerning any legislation he deems necessary, and the reasons therefor, for improving the implementation of the objectives as set forth in section 2 of this Act.

(c) Restrictions and prohibitions under this Act applicable to the use or public dissemination of information by Consumer Counsels shall apply with equal force and effect to the General Accounting Office in carrying out its functions under this section.

SEC. 18. MISCELLANEOUS PROVISIONS.

(a) Nothing in this Act should be construed to limit the discretion of any Federal agency or court, within its authority, including a court's authority under rule 24 of the Federal Rules of Civil Procedure, to grant a Consumer Counsel additional participation in any proceeding or activity, to the extent that such additional participation may not be as of right, or to provide additional notice to the respective Consumer Counsel concerning any agency proceeding or activity.

(b)(1) No act or omission by any Consumer Counsel or any Federal agency relating to such Consumer Counsel's authority under sections 7 (a), (d), (f), (i), and (j), 8, 9, 12, and 13 of this Act shall affect the validity of an agency action or be subject to judicial review: *Provided*, That—

(A) a Consumer Counsel may obtain judicial review to enforce his authority under sections 7 (a), (d), (f), (i), and (j), 9, and 13 of this Act: *Provided, further*, That he may obtain judicial review of his Federal agency determination under section 7(f) of this Act only after final action by such agency and only to the extent that such determination affected the validity of such action;

(B) a party to any agency proceeding or a participant in any agency activity in which its Consumer Counsel intervened or participated may, where judicial review of the final agency action is otherwise accorded by law, obtain judicial review following such final agency action on the ground that the Consumer Counsel's intervention or participation resulted in prejudicial error to such party or participant based on the record viewed as a whole; and

(C) any person who is substantially and adversely affected by any action taken by a Consumer Counsel pursuant to section 7(f), 9(a), or 12 of this Act may obtain judicial review, unless the court determines that such judicial review would be detrimental to the interests of justice.

(2) For the purposes of this subsection, a determination by a Consumer Counsel that any proceeding or activity of the agency of which his Office is a part may substantially affect an interest of consumers or that his intervention in any proceeding is necessary to represent adequately an interest of consumers shall be deemed not to be a final agency action.

SEC. 19. PUBLIC PARTICIPATION.

(a) After reviewing its statutory authority and rules of procedure, relevant agency and judicial decisions, and other relevant provisions of law, each Federal agency shall issue appropriate interpretations, guidelines, standards, or criteria, and rules of procedure, to the extent that such rules are appropriate and are not already in effect, relating to the rights of individuals who may be affected by agency action to—

(1) petition the agency for action;

(2) receive notice of agency proceedings;

(3) file official complaints (if appropriate) with the agency;

(4) obtain information from the agency; and

(5) participate in agency proceedings for the purpose of representing their interests. Such interpretations, guidelines, standards, criteria, and rules of procedure shall be published in proposed and final form in the Federal Register.

(b) Each Federal agency shall take all reasonable measures to reduce or waive, where appropriate, procedural requirements for individuals for whom such requirements would be financially burdensome, or which would impede or prevent effective participation in agency proceedings.

(c) Any rules of procedure issued by any Federal agency pursuant to this section shall be published in a form and disseminated in a manner that is designed to inform, and that is able to be understood by, the general public.

SEC. 20. COST AND BENEFIT ASSESSMENT STATEMENTS.

(a) In furtherance of the purpose and policy of section 2(b)(3) of this Act, and except as otherwise provided in this Act, each Federal agency which is authorized to promulgate rules (as defined in section 554 (4) of title 5, United States Code) shall prepare a cost and benefit assessment statement with respect to any rules to which section 553(b) of title 5, United States Code, is applicable, and which are likely to have a substantial economic impact. Each such statement shall be short and concise, and, together with such supporting documentation as the agency in its discretion determines to be necessary or appropriate, shall consist of the following three elements:

(1) estimated costs, that are foreseeable as a result of the effective implementation of such rule;

(2) estimated benefits, that are foreseeable as a result of the effective implementation of such rule; and

(3) the apparent relationship, if any, between such costs and benefits.

To the extent deemed practicable by the agency responsible for its preparation, each cost and benefit assessment statement shall indicate in an appendix the assumptions, if any, which were made by it regarding the means, or alternative means, and attendant costs of compliance with the proposed rule, including any manufacturer's costs and consumer costs reflected in the price of any product affected by such rule.

(b) With respect to any proposed rule subject to the requirements of subsection (a), each Federal Register notice of proposed rulemaking shall request interested persons to submit to the applicable agency, in writing, comments, materials, data, information, and other presentations relevant to the preparation of the required cost and benefits assessment statement.

(c) Each agency shall, to the extent it deems necessary or appropriate, seek to obtain comments, materials, data, information, and presentations relevant to the costs and

benefits, if any, likely to ensue from effective implementation of any proposed rule, within the time prescribed for consideration of the proposed rule, from other Federal agencies and persons. No extensions of time for comment shall be granted solely for the purpose of receiving any such presentations with respect to such benefits.

(d) Each person who contends that effective implementation of a proposed rule will result in increased or decreased costs, may furnish to the applicable agency the information upon which he bases such assertion, and which is in his possession, is known to him, or is subject to his control. Such information shall be furnished to the agency in such form, manner, and detail as such agency in its discretion prescribes. Whenever any relevant information, which an applicable agency deems necessary or appropriate to the preparation of a cost and benefit assessment statement, is or may be in the possession or control of a person who may be directly affected by the proposed rule, such agency is authorized to request such relevant information as reasonably described by it, and such person shall furnish such revelant information promptly to such agency. Such request for information shall be enforceable by appropriate orders by any court of the United States. Such information as is furnished shall be considered a statement for purposes of section 1001 of title 18, United States Code.

(e) A cost and benefit assessment statement prepared pursuant to subsection (a) shall be first published at the end of the year in which it was prepared in the Federal Register in a report which shall contain all cost and benefit assessment statements applicable to rules promulgated during the preceding 12 months. All relevant information developed or received by the applicable agency in connection with the preparation of such statement shall be available to all interested persons, subject to the provisions of section 552 of title 5, United States Code.

(f) The President, or his designee, shall issue, pursuant to the provisions of this subsection, (1) regulations providing guidelines for Federal agencies as to the nature and content of any cost and benefit assessment statement required by subsection (a) of this section and (2) regulations which shall insure that any agency shall be able to obtain information deemed by it to be necessary or appropriate to the preparation of any such cost and benefit assessment statement. Such regulations shall be issued by the President upon the recommendation submitted to the President by the Director of the Office of Management and Budget and the Comptroller General of the United States. In issuing or modifying any regulations implementing this section, the President shall proceed in accordance with the procedures prescribed by subsections (b) and (c) of the new section inserted by section 202, Public Law 93-637 (88 Stat. 2193; 15 U.S.C. 57 (a), (b), (c)). The President shall provide public notice of proposed rulemaking to implement this subsection within sixty days of the effective date of this Act. After issuance of any regulations implementing this section, the President shall transmit them to the Congress, together with all recommendations submitted to the President pursuant to this subsection. Such regulations shall take effect 90 legislative days after such transmittal to the Congress by the President, unless either House of Congress by resolution of disapproval, pursuant to procedures established by chapter 35, title 44, United States Code, and by section 1017 of the Congressional Budget and Impoundment Control Act of 1974 (31 U.S.C. 1407), disapproves such regulations.

(g) No Federal officer or agency shall submit proposed legislation to the Congress which is likely, if enacted, to have a substantial economic impact, unless such legislation is accompanied by a cost and benefit assessment statement. The statement required by this subsection shall be prepared in accordance with the provisions of subsection (a) of this section. The requirements of this subsection may be postponed upon the request of a committee of Congress having jurisdiction over such legislative proposal, for a period not to exceed 30 days from the date of submission to the Congress of such legislation.

(h) In addition to the definitions in section 3 of this Act, the following definitions shall apply with respect to the provisions of this section:

(1) The term "benefit" includes any direct or indirect, tangible or intangible, gain or advantage which the agency, in its discretion, deems proximately related to the promulgation of a proposed regulation or the enactment of the proposed legislation. The term shall include such nonquantifiable benefits as the agency identifies and describes. Benefits may include the costs that would be likely to result from the agency's failure to act, but which are likely to be avoided by the agency's action.

(2) The term "cost" includes any direct or indirect expense, including competent costs of production and supply, and any loss, penalty, or disadvantage which the agency, in its discretion, deems proximately related to the promulgation of a proposed regulation, or the enactment of proposed legislation. The term shall include such nonquantifiable costs as the agency identifies and describes.

(3) The term "legislation" or "law" means a statute of the United States or any amendment thereto.

(4) The term "rule" has the meaning prescribed in section 441(4) of title 5, United States Code.

(i) The Comptroller General of the United States shall monitor and evaluate the implementation of this section. In addition to any other reports or studies made by the Comptroller General relating to this section, he shall, three years after the effective date of this section, conduct a comprehensive review of this section including an evaluation of the advantages and disadvantages of cost and benefit assessment statements and of the nature and extent of Federal agency compliance with this section. The Comptroller General shall prepare and submit to the Congress and to the Congressional Office of the Budget a report based on such study and review. Such report shall include, but need not be limited to, his recommendations as to the necessity or advisability of the provisions of this section, and of the need to amend subsection (k), or any other provision, of this section.

(j) No court shall have the jurisdiction to review, or enforce or shall review, or enforce and, except for the general review of the effectiveness of this section provided for in subsection (i), no officer or agency of the United States, other than the agency responsible for the preparation of a cost and benefit assessment statement and the duly authorized committees of the Congress, shall have the authority to review, or enforce or shall review, or enforce, in any way the compliance of any cost and benefit assessment statement with this section, or, except where the agency preparing such a statement seeks to enforce in court its request for information, the compliance, by such agency with any other requirement of this section, including the manner or process by which such statement is prepared: *Provided*, That a Federal court may, upon the request of any interested person, review and enforce compliance with the provisions of this subsection.

(k) The requirements of this section shall supersede the requirements of any existing executive order or law imposing any economic, cost-benefit, inflationary, or other similar impact assessment requirement. No requirement of this section shall alter or supersede any Federal agency statutory requirement, regulation, or lawful practice which such agency determines to be inconsistent with any of the requirements of this section. Further, no agency shall be required to prepare and issue a cost and benefit assessment statement required by this section, if information which would be contained in such statement is encompassed within another statement required by law to be prepared in connection with the promulgation of the applicable rule.

(l) The provisions of this section shall become effective upon the effective date of implementing regulations submitted by the President under subsection (g) of this section.

SEC. 21. EFFECTIVE DATE.

(a) This Act, other than section 20 of this Act, shall take effect 90 calendar days following the date on which this Act is enacted, or on such earlier date as the President shall prescribe and publish in the Federal Register.

"(b) Notwithstanding subsection (a) of this section, any of the officers provided for in this Act may be appointed in the manner provided for in this Act at any time after the date of the enactment of this Act.

SEC. 22. SEPARABILITY.

If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality and effectiveness of the remainder of this Act and the applicability thereof to any persons and circumstances shall not be affected thereby.

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

S. 3385. A bill to authorize construction of power generating facilities at the Libby Reregulating Dam, Kootenai River, Mont.; and

S. 3386. A bill to amend the River Basin Monetary Authorization and Miscellaneous Civil Works Amendment Act of 1970 with respect to the project for Libby Dam, Mont. Referred to the Committee on Public Works.

Mr. METCALF. Mr. President, I am today introducing for Senator MIKE MANSFIELD and me two bills which relate to completion of the Libby hydroelectric dam in northwestern Montana. One provides for authorization for the installation of generators in the downstream reregulating dam; the other increases the authorization for the accompanying fish hatchery to mitigate losses caused by impoundment of the Kootenai River.

I ask unanimous consent that they be printed at this point in the CONGRESSIONAL RECORD, along with the copy of a letter which I recently sent to Senator MIKE GRAVEL, whose Subcommittee on Water Resources of the Senate Public Works Committee will soon have hearings on this general subject matter.

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

S. 3385

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the installation of power generating facilities at the Libby Reregulating Dam, Kootenai River, Montana, authorized for phase I design memorandum stage of advance engineering and design by section 1(a) of the Water Resources Development Act of 1974 (88 Stat. 12), is hereby authorized to be carried out,

substantially in accordance with the recommendations of the Chief of Engineers, Department of the Army, in Senate Document Numbered 94- , at an estimated Federal cost of $62,000,000.

S. 3386

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7 of the River Basin Monetary Authorization and Miscellaneous Civil Works Amendment Act of 1970 (84 Stat. 310), as amended by section 48 of the Water Resources Development Act of 1974 (88 Stat. 12), is further amended to read as follows:

"SEC. 7. (a) The project for Libby Dam, Kootenai River, Montana, is hereby modified to provide that an amount estimated at $6,500,000 may be used for the construction, operation and maintenance of a 50,000 pound cutthroat trout hatchery at Murry Creek for mitigation of fish losses attributed to the Libby project, including the reregulating dam and any additional hydropower units that may be installed, and for the acquisition of necessary real estate, water rights and construction of access roads and utilities as deemed appropriate by the Secretary of the Army, acting through the Chief of Engineers.

"(b) The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to convey, without monetary consideration, to the Montana Fish and Game Commission all right, title and interest of the United States in the fish hatchery constructed under subsection (a) including associated lands, water rights and access roads along with a monetary amount equal to the capitalized hatchery operation and maintenance requirements estimated at $150,000 per annum for the life of the project. The interest rate used for capitalization will be the current rate applicable for plan formulation at the time of payment to the state. The deed of conveyance shall provide that all rights and interests conveyed, including the remaining portion of the capitalized operation and maintenance funds, shall revert to the United States in the event the hatchery production ceases to be used for stocking waters impacted by the Libby Project.".

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C., May 4, 1976.

Hon. MIKE GRAVEL,
Chairman, Subcommittee on Water Resources, Public Works Committee, Washington, D.C.

DEAR MR. CHAIRMAN: I am advised that your Subcommittee will consider an Omnibus Public Works Authorization bill in early May. I wish to have two matters included in your consideration.

The first regards authorization for the installation of power units in the Libby Reregulating Dam; the second concerns authorization for the construction of a fish hatchery near the Libby site for mitigation of fish losses resulting from the construction of the Libby project.

I have enclosed a copy of my testimony submitted to the Senate Appropriations Subcommittee on Public Works which explains the progress and problems confronting the Libby Project (Exhibit A). You will note that in my testimony, I have supported the President's budget request for $260,000 for advanced engineering and design for the installation of power units in the Reregulating Dam.

Now I request of your Subcommittee the authorization for installation of those power units. Three units would be installed in the Reregulating Dam which will produce a total of 76,400 kilowatts of power. The bill draft enclosed would create such authority (Exhibit B).

The cost of adding this power capacity to the Reregulating Dam, estimated at $62 million, includes $33 million specifically for the power units themselves and another $29 million for construction, concurrently with the dam itself, of minimum provisions for the installation of power facilities. These minimum provisions include power intake structure, skeleton bays for power generating units, forebay and tailrace channel excavation, and retaining wall to support a railroad embankment. These provisions would be transferred to the Libby Additional Units and Reregulating Dam Project since they would have to be accomplished as part of the project for the construction of the Reregulating Dam itself, even though these provisions are chargeable to the power installation in the Reregulating Dam.

Your attention is also directed to the attached draft bill (Exhibit C) in the form of an amendment to the authorization for the original dam project, i.e., Libby Dam–Lake Koocanusa, which would allow construction of the fish hatchery designed to mitigate the loss of fish habitat caused by the existing Libby Dam and the planned Reregulating Dam. The authorization for construction funds for the fish hatchery is now limited to $4 million which is not enough to construct a hatchery at Murry Creek of sufficient size to mitigate the impact of the Libby project. Also, the present language does not allow adjustment for inflation. The amendment would authorize the Secretary of the Army to transfer title of the hatchery to the State of Montana to be operated by the State Fish and Game Department.

Under my proposal, authorization for the hatchery would be raised to an estimate of $6.5 million which would include construction as well as operation and maintenance for the life of the project at an estimated annual cost of $150,000. The amendment also provides that the hatchery must be used by the State for mitigation of fish losses in the waters impacted by the Libby project or title to the hatchery would revert to the Federal government.

Senator Mansfield and I will be introducing the enclosed bills to accomplish the foregoing purposes. I hope your Subcommittee will keep these matters in mind while it considers an Omnibus Public Works Authorization Bill. I have sent a similar letter to Senator Randolph.

It is imperative that these matters be dealt with before year's end in order that badly needed power can be on line as soon as possible and there will be no further delay in construction of the already long overdue fish hatchery.

Very truly yours,

LEE METCALF.

ADDITIONAL COSPONSORS OF BILLS AND RESOLUTIONS

S. 2925

At the request of Mr. MUSKIE, the Senator from Connecticut (Mr. WEICKER), the Senator from Vermont (Mr. STAFFORD), the Senator from North Carolina (Mr. HELMS), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Indiana (Mr. BAYH) were added as cosponsors of S. 2925, a bill to provide for the elimination of inactive and overlapping Federal programs, to require authorizations of new budget authority for Government programs and activities at least every 4 years, to establish a procedure for zero-base review and evaluation of Government programs and activities every 4 years, and for other purposes.

S. 3036

At the request of Mr. STONE, the Senator from Hawaii (Mr. INOUYE), was added as a cosponsor of S. 3036, a bill to amend title XVIII of the Social Security Act to authorize payment under the medicare program for certain services performed by chiropractors.

S. 3275

At the request of Mr. TALMADGE, the Senator from Florida (Mr. CHILES) was added as a cosponsor of S. 3275, a bill to amend sections 358, 358a, 359, and 373 of the Agricultural Adjustment Act of 1938 and title I of the Agricultural Act of 1949 for the purposes of improving peanut programs.

SENATE RESOLUTION 439—SUBMISSION OF A RESOLUTION RELATING TO THE OVERSUPPLY OF WHEY

(Referred to the Committee on Agriculture and Forestry.)

Mr. HUDDLESTON submitted the following resolution:

S. RES. 439

Whereas whey is a natural by-product in the manufacture of cheese; and

Whereas in recent years cheese manufacturers have spent substantial sums of money on the construction of facilities to process whey in an attempt to conform to Environmental Protection Agency rulings; and

Whereas the economic value of whey has been substantially reduced due to an increase in the supply of such product; and

Whereas whey is a nutritious product containing valuable nutrients which can be used to fortify foods for human consumption and animal feeds; and

Whereas because of depressed market conditions processors are unwilling to convert either the raw or condensed product into powdered form which has resulted in the waste of a nutritious product and in higher cheese production costs and higher cheese prices; Now, therefore, be it

Resolved, That—

(1) it is the sense of the Senate that the Secretary of Agriculture should assess the whey supply situation and advise the Committee on Agriculture and Forestry of the Senate of his findings;

(2) the Department of Agriculture begin a research program to utilize whey more efficiently for the mutual benefit of both producers and consumers.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the Secretary of Agriculture.

Mr. HUDDLESTON. Mr. President, in recent years the cheese manufacturers of our Nation have been forced to spend millions of dollars to construct facilities to process liquid whey in an attempt to conform to Environmental Protection Agency rulings and rulings of State environmental agencies. As a result of these rulings the cheese manufacturing industry began drying and evaporating this natural byproduct of cheesemaking.

Whey has been found to contain valuable nutrients which can be used to fortify foods for human consumption. It also has a wide range of other usages. In the powdered form whey is a highly nutritious product that contains 13 percent protein and 70 percent lactose. Powdered whey is used in the production

of baked goods, beverages, canned goods, cheese products, confections, frozen foods, frozen desserts, and animal feeds.

But the market for dry whey has suffered numerous economic setbacks during the past year because of increased supplies. At present the cost of production of powdered whey far exceeds its market price.

Due to the fact that in recent months whey processors have found it difficult to move their product in commercial channels, cheese manufacturers are unable to find processors willing to convert either raw or condensed whey to the powdered form. This results in higher production costs for cheese and higher prices for consumers.

I rise today to introduce a resolution which requests the Secretary of Agriculture to assess the whey supply situation and advise the Senate Committee on Agriculture and Forestry of his findings. This resolution further calls upon the Department of Agriculture to begin a research effort directed at more fully utilizing liquid, condensed, and powdered whey.

SENATE CONCURRENT RESOLUTION 115—ORIGINAL CONCURRENT RESOLUTION REPORTED AUTHORIZING THE PRINTING OF BACKGROUND INFORMATION ON THE FOREIGN RELATIONS COMMITTEE

(Referred to the Committee on Rules and Administration.)

Mr. SPARKMAN, from the Committee on Foreign Relations, reported the following original concurrent resolution:

S. CON. RES. 115

Resolved by the Senate (the House of Representatives concurring), That there be printed with an illustration as a Senate Document background information relating to the history of the Senate Committee on Foreign Relations in connection with its 160th anniversary (1816–1976); and that there be printed for the use of that Committee seven thousand, five hundred additional copies of such document.

ANNOUNCEMENT OF HEARINGS

Mr. NELSON. Mr. President, I wish to announce that the Senate Labor and Public Welfare Subcommittee on Employment, Poverty, and Migratory Labor will be holding hearings on S. 50, the Full Employment and Balanced Growth Act of 1976, on May 14, 17, 18, and 19.

On each of these days, the subcommittee will begin at 9:30 a.m. On May 14 and 19, the hearings will be held in room 4232 Dirksen Senate Office Building. On May 17 and 18, the hearings will be held in room 1114, Dirksen Senate Office Building.

Witnesses for these hearings will be announced in the next few days. For further information about the hearings, contact Scott Ginsburg of the subcommittee staff at 224–3968.

ANNOUNCEMENT OF MARKUP BY GOVERNMENT OPERATIONS COMMITTEE

Mr. PERCY. Mr. President, I wish to announce that the Committee on Government Operations will hold a markup on Tuesday, May 11, 1976, at 10 a.m. in room 3302, Dirksen Senate Office Building, and will consider S. 2872, which would extend the life of the Federal Energy Administration until September 30, 1979; S. 1439, the Export Reorganization Act of 1975; S. 2166 and H.R. 1244, the Presidential Protection Assistance Act of 1975; S. 3281, the Federal Programs Information Act, and other business.

ADDITIONAL STATEMENTS

ACHIEVEMENT REDEFINED

Mr. HUMPHREY. Mr. President, I share with my colleagues a deeply moving and sensitive profile of achievement written by Miss Rebecca Hage of St. Cloud, Minn.

Rebecca won first place in the 1976 national "Ability Counts" writing contest and was honored for her efforts at the annual meeting of the President's Committee on Employment of the Handicapped. Her essay was about a teacher injured in an accident whose life today is an example of what can happen when handicapped people do not lower their sights because of their disabilities.

Rebecca is an 11th grade student of Technical High School in St. Cloud, Minn. She plays a flute in the concert band; is a staff member of "Techoes," the school yearbook; and a staff member of "Techniciana," a book containing a collection of students' poems, short stories and art.

Active also in the community, she is a candy striper at the St. Cloud Hospital where she has worked over 400 hours. For the past 3 years, she has been a volunteer for Stearns County Social Services where she is working at a home for profoundly retarded children under the direction of a physical therapist.

Rebecca is a member of the Sons of Norway youth group, the 4–H, and is a senior Girl Scout.

Mr. President, I ask unanimous consent that Rebecca's essay, "A Profile of Achievement: How a Handicapped Person Approaches Life," be printed in the RECORD.

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

A PROFILE OF ACHIEVEMENT: HOW A HANDICAPPED PERSON APPROACHES LIFE

October 16, 1972. John Wertz, an achiever. Husband; senior high social studies teacher; swimmer; avid sports enthusiast.

October 17, 1972. John Wertz: intensive care, University of Minnesota Hospital critical list; crushed chest cavity; excessive internal bleeding; multiple leg fractures; severed spinal column diagnosed paraplegic.

John Wertz was riding his motorcycle. He was full of life and energy and was tasting the freedom of speed and the satisfaction of physical exertion. Perhaps, he was thinking that sometimes it seemed that there was nothing he couldn't accomplish in life. Perhaps, he was thinking of his parents' silly warning, "to write a will." Maybe, that was when the drunken driver ran him off the road, and changed it all....

For John's wife Sharon, there was only one concern, "Would John live?" She held on to the belief that because John was crisis oriented, if he would live, everything would work out. The doctors informed John's family that he would never walk again. For them, it was a time of little hope.

Sharon remembers crying together with John. She remembers the sadness and the depression. She also remembers that, because of John, this dark time lasted only a few days.

Hope, and a time for a new beginning, came for John when he came to the conclusion, "I must continue to achieve. I will not lower my standards for what I expect of myself." For John, this was the first step in the process of learning what real achievement is.

Sharon said, "Adjusting after the accident was hard; but I was not living with a crippled man, I was living with John." For John, some of the most difficult things were learning that independence does not always mean being in complete control, and that freedom cannot always be defined in physical terms.

John was, and remains, the only paraplegic teacher in the Saint Cloud school district. For many of his colleagues, it was a new experience and was hard to accept. It's different when it's faculty in a wheelchair, rather than a student, and teaching from his chair forced John to face many new challenges. Again, this was the beginning of a process of redefinition. He was forced to redefine his vocational achievement. John concluded, "So much of it is my own attitude. If I assume it's going to be awkward, it is." John also realized that the school wouldn't go out and look for a handicapped teacher, and that if he lost his job it would be difficult to find another. Because of this, John believes that, "being in school, being handicapped, helps the students." One of his dreams for achievement was to serve as a special example.

One of his students, Barkley Carrier, said, "His handicap doesn't bother the students, and because of his unique personality, they're comfortable with him." Another student remarked, "Mr. Wertz was the first handicapped person I was exposed to. Until Mr. Wertz, I always thought of them as freaks. I wish all students could have the opportunity to relate to him." His presence is also a model for handicapped students. He helps them with their problems and they know that he is really committed to a fight for the rights of other handicapped people.

Margaret McCormick student-taught with him the first quarter after he returned from the accident. She couldn't imagine how it was going to work. However, "He set the tone and gave a base to react to. He was very open. The wheelchair didn't slow him down at all. I know he never wanted pity and he was always student oriented.. The students came first. He has continued many of his relationships with students after they graduate."

John's closest friends summarized their fears and pointed out some of the obstacles that they were afraid he couldn't face. They worried that he would lose his job, would give up all of his activities, wouldn't be able to support his family, and perhaps the biggest fear was that his accident had taken away his masculinity.

John has proven his friends' fears false. Mr. John Kjera remarked, "I could see that he has self supportive and that he had discovered his real inner resources. He is definitely more of a man because of it."

One friend summed it up, "After the accident he had more depth, and more substance as a person. He seemed to think more of other people and seemed to know his own needs more."

John said, "I don't usually compare myself before and after. I see myself as two different people, one died in 1972, one was born. They were two different lives, two different lifestyles. Looking back, I can see that I didn't lose anything that I really value. I value being able to communicate, and to form close personal relationships. I

value my hands as a tool, and I value my teaching."

Some of Sharon's thoughts about John's new life were, "Before the accident he was getting more withdrawn. Now he laughs and jokes more, and seems to really enjoy life."

John's original commitment that he could not lower his standards for achievement are echoed in his remarks that he doesn't see himself as having any greater handicap than anyone else, some peoples' are physical, some are emotional, and some are mental. John's achievements, even according to his own tough standards, are impressive. Some of his activities include membership in the Equity in Education Institute in Saint Cloud and the District 742 Affirmative Action Program. He is also a member of the Saint Cloud Tenants Association and an executive for the District Seventeen Democratic Party.

John Wertz is an example of "achievement redefined". As his friend, John Kjera, puts it, "being around John makes you realize, that a real handicapped person is someone who refuses to try, either physically or mentally."—John Wertz is not handicapped.

THE SOVIET MILITARY BUDGET VERSUS OURS

Mr. GOLDWATER. Mr. President, press releases, which have been offered on the subject of the Soviet military budget versus ours probably come in the hundreds, so I am not going to release anything to the press on this matter, but merely place it in the RECORD in the hope my colleagues will read it and give it the attention it deserves.

I refer to an article by the former Director of the Defense Intelligence Agency, Lt. Gen. Daniel O. Graham, U.S. Army, retired. The article mentions some Members' names and I hope they will not be offended, for at times they are not mentioned in the most complimentary terms, but I think this is something we all face in this business. Those of us who live the closest to this problem; namely, those members of the Committee on Armed Services and the Committee on Foreign Relations, I think have been for some time vitally concerned about the tremendous emphasis the Soviets have been placing on their military preparedness. But I must warn my colleagues that, in my opinion, they have been engaged in other activities which, if true, will require a drastic rethinking on our part in the whole field of strategic effort. I have asked the chairman of the Armed Services Committee (Mr. STENNIS) to hold hearings on this matter and I will direct a letter to the chairman of the Foreign Relations Committee making the same suggestion.

There is every reason to believe that the Soviets have been spending large sums of money putting all of their command posts underground, their communications systems likewise and protecting both of these from nuclear effect and at the same time, placing much of their industry in dispersed areas and a lot of it underground. What I am trying to say is that actions such as these, if true, could change the entire concept we have of our ability to destroy the Soviet war machine and its industrial might.

I ask my colleagues to imagine the position the United States would be placed in if our country was suddenly faced by a Soviet declaration that they, in effect, had no targets that could be touched or damaged by our nuclear might. I ask my colleagues to think carefully on the complete destruction of our dependency on deterrents and the impossible position we could be placed in if such facts as I am relating are true. I hope that responsible committees of the entire Congress will get into this matter without any further delay. Before closing, I ask unanimous consent that the article by General Graham, appearing in the Air Force magazine of May, be printed in the RECORD.

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

THE SOVIET MILITARY BUDGET CONTROVERSY

(By Lt. Gen. Daniel O. Graham, USA (Ret.))

In the fall of 1975, shortly before the abrupt dismissal of Dr. James Schlesinger as Secretary of Defense, I found myself embroiled in a sharp public debate over the size of the Soviet defense budget. The row was sparked by the Secretary's public statement that the Soviets were spending as much as fifty percent more on military forces than was the United States. Congressional budget-cutters and some elements of the press sharply criticized this estimate, accusing Dr. Schlesinger of distorting intelligence. Sen. William Proxmire maintained that both William Colby, then Director of the Central Intelligence Agency (CIA), and I, as Director of the Defense Intelligence Agency (DIA), supported his claim that the Secretary's figures were inflated. In fact, Dr. Schlesinger's figures came from Mr. Colby's CIA, and my view was that the Secretary, far from overstating the case, was *understating* it. In March 1976, after Mr. Colby's forced retirement, CIA published figures that again supported Dr. Schlesinger's warnings about the gross imbalance between Soviet and US military outlays. (*See also "New CIA Assessment of Soviet Military Expenditures," p. 42.—The Editors.*) The CIA analysis again in my view, is too conservative and tends to understate the actual Soviet defense burden.

WHEELS WITHIN WHEELS

Estimating Soviet military costs has been one of the toughest jobs for American intelligence analysts. This is an area in which the new information-gathering satellites don't help much. The military analysts in the Pentagon today can state with remarkable precision how many missiles, aircraft, ships, and divisions the Soviets have. Further, they can do a pretty good job of using such data to estimate how many Soviet soldiers and sailors it takes to man the USSR's military machine. But when it comes to estimating with reasonable confidence how much it all *costs*, analysts have been faced with a nearly impossible task.

The task would be a lot easier if the Soviets openly published their defense expenditure figures as the US does and if there were open debates in Moscow about the costs of various defense programs. Of course, this is not the case. If there are debates about military spending, they are among very few persons in Moscow, and they are held in utmost secrecy. The Soviets do publish the total state budget, but the figures for military expenditures are patently phony. For instance, Brezhnev recently announced the official military budget figures for 1976—17.4 billion rubles. At the Soviet official rate of exchange for foreign trade purposes—1.35 dollars to the ruble—this amounts to about $23.5 billion, a totally unbelievable figure.

Ostensibly, the 17.4 billion figure is a decrease of 200 million rubles from last year. All this means absolutely nothing except as an indicator of what figure best suits the needs of Kremlin propagandists. It must be high enough in comparison to previous figures to assure the faithful that the socialist guard will not be let down, low enough to allay any guns-vs.-butter worries in the general Soviet populace. The figure must also be both low enough and trending in the right direction to back up the Soviet peace offensive in Western minds. No reputable scholar of Soviet economics gives the slightest credence to these announced Soviet military expenditures. Moscow's official figures have remained at seventeen-point-something billion rubles for many years.

To make matters worse, we would still have serious intelligence problems even if the Soviets *did* release an accurate account of military expenditures. There are a number of large items that Western countries count as military expenditures, but the Soviets do not. For instance, retired pay for military people is carried in the budget of the Soviet Welfare Ministry. Much of the basic training of Soviet soldiers takes place in secondary and higher civilian schools. This is paid for by the Ministry of Education. Most of the costs of moving military units and materiel in the USSR are carried in the budget of the Ministry of Transportation. The wages of the hundreds of thousands of reservists periodically called to active-duty training are borne by the factories and farms where they work. Thus, even if the Soviets should release a frank presentation of the Ministry of Defense budget, it could not be taken as a fair presentation of Soviet military costs when compared with those of the United States or any other Western power.

Also, when it comes to comparisons, we would have the problem of Soviet budget figures expressed in rubles. And what is a ruble worth? Well, in the USSR it is worth whatever the Soviets say it is, because all prices are determined and manipulated by the Soviet government. Further, the Soviets don't set a given price for a particular item. There are different prices for the same items sold in different markets. For instance, a given type of Soviet-manufactured truck sold to a collective farm is priced at 40,000 rubles; sold to a state enterprise, it is priced at 10,000 rubles; sold outside the USSR, it costs only 4,000 rubes. We are not sure what the Soviet Army "pays" for this truck, but probably near the lower end of the price scale. This means that the other parts of the Soviet economy, say the collective farms, are actually paying a huge subsidy for military trucks, and it wouldn't show in a budget. Thus, even if the Soviets were not so secretive about their defense budgets, intelligence analysts would have a terrible time converting the figures to dollars to compare them to our defense budgets.

CIA'S MISLEADING METHODOLOGY

For many years, intelligence people, both at CIA and in the Pentagon, simply didn't try to estimate the Soviet military budget. It was not until the early '60s that CIA felt compelled to try to express the Soviet military budget in dollars. The pressure came from Mr. McNamara's "whiz kids." At that time, "systems analysis" and "cost-effectiveness studies" became the big game in Washington as far as military planning was concerned. The indispensable yardstick in such studies is the dollar. Nothing would do but to come up with dollar figures attached to Soviet military programs.

CIA, with its usual "can-do" attitude, responded to the pressure for dollar estimates of Soviet defense expenditures and gave it a try. The basic approach was to take a Soviet weapon system, *e.g.*, a missile, estimate what it would cost to build it in the US, estimate the relative efficiencies of the Soviet

and US industries involved to obtain a "ruble-dollar" ratio, and multiply the results by an estimated number of such missiles in the Soviet inventory. The room for error in the process so far was considerable. But that wasn't the end of the problem. It was also necessary to calculate the costs of the men to man the weapons, maintain the equipment, train the crews, build the launch pads, and so on. One can imagine the enormous complexity of such efforts covering thousands of weapon systems from aircraft carriers to pistols. Naturally, the process was computerized to a large extent.

Initially, most CIA analysts connected with this effort recognized some of the method's inherent drawbacks and inaccuracies. What was not recognized was that the results of the system consistently and seriously understated the total burden of military expenditures on the Soviet budget. This fact did not become apparent for several years after the method had begun to crank out estimates of the Soviet military budget in dollars and rubles. When the costing methodology came under attack, however, many of its adherents had forgotten their initial misgivings. It became a matter of institutional and professional pride to defend the cost estimates. Figures originally suspect had become sacred cows.

The first challenge to the costing method came in 1970 from the Defense Intelligence Agency. That agency has the responsibility for projecting ten years into the future the numbers and types of Soviet weapons and units. Since such projections are bound to be imprecise, DIA always gives a range of possibilities for each weapon system projected. There is a low figure, a high figure, and one between the two representing a best guess. The high figure usually represents what would happen if the Soviets made very strong efforts to acquire quantity and quality in a particular type of weaponry. We are always worried that someone might try to add up all the high figures for the various types of weapons and units, that is, all the worst cases, and exaggerate the threat. Therefore, all such projections have for many years carried the warning to users that the high side figures should not be added together because their totality would "place an intolerable strain on the Soviet economy."

In fact, Soviet efforts resulting in all the high side estimates coming true would dislocate their economy, but not according to our costing methodology. When that methodology was applied to all the high figures, it produced a strange result. Not only did it appear that the Soviets could go all out on all types of military capabilities, but they could do so at an ever-decreasing percentage of Gross National Product! From that time forward, DIA never used the results of the CIA costing methodology in its publications.

Shortly thereafter, the validity of the costing methodology came under fire again. This time the analysis was a National Intelligence Estimate, a paper that has to be agreed to by all intelligence agencies—CIA, DIA, the State Department, and others. During the process the same case was made against the method, but from a historical rather than a futuristic point of view. CIA provided cost figures covering the Soviet military budgets for the time frame 1960–71. These figures indicated a very modest two or three percent annual increase in the Soviet budget, which to DIA estimators was incredibly low. During that time frame the Soviets had deployed 1,500 or more ICBM launchers; built more than fifty missile-launching nuclear submarines; deployed most of 700 medium and intermediate-range missile launchers, some 7,000 surface-to-air missile launchers, and a large theater force opposite China; created twenty new divisions; and introduced on a broad scale five or six new fighter aircraft. And that is only a partial list. This simply could not have been done at the low costs indicated by the methodology.

The most dubious figures were those ascribed to Soviet strategic attack forces. In 1960, the Soviet strategic offensive force consisted of four intercontinental ballistic missile launchers, no missile subs, 200 heavy bombers, and 200 or so medium-range ballistic missiles. By 1971, the Soviets had overmatched the US in ICBMs, had nearly matched us in missile subs, deployed more than 700 medium and intermediate-range missiles, and still had the 200 heavy bombers. Further, they were undertaking a massive construction program to accommodate the four new ICBM systems under test. We were to believe that costs for strategic forces in 1971 were only one-third of one percent higher than in 1960! From that point on, DIA would never agree to the inclusion of such cost figures in National Estimates even though CIA continued to produce these figures on a regular basis.

MAKING MOSCOW'S CASE

As Deputy Director for Estimates at DIA during this period, I became chief antagonist of the low cost estimates. I became even more determined to correct this anomaly in intelligence when I found that these underestimates were being used by the whole world. The US was publishing an annual unclassified report on worldwide arms spending as a service to the UN. The Sovet and Warsaw Pact figures in that document were simply the totals derived from the CIA direct costing methodology, cleaned up a bit to protect intelligence sources and methods. As a result, the report, which found its way into the reference files of most universities and research institutes around the globe, stated that NATO outspent the Warsaw Pact on arms by about $30 billion a year! The Soviets must have been enormously pleased to see the US making Moscow's case for them.

Although my DIA estimators and I were the first to balk at the Soviet budget figures, I would not like to leave the impression that the controversy was a purely Pentagon vs. CIA issue. There were analysts in DIA who supported the figures, and analysts at CIA who shared my doubts. A doubter from the outside was Joe Alsop, the well-known columnist, whose pungent criticisms of low intelligence estimates of the Soviet military budget sparked half-joking barbs directed at me by my CIA colleagues. Alsop seemed to use a number of my arguments in his columns, and there was a strong suspicion that I was leaking them to him. I wasn't, but I must confess to enjoying his efforts.

This controversy boiled and bubbled along for about three years. CIA continued to publish the results of the suspect methodology; indeed, they had no other choice because there was a constant demand for such figures. There was no other official source for them. And we continued to get into controversies over dollar costs of Soviet and even Chinese efforts. During the debate over continuing aid to South Vietnam, we were asked by Congress to estimate the dollar cost of Communist aid to North Vietnam. The minute we were asked, I knew we were in for another round of outraged expressions from some congressmen based on the proposition that the U.S. had put more dollars into South Vietnam than the Soviets and Chinese had put into North Vietnam. Later, we had the same problem with regard to North and South Korea. It seemed impossible to avoid providing these rather useless dollar figures, and all the warnings of intelligence people about our lack of respect for the figures could not prevent them from becoming the centerpiece of arguments over policy.

Both DIA and CIA, meanwhile, were trying to find alternate ways of assessing the defense expenditures of the USSR. Experts on Soviet economics from academia and the "think-tank" world were assembled on the subject. Only one of them, however, had a strikingly different approach. That was a Mr. William T. Lee, a persistent, extremely objective analyst who had been previously employed at CIA. [Mr. Lee is the author of the article "Military Economics in the USSR," which appeared in the March "Soviet Aerospace Almanac" issue of AIR FORCE Magazine.]

Mr. Lee's approach was essentially this: In order for the Soviets to manage their economy, they must publish real budget figures; otherwise, they would confuse their own bureaucrats and managers. Therefore, the *real* defense expenditures are somewhere in the overall budget figures. The trick then was to find those sums that could not be accounted for in *non-defense* outlays. The residual then would probably represent the hidden defense expenditures. This all made some sense, but unfortunately for Bill Lee, his method indicated that the results from the old direct costing method were not just a *little* too low, they were *100 percent too low*. His results showed an expenditure of some sixty billion rubles a year vs. about thirty billion estimated by CIA. Neither CIA nor DIA analysts could swallow that big an admission of error. Thus, Bill Lee's results were rejected with much criticism of his analytical approach. But Lee was eventually to have the last laugh. His method may or may not have serious flaws, but his results were far closer to the truth than those of his critics.

SENATOR PROXMIRE'S PERNICIOUS PLOY

The whole matter of Soviet defense spending come to a head again in the spring of 1975. As is the case with most intelligence controversies, this one was solved by the acquisition of good evidence. By April 1975, evidence from a variety of sources combined to provide solid proof that we had indeed been underestimating the Soviet budget by *at least* 100 percent. In terms of percentage of GNP, the new evidence showed that our old estimates of six to eight percent were wrong. At a minimum, the Soviets are spending fifteen percent of their GNP on the military. In my view, the actual figure is probably closer to twenty percent, because the fifteen percent figure still excludes pensions, much training, and transportation costs, which remain hidden in the budgets of various nonmilitary ministries of the USSR.

This new information came to light right in the middle of the first big US defense budget fight with the new post-Watergate Congress, one that promised to be the most hostile to the military establishment in many years. Evidence of the substantially larger Soviet defense expenditures, particularly compared to those of the US, could conceivably be used to persuade the Congress to increase, or at least maintain, the existing level of defense spending. If one chooses to believe the conventional wisdom around Washington, one would expect military intelligence to have immediately used this bombshell to help fend off broadax cuts in the Defense budget. This was not the case. With the agreement of Dr. Schlesinger, Mr. Colby, the CIA Director, and I, now Director of DIA, elected not to release the new evidence pending a thorough redo of cost estimates. We judged that its use at this time in the congressional arena would evoke a furious attack on the validity of the evidence and endanger the sources of the information.

We were able to continue this policy until July, when Senator Proxmire requested Mr. Colby and me to testify on the Soviet budget. We did so, and we both mentioned the new evidence and informed the Senator that our estimates of the Soviet budget were going

to rise sharply. Senator Proxmire asked that we be as liberal as possible in declassification of the testimony for publication. We were, and the declassified testimony was ready for publication within a few days. It seemed strange to me that the testimony remained unpublished and unreleased for three months. I cannot escape the suspicion that had Mr. Colby and I testified that the Soviet military budget was *lower* than we had previously held, that testimony would have been released with alacrity.

Senator Proxmire finally released the testimony in October 1975, in a press conference following Secretary of Defense Schlesinger's public statement that the Soviets were outspending us on military matters. To my astonishment—and, I am sure, to Mr. Colby's—Proxmire's press conference managed to convey the impression to newsmen that both of us would quarrel with Dr. Schlesinger on the ground that he was overstating the case. The facts were that Dr. Schlesinger was using Mr. Colby's estimates of dollar costs of Soviet military expenditure, and my only quarrel would have been that, the revisions notwithstanding, the dollar estimates still tended to *understate* Soviet expenditures. Upon rereading my testimony to Senator Proxmire, I find it inconceivable that he would come up with the opposite impression.

MANPOWER COST: AN ANOMALY

In the controversy over Soviet military spending, the military pay factor is consistently cited by those who believe the *dollar* figures too high. The rank and file of the Soviet Army are draftees and are paid very little in rubles. If their wages are translated directly into dollars, the Soviets obviously get them very cheaply when compared to US soldiers. The dollar figures provided by the CIA for the Soviet military budget, however, represent an effort to state what their forces would cost if they had to be purchased in dollars. Thus, those estimates charge the Soviets US wages for their military men.

On the face of it, this would appear to *inflate* the estimates of Soviet military expenditure. In reality, it does not. The dollar estimates are made for the purpose of comparing Soviet military costs to those of the US. The ruble prices and wages of the USSR, which are easily manipulated by the Kremlin, simply don't count in such an equation. The *actual* cost to the general economy of the USSR of putting a man in uniform is greater than it is in the United States. The Soviet economy is manpower intensive. Not only is everyone employed, the economy is short of manpower. In agriculture the shortage is so acute that the Army is called out at harvest time to assist. In the US one can reasonably deduct from the wages paid servicemen the costs that would be incurred by the country if a million or so able-bodied men were *not* in uniform and were added to the ranks of the unemployed. The problem of explaining these matters to congressmen, newsmen, and others is one of the reasons I have been a severe critic of dollar comparisons of US and Soviet military budgets.

The uproar over the size of the Soviet military budget will wax and wane, but is sure to crop up frequently during the presidential campaign. As a participant in the internal intelligence debates over the issue for the past five years, I am convinced that Dr. Schlesinger did not overstate the case when he said that the Soviets may be outspending us on military matters by fifty percent in dollar terms. I am also convinced by good evidence that the Soviets are expending in rubles about twenty percent of their Gross National Product on the military. The Soviet GNP is around $750–$900 billion. Twenty percent of that gives a rough estimate of $150 to $180 billion in defense expenditures, which, in my view, is a much more accurate figure than any derived by the discredited method that has produced the erroneous figures provided by intelligence in the past.

The figure $180 billion in Soviet military spending is and should be a shockingly high one to US citizens. It would not shock the dissident Soviet academician Andre Sakharov, recent Nobel Prize winner. In fact, he would consider the estimate of twenty percent of GNP to be an understatement. In 1972, he was quoted as having calculated the burden of Soviet military expenditures at *forty percent* of GNP. This figure was roundly pooh-poohed by US intelligence experts at the time. I agree with the experts that the forty percent figure is too high, and it remains unclear as to whether Sakharov was talking about GNP or budget percentages. But I would point out to those experts that they would have roundly pooh-poohed a figure as high as fifteen percent of GNP one year ago.

STRATEGIC IMPLICATIONS

In December 1975, the Soviet government announced the civilian economic output for the year had been drastically short of expectations, particularly in agriculture. Further, Moscow announced that 1976 was going to be another bad year. Of course, part of the reason for this remarkably poor performance was bad weather, which reduced harvests, as well as the chronic bungling of an overcentralized economic system. But to these factors must be added the impact of enormous military outlays over the past several years. It is not just weather that caused a ten percent drop in agricultural output; it was also a lack of good farm machinery. Soviet military hardware is produced in the same factories with farm machinery. In a Soviet plant that turns out both tractors for farms and tanks for the military, high tank production lowers tractor production. In a plant producing both war gases and insecticides, the more gas manufactured, the less insecticide. And so it goes. Heavy military expenditures are putting a severe strain on other sectors of the Soviet economy, and the Soviet leaders seem determined to endure that strain rather than check the growth of military power. They would rather expend their limited hard currency to buy grain from America than alter military priorities.

The huge Soviet military expenditures alone do not lead to the conclusion that the US is today in a militarily inferior position. They do, however, demonstrate Moscow's resolve to extend Soviet military advantages where they exist, cancel out the few remaining US advantages where they exist, and achieve recognition as the prime military power in the world. If this happens, US intelligence officers can throw away that comforting lexicon of words used in past intelligence appraisals to describe Soviet behavior in the world—"pragmatic," "cautious," "nonadventurous," "defensive," and so on. Already such adjectives fit poorly current Soviet behavior, *e.g.*, the thrust into southern Africa.

I hope that the internal intelligence struggles with the problems of estimating the Soviet military budget are behind us. My only worry is that it is very hard for some analysts to accept a 100 percent error in their long-held views, and there is bound to be a tendency to try to obscure that magnitude. But solution of an intelligence anomaly is not nearly as important as the strategic implications of very high Soviet expenditures on military matters. The Soviets are spending twenty percent of their GNP on their armed forces and civil defense; Adolf Hitler's Germany was spending somewhat less—fifteen percent of GNP—for armaments in 1938 just prior to the outbreak of World War II. Can the United States continue to deter the growing Soviet military threat with a grudging 5.4 percent outlay on defense?

NATIONAL HEALTH INSURANCE: ANATOMY OF A POLITICAL ISSUE

Mr. TALMADGE. Mr. President, I ask unanimous consent that an article entitled "National Health Insurance: Anatomy of a Political Issue" which was written by Mr. Jeffrey Prussin and which appeared in the March/April issue of Medical Group Management be printed in the RECORD.

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

NATIONAL HEALTH INSURANCE: ANATOMY OF A POLITICAL ISSUE

(By Jeffrey A. Prussin)

Another year has come and gone and no real progress has been made in the enactment of a National Health Insurance plan. Can we look to a more productive year ahead? No, says the author, in this cogent discussion of a political issue with implication for all clinic managers.

Enthusiasm for enactment of a National Health Insurance (NHI) plan was at a high level when the First Session of the 94th Congress convened early in 1975. The Nixon and Ford administrations had both made NHI a top domestic priority in 1974, and the House Ways and Means Committee, under the chairmanship of Representative Wilbur D. Mills (D-Ark.), had completed marathon hearings.

When the new Congress convened in 1975, key Congressional leaders, including Senate Majority Leader Mike Mansfield (D-Mont.), Speaker of the House Carl Albert (D-Okla.), and new House Ways and Means Committee Chairman Al Ullman (D-Ore.), labelled NHI a top Congressional priority and vowed quick action. In addition, the large group of freshmen Democrats in the 94th Congress that was swept into office in the wake of Watergate was generally liberal and favored NHI action. Furthermore, unlike most freshmen Congressmen in previous years who served a traditional apprenticeship period during which they were seen but not heard, the Class of '75 formed a relatively cohesive group which did not sit idly by and accept the conservatism of some of their seniors. Finally, under a House reorganization plan implemented in 1975, the House Ways and Means Committee was required to form subcommittees, one of which was a Health Subcommittee chaired by Representative Dan Rostenkowski (D-Ill.). Previously, the Ways and Means Committee had no subcommittees, which meant that the committee's ability to simultaneously consider numerous pieces of complex legislation, including tax reforms and NHI, was severely limited.

Nonetheless, the hopes that were held for NHI action at the beginning of the First Session of the 94th Congress quickly paled, and it became evident that no NHI plan would be forthcoming in 1975. Furthermore, because of the magnitude and pervasiveness of the problems encountered *vis-a-vis* NHI in 1975, it may be projected with a fair degree of certainty that NHI will not be enacted in 1976—even though political prognostication is at best perilous, especially in a presidential election year.

One of the prime factors serving to preclude enactment of an NHI plan has been the state of the economy, and there is virtually no hope for quick improvement in this area. As a result of the economic situation, President Ford called for a moratorium on new spending programs, including NHI, in 1975, thus reversing his 1974 support for immediate enactment of a comprehensive NHI plan based on a public/private partnership concept. The President did call for enactment of a catastrophic health insurance plan for Medicare recipients—the costs of

which would be at least partially offset by increases in patient cost-sharing on smaller bills unded Medicare—in his January 19, 1976 State of the Union address. However, the proposal does not even begin to approximate a comprehensive NHI plan such as the Comprehensive Health Insurance Plan (CHIP) which Ford strongly supported in 1974.

The nation's economic problems have also placed Congressional liberals who favor publicly financed NHI plans squarely on the horns of a dilemma.

On the one hand, they are seriously questioning the advisability of imposing additional taxes to finance NHI—particularly in an election year. Payroll tax financing is regressive, and many observers believe that Social Security taxes will have to be increased, even without the addition of new programs and/or benefits, in order to cover projected deficits in the trust funds. Therefore, advocates of publicly financed NHI plans must consider the use of general revenues for NHI financing. But given the severe budgetary problems of government at all levels, the initiation of a major new spending program, such as NHI, would probably mean that current programs would have to be cut. Even more important, however, is the recent experience with the Medicaid program on the state level. In response to fiscal problems, approximately half of the States have instituted, and/or are instituting, reductions in the benefits and/or payments to providers under their Medicaid programs. This situation serves as a warning that health delivery programs might not fare too well if they are forced to compete with other priorities in the budgetary process, especially during hard economic times. Therefore, advocates of publicly financed NHI plans are left with the alternatives of using payroll tax financing, which is regressive, and/or financing NHI through general revenues, which means that NHI will have to compete with other priorities in the budgetary process and may therefore suffer reductions in the benefits and/or quality of care rendered under the program.

On the other hand, however, most advocates of publicly financed NHI plans would prefer to wait for enactment of NHI until such a plan becomes feasible rather than compromise on an NHI plan which is privately financed through employer and/or employee contributions to qualified or certified private health insurance plans. Indeed, organized labor, which strongly supports the Health Security Act (S. 3/H.R. 21), a comprehensive NHI plan that would be financed by both payroll taxes and general revenues, has worked to block NHI action whenever it appears that a plan relying on the private, rather than the public, sector for financing and administration will be enacted. The main concern is the probability that enactment of a compromise NHI plan that relies on private financing and administration will preclude enactment of a publicly financed and administered NHI plan when the economy improves.

Another major set of factors serving to forestall NHI action centers on the problems being encountered under current health delivery programs, including Medicare and Medicaid. The cost overruns of both programs have been monumental in comparison with original cost estimates, and this fact has generated more than a moderate degree of concern *vis-a-vis* NHI in Congress—even among liberals. In addition, many experts are projecting substantial deficits in the Social Security trust funds, and President Ford has proposed a 0.3 percent increase in Social Security taxes to cover the projected deficits, a situation which at least creates doubts concerning the imposition of additional payroll taxes to finance NHI. Furthermore, attempts to impose cost and quality controls under the Medicare and Medicaid programs have met with little success, which has created skepticism concerning the possibility of implementing such controls under an NHI plan. Finally, many of the program abuses experienced under the Medicare and Medicaid programs have received widespread publicity, which has served to make many Congressional liberals, including those who endorse publicly financed and administered NHI plans, hesitant to place administration of such a plan under the jurisdiction of a bureaucracy that is already racked with problems.

The fact that there is much less agreement on the NHI issue than many health policy analysts indicate is another basic obstacle in the path of NHI enactment. While there is general agreement on the desirability of an NHI plan, as is evidenced by the fact that only two of the announced 1976 Presidential candidates—former California Governor Ronald Reagan and Senator Frank Church (D-Ida.) oppose enactment of an NHI plan, there is no consensus concerning the fundamental principles that should be embodied under an NHI plan. For example, there is no agreement on basic NHI issues, such as sources of financing, administration, scope of benefits, and so forth, which must be addressed and resolved if an NHI plan is to be enacted.

Most analysts felt that the spirits of compromise and consensus reigned over the NHI issue when Senator Edward M. Kennedy (D-Mass.), who is Chairman of the Health Subcommittee of the Senate Labor and Public Welfare Committee and prime Senate sponsor of the Health Security Act, and Representative Wilbur D. Mills (D-Ark.), who was Chairman of the House Ways and Means Committee, introduced a compromise NHI plan, the Comprehensive National Health Insurance Act (S. 3286/H.R. 13870), early in the Second Session of the 93rd Congress (1974). Almost immediately after the compromise measure was introduced, Mills held extensive NHI hearings and shortly thereafter began NHI mark-up sessions. However, any hopes that were held for quick NHI action were doused when Mills suddenly cancelled his NHI mark-up sessions because absolutely no agreement could be reached among the members of his committee on such basic issues as NHI financing and administration. Indeed, even if the 25 Ways and Means Committee members (in 1974) could have agreed on an NHI bill, there were no assurances that such a proposal would have been accepted by the full House or by the Senate. In any event, Congress appears to be no closer to agreement on basic NHI issues today than it was when Mills was forced to abandon his NHI mark-up sessions for lack of consensus.

Another major problem facing NHI architects is the sparsity of hard data on NHI issues. Indeed, the paucity of data has probably contributed to the lack of consensus on NHI. Since the proponents of the various positions generally lack the data necessary to support their positions, they are forced to argue primarily on the basis of personal opinion. For example, there is a great inadeqacy of data on the costs of providing specific services under NHI; the potential impacts of providing some services, such as home health services, on the costs and utilization of other services, such as inpatient hospital and extended care services; and the impacts of increased or decreased utilization of a specific service on the per-unit costs of the particular service. Furthermore, there is virtually no data currently available on the potential impacts of imposing various forms of cost-sharing, such as deductibles, coinsurance and copayments, on the utilization and costs of specific services.

In addition, much of the data which are currently available, such as that on the administrative costs incurred by various types of payers in claims processing, are contradictory. For example, while a recent General Accounting Office (GAO) study indicated that the Social Security Administration's (SSA) claims processing costs under the Medicare program were higher than those incurred by commercial insurance companies and Blue Cross and Blue Shield, other recent studies have revealed higher administrative costs for commercial insurance companies and Blue Cross and Blue Shield than for the SSA.

More important, however, is the fact that there are virtually no studies extant on the potential impacts of proposed NHI programs on the "health status" of the individuals who would be covered by the particular plan, the availability and/or accessibility of health care services, the "health status" of the general population, the costs and quality of health care services, and so forth.

Indeed, the illusory issue of quality is bound to create a great deal of frustration among legislators and administrators in the development and implementation of an NHI plan. Definitions of "quality" care, as well as measures thereof, that are acceptable to the health community have not been developed. Therefore, it will be extremely difficult, if not impossible, for Congress and the Administration to regulate the quality of the services that may be purchased under NHI.

A final roadblock in the path of NHI enactment, which could preclude NHI action even if other obstacles are overcome, concerns the jurisdictional disputes which involve the Health Subcommittees of the Ways and Means and Interstate and Foreign Commerce Committees in the House, which are chaired by Representatives Dan Rostenkowski (D-Ill.) and Paul Rogers (D-Fla.), respectively, and the Finance Committee and the Health Subcommittee of the Labor and Public Welfare Committee in the Senate, which are chaired by Senators Russell B. Long (D-La.) and Edward M. Kennedy (D-Mass.), respectively.

It is perhaps ironic that the same House reorganization under which the Health Subcommittee of the Ways and Means Committee was established served to accentuate the jurisdictional disputes between the two House Health Subcommittees; and since NHI is such a visible political issue, and therefore desirable from a political standpoint, Rostenkowski and Rogers have refused to abandon their jurisdictional claims on the issue. Therefore, both subcommittees have proceeded independently on the NHI issue with duplicative hearings.

The potential impact of the jurisdictional disputes on NHI was illustrated early in 1975 by the issue of health insurance for the unemployed. Basically, the Ways and Means Committee approved a bill which was killed by the Interstate and Foreign Commerce Committee. The bill never reached the floor of the House for a vote.

Attempts to resolve the disputes by the health task force of the Democratic study group, which is chaired by Representative Bob Eckhardt (D-Tex.), and Speaker of the House Carl Albert (D-Okla.), have failed, as have direct attempts by Rogers and Rostenkowski. Indeed, Albert told a recent meeting of freshmen House Democrats that he is "washing my hands" of the NHI jurisdictional disputes and leaving them to Rogers and Rostenkowski for settlement.

The only glimmer of hope for resolution of the conflicts in the House is the fact that Rogers and Rostenkowski are cosponsoring an April 1976 conference on development of a national health policy which was initiated by James Hastings (R-N.Y.), a former member of Rogers' Subcommittee, who retired from Congress at the end of 1975.

On the Senate side, both committees claiming NHI jurisdiction had held NHI hearings prior to the 94th Congress. However, the jurisdictional disputes in the Senate have not yet reached the same magnitude as in the House because the Senate has been waiting for the House to act on NHI and has therefore remained relatively dormant on the NHI issue. However, when and if it becomes apparent that the House will send an NHI bill to the Senate—which is an unlikely occurrence in the immediate future—or when Senate NHI activity increases, the jurisdictional disputes in the Senate are likely to equal or exceed the proportions that the conflict has reached in the House.

In sum, NHI action in 1976 is highly unlikely. Rather, Congress and the Administration will probably view Medicare and Medicaid as NHI laboratories and focus on major reforms thereof. For example, there will probably be considerable experimentation with various benefits, cost-sharing provisions, payment and administrative mechanisms, and so forth, under Medicare and Medicaid in order to generate a data base for use in development of an NHI plan. Furthermore, Congress and the Administration will certainly make a concerted effort to reduce program abuses under Medicare and Medicaid which, in turn, may make Congressional liberals, many of whom are becoming skeptical, more sanguine concerning the government's ability to administer the NHI plan. Finally, Congress and the Administration will continue to work on the development of programs, such as professional standards review organizations, health planning, health manpower, health maintenance organizations, and so forth, which are viewed by many health analysts as necessary components of an NHI plan if the costs and quality of care are to be controlled and availability and accessibility are to be guaranteed.

PRESIDENT ASSAD OF SYRIA

Mr. PERCY. Mr. President, at a time when the Middle East is once again beset with crisis, it is gratifying to note that some of the leaders of the Middle East are encouraging restraint and reconciliation.

The current focus of danger in the Middle East is Lebanon, rent with division between left and right and between Moslems and Christians. The Government of Israel has thus far shown commendable restraint by refraining from intervention in the Lebanese civil war.

A major influence for a reasonable compromise in Lebanon has been brought to bear by President Assad of Syria. In past years we have, of course, had important differences with Syria. We deeply regret, for example, Syria's reluctance to support Egypt in the recent Sinai agreement and to proceed herself with additional steps toward agreement with Israel.

All of these issues notwithstanding, in fairness I commend President Assad for his sustained efforts to bring about a compromise settlement of the Lebanese civil war.

In view of the significant role of the President of Syria, I believe that the Senate will be interested in two articles, the first in the Washington Post of April 4, 1976, entitled, "Syria's Assad: Wily Player in Middle East's Game of Nations"; the second in the International Herald Tribune of April 19, 1976, entitled "Cautious Intervention: Syrians Stake Out a Role in Lebanon." I ask unanimous consent that the two articles be printed in the RECORD.

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

[From the Washington Post, Apr. 4, 1976]

SYRIA'S ASSAD: WILY PLAYER IN MIDDLE EAST'S GAME OF NATIONS

(By Jonathan C. Randal)

DAMASCUS.—With the deliberation characteristic of a man who has established a political longevity record in his own notoriously unstable country, President Hafez Assad seems to be on his way, despite occasional setbacks, to extending his political influence throughout most of the Arab East.

Until recently, Assad's proconsul was calling the shots in neighboring Lebanon in what older Arabs would have considered the fulfillment of a long-harbored dream in Damascus of heading a Greater Syria encircling its one-time Lebanese possession.

Assad is on the best of terms with Jordan's King Hussein, a monarch who * * * former and more verbally radical Syrian regimes equated with treason and reaction for a quarter of a century.

Assad has neatly balanced a still-vague joint command with Jordan with another similarly hazy joint-command relationship with the Jordanian king's arch enemy—Yasser Arafat's Palestine Liberation Organization.

Such is the shifting nature of Middle East politics that Arab observers have yet to decide whether Assad's potential power to control the PLO represents a victory for Assad alone or a shared triumph with U.S. Secretary of State Henry A. Kissinger.

Kissinger and his step-by-step diplomacy revealed Assad to the world not as just another narrow visioned, authoritarian military dictator, but as a leader capable of playing the Game of Nations Middle East-style.

Kissinger, whose grandiose schemes have often been upset by Assad's decisions, has described Assad as "the most interesting man in the Middle East. In negotiations he seems to waffle and waver. But he has an exquisite sense of timing and is decisive in the crunch."

If Assad does indeed bring even a semblance of order to the chaos in Palestinian and Lebanese ranks, kept divided by the bankrolling of rival Arab regimes, that could well be the long-missing link allowing an overall regional settlement to be seriously contemplated.

Yet, Assad's emergence has been at the expense of Kissinger's once-high hopes of parlaying his piecemeal diplomacy into a neat and quick overall Middle East solution.

In late 1974, according to some observers, Assad realized that any Kissingerian step for Syria would be too miniscule to be accepted by the Syrian public. So, even before he condemned the Egyptian-Israeli Sinai disengagement deal of last September as Cairo's abandonment of the Arab cause for a mess of sandy pottage, Assad was apparently active in seeking to protect himself from his critics.

Military self-defense prompted Assad to woo King Hussein to protect Syria against an Israeli strike through the northwest corner of Jordan and into Damascus itself. It was also self-defense, but political this time, that prompted Assad to cozy up to the PLO, deflecting criticism that his Kissinger connections had not paid off.

Forced last fall to prolong the presence of the U.N. Disengagement Force on Syria's Golan Heights out of fear of taking on Israel frontally, Assad turned a potential humiliation into a diplomatic victory. He conditioned his renewal of UNDEF's mandate on a rider that gave the PLO its first chance to take part in a U.N. Security Council debate.

After months of encouraging all sides in the Lebanese civil war, he unleashed the regular PLO troops he controls and had them invade Lebanon, in January. Only a largely discredited Christian leader protested as Syria, in effect, took Lebanon into temporary custody with the tacit blessing of the rest of the Arab world, except for Iraq, ever hostile to Syria. The United States and even Israel accepted Syria's unleashing of the Palestinians.

Such accomplishments, even if they prove to be ephemeral, were beyond the wildest dreams of Assad's unquestioning aides only a few brief months ago. They seemed secretly to be happy enough then that Assad had completed five years in power—a record after Syria's previous two decades of yearly coups or attempted coups.

For all his success, however, Assad remains largely unknown to his 7 million fellow Syrians, even though his dour likeness, in a formal photograph or in a popular outsized plastic medallion profile, is a ubiquitous reminder of his regime.

Content to let events speak for him, Assad does nothing to encourage the kind of interest in his personal life and preferences that politicians elsewhere employ highly paid consultants to publicize.

His public appearances are few. So, too, are his speeches in a part of the world all too often led astray by the power of the word.

His wife and five children are rarely mentioned, although Assad is widely respected as a good family man—if anyone who works until well after midnight most of the time could thus qualify.

Even a close adviser was unable, for example, to say exactly when the stocky, jutjawed leader was born. But the Syrian public does not appear to be disturbed by Assad's personal secretiveness. For, aside from stability and an end to the more obvious forms of naked police repression, his reign has brought the first breath of prosperity after more than a decade of doctrinaire Marxist economic deprivation.

Part of the public's sense of relief reflects approval of an end to the years of wrangling with the rest of the Arab world and a deemphasis of Syria's previous vainglorious self-identification as the burning heart of Arab nationalism.

Ceasing to be Arabs' odd man out has been worth hundreds of millions of dollars in investment by conservative oil-rich Arab governments satisfied that Damascus no longer calls for the overthrow of their "decadent feudal" regimes, as the Syrian press and radio used to describe them.

Assad came to the fore partly because of Egyptian President Nasser's death in 1970. Nasser's disappearance allowed other Arab leaders to merge on a scene long dominated by Egypt.

Even before the 1973 Arab-Israeli war, Assad's reign had begun to symbolize an undercurrent of Syrian yearning for an honorable Middle East settlement that would end a generation of fruitless confrontation with Israel.

Syria may have lost more territory in the 1973 fighting but, for the first time, Assad managed to stand and fight back on the battlefield. This military success allowed Assad to edge away from Syria's previous total refusal to negotiate with Israel.

Assad has come a long way in his own thinking and he has brought along a notoriously hard-to-govern country.

Knowing your enemy is standard practice for most governments. But, significantly, Assad was the first Syrian leader to procure Israeli newspapers—through Rome—and to

have them translated for his daily intelligence report.

"No politician, no army officer, wanted or wants to disturb the process Assad is working out," one self-admitted detractor said. "He still has the option to make peace and become the greatest man in modern Syrian history."

In an afterthought, reflecting Syria's penchant for political instability, the detractor added, "Assad's being tolerated to allow him to reach a peace settlement."

That Assad reached the top of a notably greasy pole—and while still relatively young—was not just because of his own considerable qualities (including a coolness not normally associated with Arab leaders, an extraordinary memory, an ability to listen and Kissinger-like attention to detail, and physical stamina permitting him to function on as little as four or five hours' sleep). He also combines a defiance of the laws of averages and of diminishing returns that can only be called luck—*Baraka* in Arabic, a kind of divine protection against disaster.

Assad has helped along his *baraka* by reinforcing his ties with three minority groups. He maintains half a dozen intelligence-cum-secret police outfits and a Praetorian Guard of at least a division under the command of a brother.

The key groups are his own religious sect, the Alawites, the air force, and the Baath Party—once the most radical pan-Arab political party but now Assad's tame instrument.

Assad is one of six brothers and two sisters born to a hard-scrabble farmer, Ali Assad, in Kardaha, a mountain village southeast of the Mediterranean port, Latakia. His father was known for his opposition to French colonial rule. His grandfather, Sleiman, fought the Turks all the way down to the Yeman in the failing days of the Ottoman Empire.

To this day, Assad is known to his intimates as "Abu Sleiman," Arabic for "Sleiman's father," an unusual sign of respect suggesting that he possesses his grandfather's force of character.

For Hafez Assad and many other ambitious Alawites, the military was the way up.

Assad went to elementary school in his village, then to Latakia for secondary education, but little is known of his early years until he entered the military academy at Homs at a relatively advanced 22.

For Alawites, the profession of arms has been a way out of their generally downtrodden existence ever since the French recruited heavily among minorities for their colonial army in Syria. Until Assad's generation, Alawites were enlisted men.

The dominant Sunni sect of Islam, accounting for roughly 70 per cent of the population, traditionally had little use for the Alawites who make up 10 per cent of the population. They were suspect because of their refusal to pray in mosques, their dedication to mysterious rites and unwillingness to make the pilgrimage to Mecca. The Sunnis tend not to consider the Alawites as Moslem at all.

Holed up in the mountains, the Alawites worked their poor earth or moved to the coast and other richer farming areas elsewhere as hired hands. When Sunnis passed, Alawites would get off the sidewalks.

The Alawite country, centered on Latakia, has prospered under Assad. A new railroad links it with the northern trading metropolis of Aleppo and the giant Tabqa Dam with its ambitious irrigation projects farther east. A university is also taking form in Latakia.

Alawites hold key positions in the country's major institution, the armed forces, often down to NCO level. Their special fief is Assad's own arm, the air force and air defense command, manned by Alawites sent to the Soviet Union for special missile training.

"If Assad can hold on another five years, he can write his own ticket for the foreseeable future," a critic remarked, referring to the thousands of young Alawites Assad had dispatched abroad for a wide spectrum of specialized training.

Some observers believe that alleged favoritism toward fellow Alawites is Assad's Achilles' heel.

The Sunni merchants who once controlled Syria readily admit their error in failing to send their sons to the Homs military academy after Syria won independence from France. Their contempt for the military profession was to cost them dearly—first political power, then control of the economy.

Assad's was the first generation of Alawite air force officers. The first Alawite air force commander played a crucial role in persuading Assad and 13 others to join an early batch of cadets when the air force academy was opened in Aleppo.

Assad flew British-made Meteor jets, was credited with downing a British Canberra bomber that strayed over Syrian air space in the Anglo-French-Israeli Suez operation in 1956 and later went to the Soviet Union for a course in night-flying with Mig-17s.

Although his official biography surely errs in stating that he joined the Baath Party when 16—the party was not founded until the following year—Assad was active politically in that pan-Arab Socialist movement whose name means "resurrection."

When Syrian instability prompted the Baathists to call Egypt's President Nasser into Syria in 1958 to prevent a feared Communist takeover, Nasser's first act was to purge Baathist officers. Many of those who survived, including Assad, were sent to Egypt for easier surveillance.

Assigned to a night-combat squadron, Assad was still a very minor figure in the Alawite air force.

A disgruntled former Baath Party leader remarked, "We knew how to organize—that's very important in plotting." When the union between Egypt and Syria collapsed in late 1961, Syria's new rulers took no chances, Assad was one of the many surviving Baath Party officers who were eased out of the armed forces. Assad was transferred to the Ministry of Sea Transportation.

Such precautions proved inadequate. Cashiered Baathist and Nasserite officers took advantage of a coup that put in power Paris-trained Michel Aflaq and Salah Bitar, the Baath's two civilian ideologues, only months after officers in neighboring Iraq seized power in Baghdad in their name.

The Baathist officers then drove the Nasserites from the army. From then on, the Baathists, increasingly of Alawite extraction, began eliminating each other in a series of power struggles.

The Alawite air force leaders promoted themselves to general and made a Sunni, Gen. Amine Hafez, the figurehead president of the republic.

Another internal eruption, in February 1964, saw Aflaq and Bitar rely on the army to expel the younger civilians from the party. The party founders became, in turn, political hostages of the military.

The two leading Alawite air force generals fell out. The loser, Mohammed Amrane, was forced out of the country and assassinated in Lebanon in 1971 by killers widely believed to be acting at Assad's behest.

The winner, Salah Jadid, felt so weakened by the successive purges that he leaped headlong into the arms of the Soviets and the Egyptians to shore up his position.

Jadid sought to turn the Baath Party into a real instrument of power, formally resigned from the armed forces and handed the army over to Assad. A lieutenant colonel upon returning to active service in 1963, Assad was a lieutenant general by December 1964 and defense minister and full general after a Jadid-led coup in 1966.

But Jadid made himself unpopular. His uncompromising Marxist economics and nationalizations proved disastrous. During the Six-Day War with Israel in 1967, he mistakenly announced that the vital city of Kuneitra had fallen, touching off a general panic in the Syrian army that facilitated Israel's capture of the Golan Heights.

"Any civilian with a pistol could have taken Damascus the week after the Six-Day War," one Syrian exile remarked. "The newspapers, the ministries, the central bank, all had decamped and set up temporary shop in Homs. Damascus was an open city."

It was only after the debacle that Assad emerged from the shadows, with characteristic caution. Legend insists that Assad was at first not empowered to make command changes involving air force officers above the rank of major.

Assad built up his own air force intelligence operation and made it independent of Syria's other intelligence and secret police networks. He insured air force loyalties by lavishing on officers privileges that were anathema in an otherwise fanatically Marxist regime.

When Assad decided to move, it was with the backing of the most modern arm of the armed forces and with the knowledge that to many Syrians, bored with the intricacies of Baathist politics, any change would be welcome.

Indicative of the prevailing atmosphere then—and of Assad's own character—is the story of his intervention on behalf of the Alawite poet-Bedouin Jabal. An anti-Baathist, the poet published a poem in 1968 in a Beirut newspaper ridiculing the party. Syrian secret police chief Abdel Karim Jundi kidnaped him.

When Assad found out, he telephoned Jundi and ordered him to release the poet alive and well on pain of having his headquarters bombed. Jundi replied that the poet was in a coma and had been thrown out of a speeding police car in front of a Damascus hospital. Assad summoned the best doctors in Damascus and Beirut to care for the poet, who remained under his personal protection.

Assad did not move against Jadid until his rival gave him a perfect opening. In October 1970, Jadid ordered Syrian armor across the Jordanian-border to aid Palestinian commandos to overthrow King Hussein. The invasion was a total failure—notably because Assad deliberately withheld air cover. This allowed a dozen over-age Jordanian jets and armor to maul the Syrians badly.

In rapid succession, Assad had himself named premier and defense minister that November, elected president of the republic for a seven-year term on March 12, 1971, and named the party leader the following August.

Assad disappointed Syrians who had hoped he would dismantle the party's police operations.

Although he enjoyed complete control of the armed forces, he soon placed his controversial, womanizing brother, Rifaat, at the head of what for all intents and purposes is another army. Formally called the Republican Companies, this organization of from 13,000 to 40,000 men is an elite anti-coup force stationed near Damascus and equipped with its own helicopters, planes, artillery and other modern materiel.

Assad's toleration of Rifaat's personal and business excesses is an anomaly in an otherwise puritanical regime.

To insure his continuity in power, Assad sits at the center of a half-dozen intelligence operations, for the most part run by Alawites. "Each is empowered to arrest anyone," an opponent remarked, although in recent years ordinary citizens have worried less about

arbitrary arrest. Nevertheless, one Syrian lamented, "even with connections it takes weeks often to find out where someone is being detained."

Assad pays lip service to the Baath Party apparatus, in part, apparently to camouflage his own absolute personal power. The party also helps to distract attention from the Alawites' important share of power.

Even in decline, the Baath Party symbolizes the mainstream of Syrian nationalism, a form of protective coloration that minorities such as the Alawites, Christians and Druzes have found a useful channel for assimilation in a still predominantly Sunni society.

The product of one of the toughest survival courses in the unstable Middle East, Assad has been careful to travel outside his own country only rarely.

Nonetheless, as acute an observer as Mohammed Hassanein Heikal, Nasser's confidant and former boss of Cairo's Al Ahram publishing empire, maintains that Assad has a "comprehensive view of the world and knows exactly what he wants."

[From the International Herald-Tribune, Apr. 19, 1976]

SYRIANS STAKE OUT A ROLE IN LEBANON

(By Henry Tanner)

DAMASCUS.—Syria's decision to send troops into Lebanon April 9 was made more than 10 days earlier, after an unsuccessful meeting here between President Hafez al-Assad and the leader of the Lebanese leftist-Moslem alliance, Kamal Jumblat.

The purpose of the Syrian move was to make sure that Mr. Jumblat and the "Lebanese Arab Army" of Lt. Ahmed Khatib, the Moslem army deserter, would not defy an explicit Syrian order against an all-out attack on Christian areas, Syrian officials said.

The second aim was to prevent el-Fatah, the largest group within the Palestine Liberation Organization, from renewing its military support to Mr. Jumblat after having withdrawn it from him under extreme Syrian pressure.

In direct diplomatic contacts and through King Hussein of Jordan, who was in Washington this month, the Syrians were implored by the State Department to keep down the number of their troops in Lebanon and to stay north of the Damascus-Beirut line, well away from the Israeli border, informed Western diplomats said.

Both wishes were respected. Western diplomats said that Syrian special forces that have penetrated deep into Lebanon total only "several hundred men" but that a force of about 8,000 men is massed on the border, some of them just inside Lebanon, and ready to move.

How far the Syrian forces will eventually push is not clear.

The Syrians have not yet decided, Western diplomats believe. Mr. Assad is moving in the deliberate way that has been his method all along in the Lebanese crisis. He is known to have taken direct personal charge of Syrian policy in Lebanon.

The impression here is that Mr. Assad would like to keep his troops out of Beirut but that he would not hesitate to send them there if he judged it necessary.

"I just don't see any clear line where they could stop," a diplomat said.

"We are cautious people," a Syrian official said. He and others made it clear that the decision to use Syrian troops openly had been made reluctantly.

"A reluctant but determined dragon," was the way a diplomat described Syria. He added that the Syrians came to the conclusion they had to intervene directly after all attempts to direct events in Lebanon by remote control through as-Saiqa, the Syrian-dominated Palestinian commando group, had failed.

According to Palestinian sources in Beirut, several thousand Palestinians deserted as-Saiqa after it was used by the Syrians to obstruct Lt. Khatib's force of deserters from moving on the presidential palace outside Beirut.

One of the main points that emerged from conversations here and in Beirut with Syrian and Palestinian officials and diplomatic sources was that the Syrian military intervention was not in itself a club by which the Syrians imposed their will on el-Fatah and Mr. Jumblat, but that it was a "follow-up" to political persuasion.

The Jumblat-Assad meeting took place March 27.

According to the Syrian version, the Lebanese leftist leader told Mr. Assad that the Moslems now had the military strength to achieve all-out victory over the Christian conservatives and that he, Mr. Jumblat, intended to establish a leftist Arab popular republic in Lebanon.

The Syrians, aware that the military balance had shifted in favor of the Moslems, were determined to prevent this.

"We could not let them destroy the Christian side," a Syrian official said. "The war in Lebanon cannot be permitted to end in a military victory for one side. When it is over, the Lebanese must be able to live with each other and the Palestinians in Lebanon must be able to live with the Lebanese, all the Lebanese," he added.

"If we had not acted, the fighting of the last few months would have looked like child's play compared to the slaughter that would yet come," another Syrian source said.

Mr. Assad therefore told Mr. Jumblat that he had to call off the Moslem-leftist action. Mr. Jumblat grudgingly complied a few days later.

Mr. Assad also conferred with Yassir Arafat, the head of both el-Fatah and the parent PLO. In what informed diplomatic sources here describe as "the toughest meeting" between the two men, Mr. Assad told the Palestinian leader that the Palestinians had to choose between Syria and Mr. Jumblat.

The Syrian President is reported to have added that if el-Fatah did not give in, Syria would not only cut off arms to the Palestinians but also cease to support the Palestinian cause internationally and would look out for its own narrow national interests, including perhaps a disengagement agreement with Israel.

Mr. Arafat reluctantly chose Syria over Mr. Jumblat and el-Fatah ended its direct participation in the leftist Moslem military offensive. That made the April 2 truce possible.

But, as the Syrians knew, el-Fatah officials were profoundly unhappy.

El-Fatah officials in Beirut at the time said they would never permit Syria to take over el-Fatah and turn it into another as-Saiqa. They charged that the Syrians and as-Saiqa had alienated the majority of Lebanese Moslems and thus endangered the long-term presence of the Palestinians in Lebanon.

"We like the Syrians, but up there at their borders, not down here in Beirut," a Fatah official said in an interview.

The Syrians, aware of such feelings, feared that el-Fatah might yet change back to all-out military support for Mr. Jumblat.

As for Mr. Jumblat, he became anathema in Damascus since he challenged Mr. Assad.

It was against this background that Syria decided to intervene militarily. Its ships blocked supplies to the Moslem-held port of Tripoli in northern Lebanon. As-Saiqa prevented a Libyan plane from unloading arms at Beirut Airport and got into a fire fight with members of the commando group of George Habash. The land incursions from the Syrian border followed.

For the moment, the Syrian intervention appears to have achieved its purpose. Mr. Jumblat no longer talks about complete victory.

But nobody here claims to know whether the present level of Syrian involvement will be enough to end the Lebanese civil war.

THE FLORENCE AGREEMENT

Mr. HUMPHREY. Mr. President, since 1966 the United States has adhered to a most successful international convention—the Florence agreement—which eliminates tariffs and other trade barriers to the free international flow of educational, scientific and cultural materials. Over 60 other countries also adhere.

The existing agreement, which was drafted in 1950 deals largely with the traditional printed materials, such as books, periodicals and music. In Paris in late March of this year an international meeting was held which drafted an extension—called a protocol—to the Florence agreement which would give the same treatment to films, recordings, and microfilm publications. Additional provisions provide special benefits to nonprofit libraries of all types. This protocol, if approved by the UNESCO General Conference in October of this year, will be open for adherence as a supplementary international convention late this year or early 1977.

The organized producer and consumer groups in this country concerned with film, recordings and microforms are enthusiastic supporters of the protocol and look forward to the day when the same duty-free treatment will be given to these materials as is now accorded to printed publications under the existing agreement.

Mr. President, I commend to my colleagues an article on this subject in the April 26, 1976, issue of Publishers Weekly entitled "Delegates Adopt Protocol for Florence Agreement," and I ask unanimous consent that this article, by Herbert R. Lottman, be printed in the RECORD.

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

DELEGATES ADOPT PROTOCOL FOR FLORENCE AGREEMENT

The process of including films, recordings and other new materials in the 1950 Florence Agreement on the importation of educational, scientific and cultural materials was all but completed at an intergovernmental conference held in Paris in March.

The document hammered out by delegates of 56 member states and adopted unanimously at the closing session on March 30 will now go to next fall's General Conference of UNESCO, scheduled to open in Nairobi in October, for final approval. Once approved by the General Conference, the new document, known as a Protocol, will be open for accession as an international convention to countries which are already members of the original Florence Agreement (there are 68 member countries at present).

At the same time, the Protocol clarifies the definition of books exempt from customs duties to include printed books regardless of the space given over to illustrations, workbooks, crossword puzzle books, luxury edi-

tions, etc. It adds microfilms of all types of publications, maps and charts, architectural and engineering plans. Countries accepting the Protocol must also accept clarification of the duty-free import of works of art of an educational, scientific or cultural character; scientific instruments and apparatus; articles for the blind and other handicapped persons. But they may choose between two options for visual and auditory materials, either according unrestricted exemption, or limiting this franchise to materials of an educational, scientific or cultural character when imported by approved institutions.

The first step toward broadening the Florence Agreement took place in Geneva in December 1973, when a review conference proposed a certain number of amendments. UNESCO appointed consultants to suggest precisely what new materials should be covered. In August 1975 countries belonging to the original Florence Agreement were asked for comments on a draft Protocol by December 15 of that year. Most of them did not turn in their replies in time, and a good many changes were made in the course of the conference held at UNESCO headquarters from March 22 to 30. The United States, which came into the Florence Agreement relatively late (1966), is a major producer of materials included in the Protocol, and it is predicted that the major publishing countries, representing the lion's share of world trade—exporting and importing—in these materials, will move quickly to ratify and accede to the Protocol when it is published after the General Conference.

One issue raised but not resolved in Paris was the claim of the Common Market countries, all of which are members of the Florence Agreement, that they could not accede individually to the new Protocol, since the Treaty of Rome establishing the European Economic Community requires them to act as a body on tariff matters. The matter was turned over to the Nairobi General Conference for resolution. Another and expected hurdle was raised by representatives of developing nations who asked for special treatment in the form of reduced excise and other manufacturing taxes on exported materials in the producing countries. Such adjustments being beyond the ken of exporters, a compromise was accepted by which producing countries agree not to levy export taxes—which they don't do anyway.

On the final day the conference agreed to include an escape clause for developing countries should they find outside competition harmful to domestic products. On a product-by-product basis they can limit acceptance of the Protocol, but in such cases they must give notice, and if possible advance notice, to UNESCO, which will inform member states. But, if they choose to do this, developing nations must act on a non-discriminatory basis, not directed against any one country or countries. A significant breakthrough was the clause by which contracting states agree to provide licenses and/or foreign exchange for public library acquisitions, although this is one of the clauses which has been made optional.

The United States delegation was headed by the State Department's Guy Coriden, director of the Office of International Arts Affairs in the Bureau of Educational and Cultural Affairs. Another member of the delegation, Robert W. Frase, assistant executive director of the National Commission on New Technological Uses of Copyrighted Works, served the conference as Rapporteur, sharing the speakers' table with Finnish Ambassador Ake Frey, conference chairman.—HERBERT R. LOTTMAN.

A BICENTENNIAL EVENT IN BALTIMORE, MD.

Mr. MATHIAS. Mr. President, the Bicentennial is upon us, and although I have some misgivings about some of the artificiality that has been created to commemorate it, I also feel a deep sense of pride in some of truly meaningful ways that Americans are going about observing our 200th anniversary as a nation. I am particularly proud of some of the things that are happening in Maryland, which contributed so much to the birth and early development of the country, and has so much to share with the rest of the country this year. The Washington Post, in an editorial May 5 entitled "Maryland Heritage," described a Bicentennial event in Baltimore that has contemporary significance even beyond its historical basis. I am pleased to bring Baltimore's achievement in this regard to the attention of my colleagues, and I ask unanimous consent that the editorial from the Post be printed in the RECORD.

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

[From the Washington Post, May 5, 1976]

MARYLAND HERITAGE

Baltimore's five exhibits on the American Revolution are revolutionary in themselves. For the first time in America's cultural history, it seems, different institutions in the same city are closely working together, pooling their financial, technical and scientific resources on one big show.

The show is a survey of "Maryland's Heritage" and will be open until June 20th. The Walters Gallery displays "European Art at the Time of the Revolution" with emphasis on English, French and Italian paintings that have influenced American art. There is also a display of European artifacts which have been produced for the American market, such as clocks decorated with a portrait of George Washington. The Baltimore Museum has prepared an exhibit of "American Painting and Decorative Art of the Revolutionary Period." It includes paintings by Joshua Johnston, America's first widely known black painter. The museum also shows Chippendale, Hepplewhite and Sheraton furniture by Baltimore and Philadelphia cabinet makers. The Maryland Historical Society shows us daily life in the tobacco and wheat growing colony under the title "From Feudalism to Freedom: Maryland in the American Revolution." In addition to several wealthy households, the exhibition also documents the sordid lot of the slaves. The Peale Museum's "Baltimore in the Revolutionary Generation" illustrates the exploits of the city's leaders who fought in the revolution and the War of 1812 and who capped their civic efforts by erecting Baltimore's Washington Monument. The Maryland Academy of Science celebrates two Maryland Nobel Prize winners. Albert Michelson, who measured the speed of light, and Christian Anfinesen, who discovered certain characteristics of enzymes. Among the other scientists featured in the display is Banjamin Banneker, the black tobacco farmer who died in 1797 and who was a self-educated astronomer given to highly complex mathematical calculations. He is best remembered for his almanac.

More impressive, perhaps, than the exhibitions themselves, is the spirit of cooperation between the five institutions that created them. More often than not, cultural institutions in America are as competitive as business organizations, competing with one another not only for financial contributions, but also for art scoops and acquisitions (my Picasso is bigger than your Picasso!), but also for popularity. Baltimore's museums have cooperated before, but never to this extent. Their joint planning of the bicentennial exhibit has given it more depth and interest than any one museum could have created by itself. It has only one catalogue, which is, of course, a great deal less expensive than five. There is, furthermore, a special bus service that takes visitors around the five museums for only ten cents.

All this has startled the National Endowment for the Arts into granting a substantial subsidy. The Endowment's museum specialist, John R. Spencer, proclaimed the feat "the most fantastic thing I have ever heard of." And the Endowment's chairman, Nancy Hanks, talks about it in her speeches all over the country, citing Baltimore's joint exhibition as an example for other cities to follow.

THE PANAMA CANAL TREATY

Mr. McGEE. Mr. President, in Monday's issue of the Washington Post, there appeared an excellent column written by Marilyn Berger analyzing the current controversy over the Panama Canal Treaty negotiations.

As Ms. Berger so aptly noted:

It's distressing that a candidate for President of the United States can win votes by promising to lead us into the past. That's what Ronald Reagan has done with his demagogic misleading refrain about the Panama Canal. "We bought it and paid for it . . . it's ours . . . just as much as the Louisiana Purchase and Alaska are ours . . . we're not going to give it up to some tinhorn dictator."

Candidate Reagan's assertions are both factually incorrect and simplistic. This would be disconcerting enough under normal circumstances. However, the Governor is holding himself out to be a serious candidate for his party's nomination to this Nation's highest office, while demonstrating that his leadership capabilities must be called into serious question. The conduct of foreign policy is not a simplistic process of jingoistic breast-beating and club-swinging. The world has changed much too rapidly to accommodate such primitive delusions. Ultimately, it can only serve to endanger what our vital national and security interests might be.

The proper role for those who must give the ultimate direction to the foreign policy decisionmaking process is to reduce the uncertainty of potential threats in the conduct of such policy and to have the vision and wisdom to insure against the occurrence of future events which would have enormous costs to our Nation. It is apparent that Governor Reagan is not a man of these important qualities, as evidenced by his rhetoric associated with such foreign policy issues as the Panama Canal.

The cautious estimate of our own Department of Defense is again worth noting. We are negotiating to protect our interests in the canal; no treaty relationship is so endurable that modernization of such a relationship is not required from time to time; and to hold out the notion that maintaining the status quo is even relevant is indeed a dangerous proposition. The Department of Defense could hardly be characterized as an institution which is "soft on communism" or which demonstrates a proclivity for Marxism. Certainly, one could hardly characterize our distinguished colleague from Arizona, Senator BARRY GOLDWATER, as a "giveaway artist."

In essence, the entire Panama Canal Treaty debate, as offered by Governor Reagan, is a ludicrous contradiction of

simplistic rhetoric. Ms. Berger most appropriately observed in her concluding remarks that:

Our statesmen—even our politicians—are supposed to have vision. But Reagan has been facing in the wrong direction. Unhappily, the results of the Republican primary in Texas did not offer much hope that we will be able to turn around any time soon and look forward again.

I ask unanimous consent the column be printed in the RECORD.

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

[From the Washington Post, May 3, 1976]

PANAMA CANAL: REAGAN'S "GOOD OLD DAYS" ISSUE

(By Marilyn Berger)

It's distressing that a candidate for President of the United States can win votes by promising to lead us into the past. That's what Ronald Reagan has done with his demagogic misleading refrain about the Panama Canal: "We bought it and paid for it . . . it's ours . . . just as much as the Louisiana Purchase and Alaska are ours . . . we're not going to give it up to some tinhorn dictator."

To Texas, where Reagan turned up the volume on a melody we first heard in New Hampshire, it seemed as effective as a call to "Remember the Alamo." His audiences loved it. It's an issue that appeals to patriotism, love of flag and country. It permits a show of American strength after years of being pushed around in Vietnam. What's more, it's a foreign policy issue people can understand. It's not complicated like limitation of strategic arms or the problem of proliferation of nuclear weapons.

It evokes images of Teddy Roosevelt, the good old days when men were men and what America wanted America got. Doesn't everybody remember reading in his school books that we conquered the jungle and yellow fever all at once and dug a canal? One official has called it the moonshot of the first decades of this century.

That we engineered the revolt of Panama from Colombia and presented a treaty to the new Panamanian leaders on a take-it-or-leave-it-basis doesn't figure much in those memories. The Panamanians had to accept or they would have been left to the tender mercies of Colombia.

That's how we got control "in perpetuity" over the 10-mile strip of land that bisects Panama. But even that treaty does not make the United States sovereign in the Canal Zone. No less a legal expert than William Howard Taft, who later became Chief Justice, said the United States does not exercise sovereignty there, that the Hay-Bunau-Varilla treaty of 1903 did not make the Canal Zone "ours."

Nor did the $250,000 a year we were paying to Panama until 1936 when the sum was adjusted to $500,000 because of the depressed value of the dollar. Since 1955 we've been paying $2.3 million (which amounts to just about one-tenth of one per cent of what we'll be paying for a fleet of new bombers).

While the United States has acted as if it were sovereign in the Zone and offended the Panamanian sense of nationhood, the attributes of sovereignty were missing. Take just two examples: An American can remain in the Canal Zone only as long as he or she is employed there. A person born in the Zone of Panamanian parents is not an American citizen. Anyone born in any of the states of the Louisiana Purchase, or Alaska, to borrow Reagan's examples, is a U.S. citizen no matter what the nationality of the parents.

In 1964, following three days of riots along 4th of July Street, President Lyndon B. Johnson (a Texan), made a public commitment to negotiate a canal treaty of fixed term—meaning the end of rights "in perpetuity." Treaties were completed by 1967, but then domestic politics interfered. First Panama had an election, then a revolution. Then there were the 1968 elections in the United States. Anyway, the new government of Panama, under Gen. Omar Torrijos, rejected the draft treaties.

The Panama Canal was becoming a symbol to Latin American countries of Yankee oppression in an era when colonial rule was ending almost everywhere. Ambassador Ellsworth Bunker, the chief U.S. negotiator for a new Panama treaty, has warned that unless there is a new foundation for a more modern relationship "some form of conflict in Panama would seem virtually certain."

Most officials admit the canal is indefensible. It is a hostage to every ship that passes through the locks. A well-placed grenade thrown from nearby hills could knock it out of commission. That hasn't happened, and the Panamanians have been patient. By most accounts, they didn't expect any spectacular achievements this year, another election year in the United States.

Torrijos, who has placed far greater stress on his country's educational system than on its defense, has even shown a sense of humor. During a recent press conference in Jamaica, where he was on a state visit, he said he didn't want to talk about the Panama Canal because it had become a political issue in the United States. "There is one candidate," he said, "who sounds like his speeches were written by Cassius Clay."

The negotiations for a new treaty seem to have been going along well, if slowly, when the Reagan challenge forced the administration into a low profile. In fact, officials in the Pentagon and the State Department will say nothing for quotation, giving the impression that the entire government apparatus has been enlisted in the service of President Ford's reelection. That service, for the moment, is to keep quiet.

Some diehards in the Senate think they could block any new treaty that "gives away" the canal. The administration thinks otherwise, that a reasonable treaty preserving our interest in the operation and defense of the canal with a gradual turnover to Panama, will be approved by reasonable men. Keeping the canal open and efficient does not require that 40,000 Americans live in what amounts to a company zone, with company stores, a colonial enclave representative of another era.

Much more than the canal is at stake. The nations of Latin America see this as a test case. The outcome can determine whether there will be hemispheric cooperation or hemispheric confrontation, with our southern neighbors joining the rest of the Third World in opposition.

Our statesmen—even our politicians—are supposed to have vision. But Reagan has been facing in the wrong direction. Unhappily, the results of the Republican primary in Texas did not offer much hope that we will be able to turn around any time soon and look forward again.

MR. REAGAN'S VICTORY IS NOT A CALL TO THE RIGHT

Mr. HUGH SCOTT. Mr. President, I ask unanimous consent that an editorial from yesterday morning's Philadelphia Inquirer entitled "Mr. Reagan's Victory Is Not a Call to the Right," be printed in the RECORD.

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

[From the Philadelphia Inquirer, May 4, 1976]

MR. REAGAN'S VICTORY IS NOT A CALL TO THE RIGHT

There are primary elections today in Alabama, Georgia and Indiana, hot on the heels of Ronald Reagan's sweep of the Republican primary in Texas Saturday. There is more to come after that, before the Republican convention, and thus far, Mr. Reagan has not made a winning showing against President Ford outside the South. Time, as is its habit, will tell.

None of that minimizes the dramatic impact of Mr. Reagan's victory in Texas, carrying all the delegate races by margins wider than his own most optimistic hopes. But to take the Texas bombshell as indication that Mr. Reagan represents a prudent nominee for the Republican Party would be, we believe, to ignore both the best interests of the party and those of the nation.

Mr. Reagan is a campaigner of charm and force. He is fortuitiously running—as Jimmy Carter is in the contest for the Democratic nomination—as an "outsider," a man not having to carry a feather of the albatross of the federal government in Washington, which clearly has aliented immense numbers of Americans. He has earned loyal support within the conservative wing of his party by hard work going back to the Goldwater campaign of 1964.

It was Mr. Reagan's articulate support of Sen. Goldwater's presidential candidacy which first vaulted him into the hearts of Americans of conservative disposition. And in that there is a revealing irony.

Even as the Texas votes were being analyzed, Sen. Goldwater told a television panel that Mr. Reagan's position on the Panama Canal dispute is a wrong-headed one. Mr. Reagan campaigned hard on the contention that the Ford Administration is soft on Panama, caving in when it should be standing firm—and so on. Sen. Goldwater's appraisal: "I have to support Ford's position," which is to renegotiate the canal treaty. And—most significantly—"I think Reagan would too, if he knew more about it."

For the grand old man of Republican conservatism to read out for superficiality his faction's standard-bearer is particularly dramatic example of what we take to be the central failing of the Reagan candidacy. It is simplistic and it is more tuned to theatrics and to easy answers than to constructive principles.

The Texas results emphasized that. The cross-over to Republican primary ballots by Democrats was enormous. Mr. Reagan clearly picked up the votes of the disenchanted who have for years been identified with George Wallace. Texas itself is a state with a conservative stripe far wider than that of the national electorate.

Mr. Ford campaigned hard in Texas, and latterly took to strong personal criticisms of Mr. Reagan, on one hand, and increasing emphasis of his own conservative positions on the other. Both tactics were ill-conceived.

The strength of American politics—and, as Sen. Goldwater is best able to attest, of the Republican Party—is in the ideological center. Mr. Reagan, with his Texas victory, has increased the force of his threat to Mr. Ford. For Mr. Ford to move more strongly to the ideological extreme which Mr. Reagan represents would be to play to his opponent's strength—a strength which at its greatest has never carried the country or even a significant minority of it.

Mr. Ford would enhance his own strength by emphasizing the accomplishments and the essential sanity of the broad, moderate and

progressive middle ground of his party—and of the nation's electorate.

WALL STREET JOURNAL FAVORS REPEAL OF DISC TAX SUBSIDY

Mr. KENNEDY. Mr. President, this morning's Wall Street Journal contains a significant editorial calling for the repeal of DISC, the expensive $1.4 billion in the Internal Revenue Code.

Earlier this week, the distinguished Senator from Colorado (Mr. HASKELL) and I released a study by the Library of Congress concluding that repeal of DISC would have no disruptive effect on U.S. jobs or the level of U.S. exports.

Although the Wall Street Journal editorial disagrees with some of the conclusions of the Library of Congress study, the editorial states unequivocally that DISC should be repealed, because it is an unjustifiable subsidy to foreign consumers over U.S. consumers and to U.S. exports over domestic producers.

Mr. President, there is growing support in the Senate for the repeal of DISC. I believe the Wall Street Journal editorial will be of interest to all of us as we prepare to consider the issue, and I ask unanimous consent that the editorial may be printed in the RECORD.

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

THE "DISC" STUDIES

[From the Wall Street Journal, May 5, 1976]

Are Domestic-International Sales Corporations (DISCs) in the national interest? Does the economy benefit by giving a special tax break to exporters? The U.S. Treasury says yes. A Library of Congress study, commissioned by Senator Edward Kennedy of Massachusetts and Floyd Haskell of Colorado, says no.

We say yes and no. We agree with the Senators that the 1971 law permitting tax advantages to exporters should be repealed. Giving manufacturers of export goods a tax preference over manufacturers of domestic goods is a departure from the most efficient allocation of resources. There's no reason exporters should be singled out for special treatment any more than companies with names beginning with the letters A through M.

Yet we think that the rationale offered up in the Library of Congress study is patent nonsense. It concludes that repeal would have little or no adverse impact on jobs or exports because exporters would export anyway. In other words, tax rates have no effect. The government might as well repeal DISC and keep the $1.4 billion.

But a tax increase is a tax increase and will reduce incentives to invest, employ and produce just as surely as would an increase of $1.4 billion in the tax on capital in some other area. Of course the economy would suffer. Which is why, in addition to repealing DISCs, the corporate tax rate should be cut to 46% from the current 48%. The idea behind these export-sales companies is so silly it could only have been conceived in Washington, D.C. If an Illinois company wants to make widgets for sale in Belgium, it gets a tax break. But if it exports Illinois widgets to Ohio, it get no tax break. If you are a consumer of Illinois widgets, it is thus to your advantage to be a foreigner rather than an American.

Replacing the DISC loophole with an across-the-board corporate tax cut, which is in fact the perfectly logical proposal of Rep. Sam Gibbons of Florida, would not only give American buyers of American goods equal footing with foreigners, it would also be beneficial to the U.S. economy, reducing the need for thousands of loophole lawyers and accountants and their counterparts in the Washington bureaucracy.

1976 U.S. WHEAT OUTLOOK

Mr. HUMPHREY. Mr. President, I wish to share with this body a special report prepared by the Western Wheat Associates regarding the outlook for wheat production in 1976.

There have been numerous reports concerning the extensive drought throughout areas of the southern Great Plains from last fall into early 1976, and these stories have created some fears as to the level of production to be anticipated in 1976.

While it is true that some reductions in output are expected and particularly in the States of Kansas, Oklahoma, Texas, Colorado, and to a certain extent Nebraska, we do expect to harvest the second largest wheat crop in history this year.

Recent rains have reduced the likelihood of serious yield reductions although total winter wheat production is expected to be 200 million bushels lower than last year. Total U.S. wheat production for this year is presently estimated at around 2 billion bushels.

More importantly, it is anticipated that the approximate carryover of 525 million bushels of July 1, 1976, will be increased by further 200 million bushels from the 1976–77 crop.

Mr. President, I ask unanimous consent that this special report be printed in the RECORD so that my colleagues may have the benefit of this information.

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

[Special report from Western Wheat Associates, USSA, Inc., Washington, D.C., Apr. 22, 1976]

THE 1976 U.S. WHEAT PRODUCTION OUTLOOK

In spite of the persistent drought which plagued the Southern Great Plains area from August well into March, the United States will harvest the second largest wheat crop in history this year. The production this year, added to the carryin stocks, will result in the highest level of available wheat supplies since 1961. With the somewhat lower expectation for 1976/77 exports, the wheat carryover next year is projected to increase for the third consecutive year.

The winter wheat crop in the Southern Plains states received some fairly general and beneficial rains in April which helped alleviate the effect of the severe drought. However, the moisture will not bring a major reversal in production prospects since the crop was already too far gone in many areas. With the added moisture, some farmers will likely plow down the weakened wheat stands and plant sorghum in an attempt to recoup their losses with a cash crop. Brighter prospects in the Northern Plains will offset some of the major losses incurred further South.

Total winter wheat production will be approximately 200 million bushels lower than a year ago, with most all of the reduction coming from the Hard Red Winter wheat producing states of Kansas, Oklahoma, Texas, Colorado and—to a lesser degree—Nebraska.

The Hard Red Winter wheat crops in Montana, South Dakota and Nebraska have benefited from the timely April rains and the 30 day weather outlook for these states predicts above normal precipitation. With the more favorable plantings, the wheat production in the Northern Great Plains will be approximately the same as last year.

The Pacific Northwest states of Washington, Oregon and Idaho increased their white wheat acreage slightly last fall and the moisture conditions are generally favorable throughout the entire area. This region experienced excellent yields last year in most areas and, with the slight increase in plantings and good moisture conditions thus far, the 1976/77 white wheat crop could be ten million bushels more than last year's record crop. The Soft Red Winter wheat production in Illinois, Indiana and Ohio will be at about the same levels as last year.

Based on the current weather conditions and projected plantings, the 1976 winter wheat crop—including Hard Red Winter, Soft Red Winter, and White wheat—is estimated at 1,450 million bushels, 200 million bushels less than a year ago.

The spring wheat production prospects in the Northern Plains states of Montana, North Dakota, South Dakota and Minnesota have improved considerably. Spring wheat plantings, which are underway at the present time, are about two to three weeks ahead of normal. The USDA Prospective Plantings report indicates a large 16.5% increase in spring wheat plantings and solid moisture conditions improved during April to allow for optimistic production prospects.

The increased spring wheat acreage has primarily been the result of a reduction of 545,000 acres in projected durum plantings in North Dakota, Montana and South Dakota plus a 525,000 acre reduction in Flaxseed plantings in North Dakota, South Dakota and Minnesota. A 210,000 acre reduction in projected Barley plantings and 200,000 acre reduction in Oat plantings will also go into the sharply increased projected spring wheat acreage. In addition, some traditional grassland has been broken up in Montana and North Dakota to bring new land into production. It is estimated that 100,000 acres of rangeland in Eastern Montana and 200,000 to 300,000 acres in North Dakota have been plowed up, most of which will be seeded to spring wheat.

Spring wheat production—including durum—is estimated at 550 million bushels, a 100 million bushel increase over last year. The larger acreage in the traditional spring wheat areas plus significantly higher durum plantings under irrigation in California and Arizona account for the sharp increase in the combined spring wheat and durum production.

Total U.S. wheat production for the 1976/77 crop is currently estimated at two billion bushels. The beginning stocks on July 1, 1976 will be approximately 525 million bushels, bringing the total supply availability to 2,525 million bushels. This is the highest level since 1961 when the wheat supplies were 2,679 million bushels.

We estimate domestic usage at 700 million bushels for 1976/77. The domestic milling requirements are a predictable 530 million bushels, leaving the remaining 170 million bushels for seed and animal feed. This is up only slightly since the prospective record corn crop will likely prevent larger amounts of wheat from being used in domestic livestock feeding because of the price relationship.

We project 1976/77 wheat exports at a maximum of 1,100 million bushels. Although it is not possible to make firm export estimates at this early date because of the vagaries of weather in either major wheat producing or consuming regions, the present situation does point to lower levels than the 1975/76 record of about 1,250 million bushels.

Weather conditions are generally favorable in the Northern Hemisphere with the possi-

ble exception of the U.S.S.R. The Soviet winter wheat crop is believed to have suffered larger than average winterkill of 25%. This will likely result in higher than normal spring wheat acreage, which is currently being planted.

Eastern Europe has received beneficial moisture as has North Africa and the Middle East. Rainfall has been infrequent and spotty in the major wheat growing areas of China but is considered to be generally adequate.

Brazil's government is pushing an all-out program of expanding wheat production to reduce their dependency on imports. Brazil will import about 3.4 million tons of wheat from all sources this year but, if their planting targets are realized, total imports could fall to approximately one million tons in 1976/77.

India, the largest customer for U.S. wheat this year, is expecting at least an average spring grain crop. The wheat to be shipped to India under a pending PL 480 agreement is expected to go into their reserve system, which is a strong indication that their 1976/77 import requirements may not be as great as in recent years. Of course, this situation could change rapidly and significantly if the summer monsoons are not sufficient to develop a good fall grain crop.

Of more importance are the developments in the other major wheat exporting countries. Canada's spring wheat planting intentions are estimated to increase by 18% over the 1975 crop. The Canadian Wheat Board has substantially increased the initial payment on their 1976 crops to encourage farmers to expand wheat production.

Under their new government, Argentina is also sharply raising wheat support prices to encourage expanded wheat production. Their goal is to improve their balance of trade position through increased wheat exports.

The other major wheat exporter, Australia, has good soil moisture conditions for wheat plantings and intends to increase planting by 12% over last year. These expanded plantings in the major exporting countries indicate more competition for U.S. wheat in the export markets, which will likely result in lower world wheat prices.

In summary, the 1976/77 wheat crop will be the second largest on record at two billion bushels. Adding the 525 million bushels of carryover stocks, total wheat supplies will be the largest in 15 years at 2,525 million bushels. With approximately the same level of domestic usage of 700 million bushels and a lower export level of 1,100 million bushels, wheat stocks at the end of the 1976/77 marketing year are projected to increase another 200 million bushels to 725 million bushels. This would be the highest level since July 1, 1972, and would be the third consecutive year that wheat stocks have increased from the very low levels of 247 million bushels on July 1, 1974.

U.S. WHEAT PRODUCTION AND UTILIZATION

	USDA 1972/73	USDA 1973/74	USDA 1974/75	WWA 1975/76	WWA 1976/77
Planted (million acres)	54.9	59.0	71.4	75.1	78.4
Harvested (million acres)	47.3	53.9	65.6	69.7	69.4
Yield (bushel/acre)	32.7	31.7	27.4	30.6	28.8
Stocks (million bushels)	863	438	247	327	525
Production (million bushels)	1,545	1,705	1,796	2,134	2,000
Imports (million bushels)	1	4	2	2	2
Total supply (million bushels)	2,409	2,147	2,045	2,463	2,527
Domestic use (million bushels)	786	752	679	688	702
Exports (million bushels)	1,185	1,148	1,039	1,250	1,100
Total usage (million bushels)	1,971	1,900	1,708	1,938	1,802
Ending stocks (million bushels)	438	247	327	525	725

CAB URGES CUTBACK IN REGULATORY HOLD

Mr. PERCY. Mr. President, on April 8, 1976, the Subcommittee on Aviation of the Senate Commerce Committee heard some outstanding testimony. John E. Robson, Chairman of the Civil Aeronautics Board, said that its regulation of the airline industry has probably resulted in higher fares. In addition, he urged "a redirection of public policy toward reliance essentially on competitive market forces rather than governmental decisions."

In this age of proliferating Federal agencies, it is a pleasure to take note of a Federal agency that recommends its regulatory activities be curtailed. I wish more agencies would subject themselves to a similar self-scrutiny.

Mr. President, I ask unanimous consent that the excellent testimony of the Civil Aeronautics Board given by Chairman John E. Robson before the Subcommittee on Aviation be printed in the RECORD.

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

STATEMENT OF THE CIVIL AERONAUTICS BOARD GIVEN BY CHAIRMAN JOHN E. ROBSON, ON REGULATORY REFORM

Mr. Chairman and Members of the Committee, it is both a privilege and a challenge to appear here today to participate in Congress' most comprehensive examination of air transport regulation in almost forty years. The Civil Aeronautics Board welcomes the opportunity to contribute its views in your study of this vital matter.

In these remarks, we will first summarize the Board's existing responsibilities under the Federal Aviation Act, outline the Board's discharge of those responsibilities and offer some thoughts on the air transport system as it has grown and as we find it today. Second, offer the Board's views on the Administration's program for aviation regulatory reform, as embodied in the proposed "Aviation Act of 1975". Third, put forth the Board's own recommendations for regulatory reform.

ROLES AND RESPONSIBILITIES OF THE BOARD

In presenting our views, the Board has tried to keep in mind its role in the air transport system. Simply stated, our role is faithfully to carry out, as Congress' delegate, those regulatory functions and authorities specifically assigned by law.

We have no other powers or duties. Our existence and our tasks are wholly dependent upon Congressional decisions.

Consistent with this role, it is our obligation to inform Congress of our honest and objective opinions. We also are fulfilling our specific statutory obligation to transmit to Congress our "recommendations as to legislation" (§ 205).

We do not take it as the purpose of these hearings merely to provide a forum for the Board to defend the past or to champion continuation of the status quo. We will try to deal with the present and the future as thoughtfully and responsibly as we can.

There has been substantial recent interest and discussion regarding the question of what air transport regulatory policies this nation should pursue. Unfortunately, the debate has frequently been polarized, sometimes misleading, and, on occasion, irresponsible. There has sometimes emerged an accusatory theme marked by uncomplimentary characterizations of airline management, airline labor, financial institutions, the Board, and others. We look on these accusations as unfortunate. They make no contribution to a consideration of the difficult issues before you.

The Board has no axe to grind. In offering our considered judgments on what we believe to be sound long-term regulatory policy and in stating our honest assessment of the uncertainties and risks in whatever policy is pursued, we do not intend to imply either hostility or indifference to management, labor, financial institutions, airport operators, aircraft manufacturers, smaller communities, or others whose interests are affected by these policies.

Many months ago the Board determined that its observations on fundamental questions of regulatory policy and the Administration's proposed Aviation Act of 1975 should be deferred until we came before the Committees of the Congress formally charged with considering those questions and that legislation. That time has now arrived.

During this period, considerable effort has gone on within our agency. Careful attention has been given to the many reports and studies which have been published on the subject, including the Reports of the CAB Special Staff on Regulatory Reform and the Advisory Committee on Procedural Reform, both of which were undertaken at the Board's request, and the Report of the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee. In addition, the Board has solicited and considered public comments on the Aviation Act of 1975. The views we offer reflect the considerable thought and analysis of the Board's professional Staff and its Members, representing observations and opinions gathered and crystalized over many collective years in both Government and the private sector.

We emphasize that this is the product of the Board alone, independent of and without consultation or clearance with any individual serving in any other agency or branch of Government.

The decisions concerning regulatory reform are for the Congress to make—just as it was the Congress' decision in 1938 to bring the aviation industry within the scope of Federal economic regulation. The Congress must look closely at the existing system, its benefits and its shortcomings, and determine what changes, if any, are required. Independently, we have reached the best judgments we could and today we present these judgments to the Congress.

Briefly summarized, our judgments are as follows:

1. Economic regulation should be redirected so domestic air transport is, in time, essentially governed by competitive market forces. In the long run, we believe this can result in a more efficient, lower-cost system

which will successfully respond to public needs for air travel.

2. The transition to a system emphasizing free-market forces should be gradual and carefully monitored. Transition plans must take into account the potential need for regulatory actions to prevent or mitigate special problems which could arise during transition and could adversely affect the traveling and shipping public or other national interests.

3. It must be recognized that there are uncertainties and risks involved both in movement toward and in operation under a regime relying essentially on market forces.

Specifically, these risks and uncertainties include possible disruptions of service and the possible failure of less efficient carriers. These are natural concomitants of a free competitive environment. But we believe there also will be significant risks and uncertainties, and fewer potential future benefits if the present regulatory regime is continued.

4. There are portions of the Administration's Aviation Act of 1975 which the Board opposes and some which it endorses.

The Board today offers for Congress' consideration an alternative program of monitored regulatory reform designed to place greater reliance on the natural forces of the marketplace and competition, including the entry of new carriers into the industry.

THE 1938 ACT

When Congress created the present airline regulatory system in 1938, it determined that the orderly development of civil aviation required that it be subject to public utility-type regulation to promote the development of a nationwide air transportation system capable of meeting the needs of commerce, the postal service, and the national defense.

The Congress required that the Board take into account such factors as the encouraging of a degree of competition, the fostering of sound economic conditions in the industry, and the promotion of adequate, economical, and efficient service. Price-regulation standards not only embraced traditional concepts of just, reasonable, economical and nondiscriminatory fares, but specified that the revenue needs of individual carriers were to be taken into account.

The Board was empowered to regulate the air transportation system with these general, and sometimes contradictory, standards to guide it, by granting individual licenses to operate over specified routes upon a showing of public convenience and necessity, to regulate rates and fares, and to enforce the carriers' obligations to provide service in accordance with the terms of their licenses. However, the Board was precluded from exercising any authority over schedules or equipment.

The Act contemplates that adjustments to the route system must be undertaken on a case-by-case basis, and that licensing changes or new entry can only be accomplished after notice and hearing primarily on the basis of carrier applications. The Board's exemption powers are limited by the statute.

While the statute contemplates a degree of competition, the concept of competition is qualified by statutory injunctions to find public convenience and necessity before making route awards and to pursue a policy of competition only to the extent necessary to assure sound development of a properly adapted air transportation system.

Thus, the statute in fact contemplates limited entry rather than free entry—that is control by governmental regulation, generally speaking, rather than free market forces. Indeed, the Court of Appeals for the District of Columbia has stated that "... the fact [is] that the entire regulatory scheme set up by the Federal Aviation Act is severely anticompetitive."

The desirability of establishing a coordinated system gave a substantial advantage for new route authority to applicants which already held existing routes and could thus offer improved single-plane or on-line connecting service to communities beyond the particular city-pair market at issue in a given case.

THE GROWTH OF THE SYSTEM

Despite these limitations and contradictions in the governing Act, an air transportation system has evolved over the past 38 years which may be fairly characterized as the finest in the world.

It combines a very high level of safety, service, and convenience with a level of fares which are low when measured against fares prevailing in most other parts of the world. Few other industries can match the long-term growth rate that domestic air transportation enjoyed until recent years. From a level of just under a half billion revenue-passenger-miles in 1938, scheduled domestic traffic has grown to 131.7 billion revenue-passenger-miles in 1975.

Since 1938 more and more city-pairs have received new service—58,000 city-pairs are currently part of the domestic route network—and more and more city-pairs have received single-plane, non-stop, and competitive service. The 1938 Act, by Congressional mandate, accorded grandfather rights to 19 then existing trunk carriers (excluding those in Alaska), 10 of which have survived. The Big Four Carriers at that time—American, United, TWA, and Eastern—carried more than 80 percent of the domestic revenue-passenger-miles, in 1975 they carried 57 percent.

By 1975, entirely new categories of direct and indirect carriers had developed—local service airlines, cargo specalists, charter specialists, communter carriers and air taxis, and air freight forwarders. The smallest of the local service carriers operated over 78 million revenue-passenger-miles in 1974—nearly four times as many revenue-passenger-miles as the largest of the original trunkline carriers in 1939. Today, the *local service* airlines generate more than 20 times as many revenue-passenger-miles as all the airlines generated in 1938. The commuter carriers and air taxis served more than six and three-quarter million passengers in the year ended June 30, 1975, and provided air transportation to small and large communities throughout the country.

Air fares have gone down when measured against prices in the rest of the economy. While the consumer price index rose by about 275 percent between 1946 and 1975, fares per mile rose by only about 40 percent during the same period. Expressed in 1967 dollars, scheduled fares which in 1946 averaged 9.16 cents per mile had actually decreased to an average of 4.56 cents per mile by 1975, or about half their level at the end of World War II.

Recently, low-cost air transportation also has become increasingly available under new charter rules promulgated by the Board and a wide variety of discount fares and off-peak fares which have been allowed by the Board.

In other respects, too, the consumers, represented by 175 million passenger enplanements last year, have had the benefit of regulations protecting them against various consumer problems—although we cannot say that these are, like the environmental problems, continuing areas of controversy.

Through the years the domestic air transport system has achieved great technological progress as it has joined in a profitable partnership with aviation manufacturers and suppliers.

In terms of overall benefits to the Nation's commerce, employment, manufacturing and balance of payments, generated by the air transport industry itself, and as a vital infrastructure service to general commercial activity, our domestic air transport system makes a major contribution.

THE BOARD'S ADMINISTRATION OF THE ACT

The Board does not claim credit for the remarkable growth of the air transport system. We did not build it, and we did not decree it. On the contrary, the driving forces behind creation of the present air system have been the enormous demand of the American public for fast, safe, convenient, and comfortable transportation, and the stream of technical innovation which has enabled the industry to meet that demand.

To those who contend that inherent demand and technological innovation would have produced the air transport system we have today or perhaps an even better one if we had not had government regulation, we can only say that no one will ever know. We can say that the principal development of the air transport system occurred during the period of Federal regulation. Speculation as to where we would be today if history had been different is interesting. But the real question is where do we go from here.

We do, however, want to address ourselves to those who argue that the Board has betrayed its statutory mandate. We address the Board's detractors not because the Board and its staff seek vindication, but because the Board is today proposing a program of regulatory reform which, in significant part, the Board would administer.

If you become convinced that the Board has been faithless to its existing mandate, you will naturally not want to entrust the administration of the transition toward a system placing greater reliance on market forces to the Board, but will want to write into the statute fixed dates and fixed actions which leave no administrative flexibility. That, essentially, is the Administration bill's proposal, which we see as being excessively rigid. But we can only convince you of the desirability of our more flexible reform proposal if you believe that the Board will carry it out in accordance with the expressed intent of Congress.

We address ourselves, then, to some of the major charges made against the Board. The first of these is that the Board has systematically precluded new entry into air transportation.

It is true that only once has the Board awarded a trunkline-type certificate to a carrier which previously held no certificate at all. But the Board has certificated whole classes of new carriers to perform specialized types of air transport service. Carriers which did not exist in 1938 today provide charter and cargo service to every corner of the globe. The local service carriers have progressively been awarded new route authority until today they are effectively regional trunklines, flying modern jet aircraft and serving route systems more extensive than the ones served in 1938 by any of the "grandfather" carriers other than the "Big Four". None of these carriers existed in any form in 1938.

In addition, literally hundreds of air taxis and commuter carriers have freely set up shop under a blanket exemption granted by the Board. These exempted carriers are now authorized to fly aircraft larger than the standard trunkline aircraft of 1938. We would note, further, that the Board in the early 1960's proposed the continuation of individually ticketed authority for the supplemental carriers, but the Congress chose to confine them essentially to charter service only.

A second allegation is that the Board has suppressed route competition among carriers. On the contrary, although the 1933 Act calls only for "competition to the extent necessary" to develop a properly adapted air trans-

portation system, the Board in its route decisions has frequently proclaimed competitive service to be an affirmative good, to be authorized even where there has been no affirmative showing in a particular case that the existing monopoly service in the market was deficient. Whereas competitive air service was confined to a handful of major markets in 1938, today roughly seventy percent of domestic air travel takes place in markets where two or more carriers are authorized.

We do not suggest that there are no more markets where competition could be authorized; in fact, within the past year the Board has set for hearing applications for competitive service in a number of such markets. We do say that no one who dispassionately studies the Board's route decisions over the years could fairly say that the Board has shown itself hostile to route competition.

A final set of allegations is that the Board has suppressed price competition between air carriers, and has, instead, encouraged a wasteful kind of service competition which increases costs.

It is true that there is not much competition among carriers in the level of basic fares. That, however, is not because the Board has deliberately suppressed it, but rather, we suggest, because in a system with limited freedom of entry the carriers appear to have very little incentive to compete in that way. The fact is that we almost never find a carrier filing for a general reduction of basic fares.

On the other hand, while the Board's attitude toward promotional and discount fares has varied over the years, during the past decade it has for the most part been quite receptive to carrier experimentation with such fares. As you know, a wide variety of discount fares are in effect today. Finally, the Board's liberalization of its charter rules has encouraged this very fundamental form of price competition.

As to the alleged encouragement of wasteful service competition, we fear that such competition is an inherent feature of the basic regulatory system, rather than a product of the Board's particular decisions.

And the Board has acted to prevent some major costs of service competition from being passed through to the consumer in higher fares. That is the crux of the Board's load-factor standard, adopted in the Domestic Passenger-Fare Investigation. A major source of increased costs from service competition is the provision of excessive capacity; resulting in the operation of flights with too many empty seats. The 55% load factor standard established in the DPFI means that the carriers are allowed to charge the public only the costs of operating, on the average, enough flights to accommodate the traveling public at normal fares with 55% of the seats full. Costs of operating capacity in excess of that standard are disallowed for ratemaking purposes. In the past several years, these disallowances have totaled hundreds of millions of dollars. Without discussing the details of the DPFI, we think it refutes the charge that the Board is indifferent to the problem of burdening the consumer with the costs of excessive service competition.

Without defending particular errors or decisions which in hindsight may appear to have been unwise, the Board believes that over the 38 years of the Board's existence, the Board and its staff have faithfully, intelligently, and on the whole, successfully, carried out the basic statutory directives of the 1938 Act.

The best evidence of this is that since the statute's enactment, the Congress had not seen fit to change in any significant way the statutory policy or the substantive or procedural provisions of the basic law governing air transport economic regulation. If any systematic abuse or significant departure from Congressional intentions had been perceived or if any major policy direction was not acceptable to the Congress, the statute would have been changed.

Thus, the question of the efficacy of the present framework of aviation regulation does not, we think, go so much to the Board's administration of the law as it goes to the law itself.

PROSPECTS UNDER THE CURRENT REGULATORY REGIME

Despite the incredible growth of the domestic air transport system since 1938 and its considerable successes, there are serious current problems and some clouds on the horizon. The economic environment which existed when air transport regulation began and in which the system grew so dramatically has changed. And we are concerned that the present regulatory system may have great difficulty in coping successfully with the future.

It is these concerns that lead us to think that the Nation has come to a crossroads where some fundamental choices as to the direction of air transport regulation must be made.

How will economic regulation affect the development of air transportation and how will the airlines be affected in the years ahead if the legislative regulatory direction and framework remains essentially unchanged?

It is a difficult undertaking to forecast the economic future. But one way to assess the future is to attempt to understand the past, and, more specifically, to determine whether it is likely that the trend of events already experienced will continue.

It is the travelers' demand for air transportation that has built and today sustains the system, except for some subsidized service. The level of demand for air travel is determined by the overall performance of the economy, the discretionary income available, and the price of air transportation relative to all other goods and services. Price, in turn, is determined largely by costs. And costs, finally, are significantly influenced by those aspects of economic regulation which allow costs to flow through to the consumer without sufficient incentives to contain them.

The present system of economic regulation has remained largely unchanged since 1938. But during this time the general economy has been rapidly expanding. As a result of this expansion the demand for air transportation has increased at an average annual rate of between 12 and 17 percent, depending on the precise period used for computation. This great, sustained boom has resulted in an air transportation market that is now more than 240 times larger than in 1938 when measured by revenue-passenger-miles.

Demand for air travel has made it possible for the industry to acquire faster, more comfortable and more efficient aircraft. And the rapid introduction of enormously productive aircraft technology permitted, particularly in the 1960's, the real price of air transportation to decline in absolute terms and relative to all other goods and services. This productivity allowed corporate profitability to increase even as airline labor received significantly higher wages at a rate far exceeding national averages.

Because of the extraordinary increase in demand for air transportation, the Board was able to, and did, award a great array of new competitive routes to existing carriers. "Trunkline" carriers, which in 1938 served routes shorter than those of today's local service carriers, today span the continent. In this process the Board also made the local service carriers (which now number 8) a part of the nonspecialized air transportation system. This expansionary route program contributed significantly to the vast improvement in service that occurred throughout the postwar period.

Thus, over an extended period marked by the coincidence of tremendous growth in traffic and rapidly declining unit costs, primarily made possible by new, enormously productive aircraft, the system grew, the airlines made substantial profits, fares were stable or declining, and the Board could follow an expansionary competitive route policy without excessive concern for the immediate financial risks to the carriers. Any mistakes by the Board or the industry could be and were absorbed by the expansion of the economy and the industry.

It is a fact, however, that the rates of expansion in airline traffic that characterized the 1950's and the 1960's have not been carried into the present decade, and it is widely thought that they will not be resumed. In fact, a number of air transport forecasts for the next decade are in accord that the rate of traffic growth will probably be only half of the earlier rates. These forecasts assume that the historic ability of the airline industry to reduce unit costs by means of new aircraft technology has, at least temporarily, been slowed. It is also a fact that the airline industry has come to require higher and higher investment costs. Similarly, the rising costs of petroleum-based energy, consumer protection and environmental requirements, together with an inflationary rate much higher than we have experienced in the past, will continue to have an impact on the costs of producing all goods and services, including air transportation.

What are the implications for the regulatory system of a sharply reduced rate of traffic growth combined with declining productivity and increased costs? Our concern is that these factors will make regulation increasingly difficult and progressively less capable of meeting public needs.

If fare levels are moderated the effect might be to prevent carriers from earning sufficiently high profits to attract equity capital. Whether true or not, this perception has assertedly prevented airlines from securing equity capital for some time. As carriers find it necessary to acquire new, more fuel-efficient and environmentally acceptable aircraft, they may thus become even more debt-ridden. Because of the leverage effect of high debt ratios, the airlines may become more and more vulnerable to swings in the general economy.

If the forecasts of slower air-traffic growth and a decline in the rate of cost improvement reflected by sagging productivity gains are accurate, and if, as we might expect, the general economy continues to experience periodic troughs as part of the ups and downs of the economic cycle, it is likely that individual airlines will, as in the past, experience uneven financial fortunes. If this occurs—and it is to some degree occurring now—even debt capital could become unavailable, except for aircraft mortgages or lease/purchase agreements.

Pressures could then develop for the government to insure equipment loans; there would then be pressures to require advance government approval for all equipment purchases; and a process toward tighter and more restrictive regulation would have begun.

Moreover, if the fortunes of a number of carriers were to decline, the feasibility of the Board's granting competitive route awards or allowing new entry would be seriously constrained. Community expectations of an over-expanding route network, built up by the Board's route expansion programs of the 1950's and 60's, would have to be drastically disappointed.

It is very possible, then, that a future Board could find itself in the position of responding with rapid and sizeable fare increases and maintaining, at the same time, a very restrictive route award and entry policy. Alternatively, a future Board might face inexorable, simultaneous public pressures

for expanded service on the one hand and lower fares on the other, a road which could lead ultimately to financial disaster for the industry and the possibility that Federal funds would be required to sustain the air transportation system.

In a democracy, Government has to have general acceptance if it is to govern effectively. We are sincerely concerned that future Boards may not be able to function effectively in an environment in which economic regulation would be subject to increasing attack both by a dissatisfied travelling public and a dissatisfied industry. An environment which constantly calls into question the efficacy of regulation would also create major difficulties for the carriers' ability to plan for the future and to obtain needed capital.

TWO ALTERNATIVE POLICY DIRECTIONS

Mr. Chairman, we have outlined why we have doubts that, over the long term, the mixture of regulation and competition for air transport, historically, and thus far successfully pursued under the current regulatory scheme, can succeed in an economic environment which is likely to be so different from that of the past few decades.

If this is so, the Nation would seem to be presented with some basic choices on what long-term regulatory course to pursue. We perceive two fundamental options.

The first is to move in the direction of a progressively stricter utility-type regulatory scheme—that is, to reduce competition by very strict entry and route-award standards, promote mergers and route swaps, encourage anti-competitive domestic capacity-limitation agreements, and pursue other steps in the direction of a greater monopoly status for the carriers' individual routes. This could result in greater concentration in the industry as a whole and a strengthening of the already entrenched position of the airline oligopoly. Indeed, there is a possibility that carrier failures or mergers will bring this result even if the Board takes no affirmative restrictive actions.

However, a necessary concomitant of enhancing the carriers' monopoly status would seem to be much tighter regulation of fares and more stringent Government regulatory control over cost categories which contribute to higher fares. Much higher load factors would be aggressively pursued, ultimately, perhaps, through some form of control over scheduling. And such a regime may, as it has in other regulated monopoly industries, lead to supervision of advertising costs, food service, and other amenities, and conceivably intervention into the pricklebushes of executive and non-executive salaries, wages, and airport costs.

While the Board very decidedly does not recommend such a course, we recognize that others, including many in the financial community, have seriously advanced it as a rational and desirable means of insuring stability and profitability of the present airlines in the industry by suggesting the rationalization of capacity and demand and eliminating redundancy. One economist has described this process as "perfecting the cartel", and some have argued that a perfect cartel, well regulated, would give better and cheaper service than the half-regulated, half-competitive "imperfect cartel" that they see us as having today.

The other fundamental long-term regulatory path which can be pursued is one which moves in the direction of relying fundamentally on competition and the operation of natural market forces—a system which minimizes Governmental interference to the greatest extent possible and emphasizes greater management freedoms in entry, exit and pricing. As we have previously stated, it is the Board's judgment that this is the preferable course.

As the foregoing analysis indicates, there are substantial dangers in a continued, uncritical reliance upon the regulatory framework established in 1938. The question remains: Why move in the direction of the competitive marketplace if that entails a considerable degree of risk to at least some of the present carriers, and thus to their labor forces and financial backers? To answer this question requires us to go back to the most basic premises of our national economic policy.

Historically, this country has relied for its economic growth on the stimulative and innovative pressures of a competitive marketplace. That reliance has made us the greatest industrial society in the world today. But we do not function, and have probably never really functioned, with a perfectly free market. Government regulation of private enterprise to curb various abuses of economic power such as fraud, monopoly, exploitation of labor, and more recently product hazards and environmental pollution, are recognized facts of industrial life.

In particular, however, Government regulation of public transportation has, at least since the creation of the Interstate Commerce Commission, represented a major exception to the general principle of competitive freedom. The Federal Aviation Act of 1938 is the embodiment of this exception for the field of air transportation. To determine whether this exception is still justified, we should first look at the rationale for the exception and then ask if it is still applicable to the economics of air transport as we know them today. In our view, careful analysis leads to the conclusion that reliance on natural market forces for air transport is achievable and holds out the best long-term possibilities for the continued fulfillment of the public's need for air travel.

Utility regulation is predicated upon several assumptions:

That the industry in question is vital to the economy;

That it is characterized by the need for large amounts of capital to be invested in fixed, immobile assets, the duplication of which would be wasteful and economically destructive;

That there exist economies of scale for large firms, i.e., that unit costs which tend constantly to decrease as output increases are available to the most efficient producer, who consequently is able to drive out all competitors maximizing his returns from consumers.

These characteristics, and there are others, are not necessarily all equally apparent in the industries for which economic regulation has been deemed necessary. But the striking point is the degree to which none—save the first—are characteristic of commercial air transportation. Indeed, most of the available evidence points in the opposite direction.

Very little of the airlines' capital investment goes into immobile assets, nor are threshold costs prohibitively high;

The extreme mobility of the airlines' principal assets, their airplanes, makes actual and potential competition a powerful and efficient regulator of market behavior;

Giant firms have no inherent cost advantage in providing air transportation and may in fact be handicapped by their sheer size.

These factors are such that competitive market forces could furnish the Nation with an efficient, adaptable air transport system, free of the protection of anticompetitive regulation. Yet to base the admittedly difficult transition from today's regulation to a more competitive system wholly on the presumption that competition is a preferred national goal could appear to some to embrace unrealistic idealism.

The arguments for greater reliance on competitive market forces in air transport are strongly buttressed by numerous detailed studies of the airline industry that have been carried out over a period of twenty years. It is not possible to cover the substance of these analyses in our testimony, but each describes specific situations in which regulation has led to inefficiency, has delayed desirable change, or has benefited vested interests at the expenses of the general public. Invariably each analyst concludes that greater reliance on competitive forces would have better served the public interest. Support for these findings has grown over fifteen years and the Board finds the analyses and arguments persuasive.

In addition, such empirical evidence as exists is consistent with the view that greater reliance on market forces will be successful and ultimately beneficial to the traveling public. The commuter airline industry—which has been exempted from protective entry and price regulation—provides good service to many communities, some not served by regulated carriers. The rapid growth and success of this sector of the commercial aviation industry—more rapid even than the growth of the regulated sector—indicates that neither the carriers themselves nor the traveling public require protective economic regulation of the air transport system.

Where intrastate carriers have not been subject to the protective entry and price regulation of the Federal Aviation Act, they have provided levels of service at fares that are frequently low in relation to the fare level of the regulated carriers. The experiences in California and Texas are examples. We will not recount the details and we would underscore that these are limited experiences which may not necessarily be wholly representative of the interstate system. But we can find in them little support for the view that protective regulation is required in the public interest.

Close analysis seems to bear out that regulation has, over time, probably produced a higher cost level than would have occurred in its absence. The higher costs are in two principal areas: those relating to the quality of service—load factors, seating density, and aircraft utilization—and labor costs—both gross wage rates and the impact of work rules.

Critics of airline regulation contend that the Board has administered prices at a level which has permitted a higher quality of service than that for which users would have opted if they had been given a choice between higher-quality service and higher fares, on the one hand, and lower-quality service and lower fares, on the other hand. This has occurred in various forms over the years. For instance, while seating density increased for any given type of aircraft during the growth period of coach travel in the 1950's, load factors and aircraft utilization rates began to fall as jets came into the fleets in large numbers during the decade of the 1960's.

The decline in load factors reflects higher quality service—that is, more frequencies and capacity than would otherwise have been offered. The prospective passenger had a wider choice in selecting travel time and greater convenience in air travel than probably would have existed if incentives pushed for higher load factors.

The second area, wage rates, is more complex. Regulation has influenced the rise in wage rates. First, the value of a carrier's route certificate to other carriers has operated as an effective assurance that even the employees of airlines approaching bankruptcy would be assured jobs and seniority through the merger process. And this assurance has strengthened the bargaining position of labor in wage, benefits, and work rules negotiations. Second, the administration of airline prices by the Government assured both

labor and management that labor costs would be recovered without review. Under these conditions, airline wage rates have increased at a substantially faster rate than average wages for industry as a whole.

During the 1960's, when jet aircraft with significantly lower unit costs were introduced, some reduction in real prices occurred. However, due to escalating wage rates and the costs of excessive capacity (overscheduling), the reduction in fares to the consumer was less than the dramatic improvement in aircraft technology could have yielded.

When unit costs began to increase in the early 1970's, the Board developed a price control program designed to limit capacity by disallowing the costs of excessive service. The present conflict between the airlines and airline investor interests, on the one hand, and the Board on the other, revolves around the question of whether the Board is justified in disallowing these costs with the claim being that the fleets now in place were acquired on the expectation that traffic growth would continue at the high rates experienced prior to 1970.

An additional factor which might be considered in this analysis are some inherent limitations of Government economic regulation.

Economic regulation is, in part, a process of Government substituting its judgment for the natural and faster allocations and decisions of the marketplace. But, there is a natural difficulty in doing so.

Few assert that air transport regulators are, as a class, inherently more intelligent than those responsible for managing their respective airline businesses. Yet, we regulators have the final word on two of their most basic business decisions—where the product can be sold and at what price.

The fact is that a Government regulatory agency is comprised of human beings of different backgrounds, perspectives, and values. Under the laws we administer, we are legally charged to consider several different goals—some of which are in conflict—and as public officials we must be responsible to the overall public interest.

An examination of recent testimony before Congress and other statements indicate that, from the perspective of the regulated industry and the financial community, regulation seems to operate against their interests.

It is asserted that fares are held too low or that too promiscuous a competitive route award policy has been pursued, and finally, that the decision making process is too slow to permit adequate planning or response in a changing marketplace.

It is pointed out, for example, that the industry achieved the return on investment allowable under regulatory rate-making standards only twice in the past twenty years.

Similar complaints that rates have not risen to adequate levels to preserve a healthy private industry have been leveled at the ICC's regulation of the rail industry and has stirred serious Congressional consideration of the regulatory constraints which should be placed on natural gas prices. And the recent experience in the railroad industry has caused some to question whether the transport industry will fare well under long-term Government regulation.

With respect to matters of competitive entry, it is perhaps fair to observe that the regulator is faced with a difficult situation where an entrepreneur only wants a chance to sell his better mousetrap. Even in sectors such as telephone service which have traditionally been viewed as warranting monopoly status, regulators have recently relaxed restraints on competition.

Conceding that regulatory lag is a serious problem throughout the regulatory community, we would point out that some element of delay is inherent where a public agency has regulatory powers over business decisions, some element of delay is inevitable by reason of the requirement of due process and an inherent awkwardness in decision-making by large multi-member institutions.

We raise these points because the apparent resistance by the airline industry and the financial community to any significant relaxation of the regulatory grip seems at odds with their assertions that regulation has not been responsive to their interests.

We do not argue that improvements cannot be made in the regulatory process, particularly in the area of expediting decision-making. But if it is unrealistic (as we think it is) to expect that the regulatory apparatus will be restructured so as to primarily accommodate the economic interests of the regulated industry—one might at least inquire why the regulated do not perceive it in their interest to shed the burdens of regulaton.

UNCERTAINTIES AND RISKS

At various places in our testimony we have pointed out that uncertainties and risks attach to any decisions Congress might make with respect to the basic direction for air transport regulation.

In a dynamic economy, no one can confidently forecast with precision what all the possible future benefits and burdens of pursuing a particular regulatory course might be. However, having reached the judgment to recommend a system which relies essentially on natural market forces, the Board believes that it should bring to your attention some of the possible problems, uncertainties and risks we perceive.

The benefits from reliance on market forces depend, of course, on those forces operating in a relatively unrestricted manner. This point is made because certain existing elements of the air transport system could limit the ability of the marketplace to operate freely. For example, limited access to airport landing slots, gates, and other ground facilities, possible air traffic control limitations, state or local regulation, particularly with regard to environmental considerations such as curfews, or the practical inability of potential new entrants to obtain sufficient capital, are factors which could restrain the operation of market forces. We do not suggest that these are probable or irremediable obstacles even if they were found to exist. But they are matters which would bear scrutiny during the transition.

Some have advanced the argument that a consequence of an air transport system essentially reliant on market forces would be a tendency toward a more concentrated industry—that is one with fewer carriers and a greater risk of anticompetitive behavior. Analysis indicates that this is not a proper assessment of the characteristics of the air transport industry. However, it has yet to be proven that this would be an impossible evolution.

We have alluded previously to the risk that one or more carriers—new entrants as well as existing carriers—could face the ultimate consequence of an inability to compete successfully, financial failure. It may well be that the existing carriers would be able to adjust to the demands of a new competitive environment, assuming a gradual transition toward that environment. However, the potential impact of a new entrant which could operate with greater efficiency at lower costs raises the possibility of the failure of an incumbent carrier.

If such a result should occur, we think it probable that replacement services would fill the gap for the traveling public. It appears unlikely that a disruption of service following a carrier bankruptcy would be more than temporary.

The heavily-traveled routes in the U.S. are already served by two or more carriers. The high cost of aircraft suggests that the aircraft of a bankrupt carrier would not be withdrawn from service for very long in any market where there is substantial unmet demand for service. The high mobility of aircraft means that it is probable that lost services in most markets would be restored by other carriers. Indeed, changes in the Federal Aviation Act that the Board is proposing would enable us to authorize expeditiously replacement service if that should prove necessary in the wake of bankruptcy. In other cases, an unregulated commuter carrier could fill the gap.

But those of us who think seriously about these issues of regulatory change must consider such a situation, and the hardship it would cause for some employees, investors, creditors, and suppliers as well as the possibly temporary inconvenience for communities and the traveling public.

There are also possible repercussions in the capital markets and aircraft manufacturing community that could extend beyond the failing carrier, because other airlines may find capital more difficult or more costly to raise and long-term commitments to acquire new equipment could become uncertain. Similarly, we recognize that airport development revenue and financing could be adversely affected.

We believe, that in the long term these problems should become stabilized and, with the prospect of expanded demand for air travel in a less regulated environment, capital and equipment needs should concomitantly grow and be satisfied.

There is also a legitimate concern for the service provided to and from the smaller communities in America. We support the public financing of air transportation to small communities, under a responsible program which will substantially protect these communities against loss of service resulting from a different regulatory environment.

Another possibility is a reduction in the convenience and comfort of air service received by various classes of the traveling public. As market determinations replace regulatory decisions regarding fares and service levels, some classes of air traveler could receive less service or pay higher prices than they now pay, even though, on balance, we think, more travelers will probably pay lower fares.

Specifically, air travelers might find some reduction in convenience. A reduction in the frequency of flights in certain markets and the disappearance of last-minute seat availability on some flights may occur as the system shifts toward higher load factors. Those who enjoy the convenience of nonstop or single-plane service in certain city-pair markets could find that this level of convenience has diminished because a majority of air travelers have opted for lower prices with the associated inconvenience of more frequent transfers. We may expect that those who object to such a decline in service convenience will make their displeasure known to you and to us.

As we have suggested above, the road by which we hope to reach the benefits of a more competitive system may well prove to have some bumps. The only sensible course is to discuss these frankly. You must decide whether the eventual destination justifies the journey, and we, together, must be prepared to absorb those bumps. By proceeding under the Board's program, we would hope to avoid many of the bumps and to minimize the pain of those we can't avoid.

THE PROCESS OF CHANGE

The basic question of what direction regulation should take has been addressed. The Board believes that the proper direction is to essential reliance on market forces. What

should be the process of change? The Board believes that there are two basic alternatives:

1. Gradual or phased loosening of entry, exit and price controls; and

2. Abrupt elimination of such controls after some period of notice, such as three or five years. In our view, gradual and controlled movement towards a competitive environment is the preferable course. This view is founded on the belief that the interests which might be adversely affected can make better adjustments, and the risk of injury can be minimized, under a controlled, monitored regime than under abrupt change, even with substantial notice.

Even a gradual program has potential pitfalls. It is possible that if the program is misconceived it will be ineffective in achieving the intended results or it could produce unforeseen perversities. But in our judgment, the Administration has proposed too much change in too short a time.

Mr. Chairman, the present domestic air transport system has developed over nearly four decades under a Federally prescribed utility-type regulatory regime. It is only natural that airlines, their management and labor groups, aircraft manufacturers and suppliers, investors and lenders, airport operators, towns and cities and other elements of the aviation community have grown accustomed to a way of life under that regulatory environment. Financial and other commitments and patterns of conduct exist and grew up in substantial reliance on the way things were and were expected to continue to be under the legislatively prescribed regulatory framework.

The system of regulation has muted competition in the airline industry; entry controls have partially sheltered higher-cost carriers from more efficient competitors. As entry and price controls are relaxed, this measure of protection will be diminished. Existing carriers have made commitments over the years to their employees, to the communities and airports they serve, to their suppliers and to their creditors premised on the expectation that protective regulation would continue. Changing the rules of the ball game, however gradually, as is now proposed, will give advantages to those that have made no such prior commitments. We particularly recognize that some of the existing carriers have functioned under the present protective regulatory system with subsidy. Here, a controlled and monitored approach seems necessary to provide a fair opportunity for successful adjustment to a new regime.

The Board does not believe it is equitable, if Congress determines that the direction of air transport regulation should be fundamentally altered in the direction of primary reliance on market forces, for such a change to be precipitous.

Maintenance of some regulatory guidance over the transition to an air transport regime basically reliant on natural market forces is an underlying theme in the Board's recommended program. We certainly do not claim that our program cannot be improved upon or guarantee that it will in fact accomplish the kind of deliberate but determined movement we contemplate. It represents, however, our best present judgment.

We have considered the arguments some have advanced for a more abrupt change—arguments which have as their premise something like the lines from Shakespeare's Macbeth: "If it were done . . . , then 'twere well if it were done quickly." We cannot say that there is no merit in those arguments.

However, the Board is not persuaded that the advocates of this approach are correct and we think that we must take into account the fact that regulatory change as significant as we propose will affect real people, real jobs, real financial commitments and real air service.

THE PROPOSED "AVIATION ACT OF 1975"

Thus far, you may be thinking, there is little to distinguish the Board's approach to regulatoray reform from that of the Administration's proposed Aviation Act of 1975. Both call for a redirection of public policy toward reliance essentially on competitive market forces rather than governmental decisions. Neither the Board nor the Administration advocate a program for the total elimination of regulatory powers, either at once or on a day certain in the future.

But there the similarity of approach ceases and the differences begin. The Administration approach is premised on the notion that transition toward a freer system can only be achieved if Congress spells out in the statute, and sets dates for, the precise substantive and procedural steps along the road, and removes or hedges any Board supervision or discretion over critical areas of decision. Furthermore, although "regulatory lag" is one of the major complaints against the Board today, the Administration bill ensures that in certain areas the Board's action will be even slower than it is today.

The Board has submitted a detailed section-by-section analysis and critique of the Administration's proposed bill. Some provisions we support, most notably the change in the statutory declaration of policy, which sets the overall direction regulation will take. Others we oppose as unnecessary, misdirected, or potentially harmful in their consequences.

In our testimony we will not discuss each provision of the Administration bill. A few examples, however, illustrate the thrust of some of its provisions. For example, the Aviation Act of 1975 sets precise deadlines within which the Board must first set for hearing and then act on every route application filed, regardless of their number or the scope of authority they seek. If the Board fails to act within the prescribed time, the Board must issue the certificate. That will be done without regard to whether the application seeks authority in a single moderate-sized market or in the one hundred largest markets in the country, and regardless of how many competing applications have been filed. Presumably they would all have to be granted together.

The Board supports procedural reform, including establishing deadlines through rulemaking procedures in which all interested parties could participate.

Indeed, the Board has just recently set a deadline of 120 days for Board action on petitions for rulemaking. Through such a framework, the Board could achieve sufficient flexibility to dispatch properly its regulatory duties in difficult cases and during crises, while at the same time remove much of the currently existing uncertainties. However, the Board finds statutory deadlines too inflexible to permit sound allocation of limited regulatory resources and opposes the specific provision of the Administration's bill because it is fraught with latent, unpredictable consequences for the air transport system during a difficult transition time.

The Administration bill also forbids the Board to impose operating restrictions in new certificates or amendments to existing certificates. Operating restrictions are comprehensively defined to cover any provision in a certificate which precludes a carrier from operating unrestricted nonstop service between any two points on a route segment, or which imposes any limitation on service between points on different segments other than the requirement to stop at a segment junction point. The Administration bill further requires the elimination by January 1, 1981, of all existing restrictions, including the requirements to stop at existing segment junction points, so that thereafter each carrier will have unrestricted nonstop authority between any two domestic points on its system on January 1, 1975.

This provision, we believe, could have perverse effects—some now, some in 1981 or earlier—which appear not to have been anticipated and certainly have not been discussed in the materials to which we have had access.

Thus, effective upon enactment of the bill, the Board could not extend a carrier's route to a new point unless it was prepared to give the carrier at least one-stop authority between the new point and every point on its existing system. An obviously unintended result is that, under this provision, it would, for example, have been far more difficult for the Board several years ago to give Ozark Airlines its relatively noncontroversial route extension from Peoria to Washington and New York, benefiting thousands of downstate Illinois travelers, since the Board would not have been able to limit the scope of the proceeding by excluding in advance the extremely controversial issues of additional one-stop authority in the New York-Chicago, New York-St. Louis, and New York-Dallas markets. Similar relatively noncontroversial route changes, often of great benefit to the public, would be much more difficult during the transition period. Indeed, any application to extend a carrier's route to a significant off-route point would automatically involve one-stop issues in a large number of other major markets. Any competing application by another carrier to serve any of these other markets might well have to be heard simultaneously, and that could draw into the hearing even more markets. Thus, every hearing would tend to expand and involve the entire domestic route network.

Pretrial restrictions, the Board's major tool in keeping its route cases within manageable bounds, would be gone. This provision, coupled with the route-award procedural deadline and automatic-grant provision of section 5, could conceivably result in total deregulation of entry within a year or two.

The companion provision of the Administration bill for removing all existing restrictions would, effective January 1, 1981, substantially eliminate any remaining route regulation. For instance, the number of authorized competing carriers in the New York-Los Angeles market could precipitously and automatically increase from three to nine, that is, every domestic trunkline carrier plus Pan American, but not Continental and Western, which do not serve New York. This result seems arbitrary. New York-Chicago carriers would increase from three to fourteen. National Airlines would automatically become an authorized New York-Atlanta nonstop carrier, even though its present "authority" is solely to fly by way of Miami and San Francisco. It could either exercise its newly acquired direct New York-Atlanta authority, or under the Administration bill, could sell that authority to another carrier. Similar results could obtain in hundreds of markets. In some modest-sized markets which can sustain service by only one or two carriers, a half-dozen or more could automatically be authorized. On the other hand, in monopoly city-pair markets where no other carrier currently serves both cities—and there are a good number of those—no competition would be created.

The Board favors the removal of operating restrictions which are unneeded or obsolete, or where removal would fulfill an unmet public need. To accomplish this, we have adopted special expedited procedures. We cannot support the Administration's proposal because of its potentially perverse effects during the transition period and its abrupt abolition of virtually all control on operating authority on January 1, 1981, with some apparently arbitrary exceptions—a date on which we have no basis to be certain that

the system will be prepared for such a sweeping change.

In the rate area, the Board would be precluded from requiring a carrier to charge a passenger more than its "direct costs." "Direct costs," however, exclude not only depreciation, interest, capital costs, route development costs, general and administrative costs, and overhead in general, but also exclude any part of the costs on operating the airplane if it would have flown without that passenger.

"Direct costs" would apparently include only the out-of-pocket costs of making the passenger's reservation, writing and collecting his ticket, handling his baggage in the terminal, and feeding him. For a standby passenger with carry-on luggage on a no-meals flight, "direct costs" would be essentially zero. The Administration's proposal leaves us uncertain as to what is intended with respect to minimum rates, since we are not aware of any instance in which a carrier has sought to charge less than "direct costs" as defined in the bill, except in the case of free transportation.

Regarding maximum rates, the Board could not suspend any tariff increasing fares ten percent above the level prevailing a year earlier. This might be reasonable enough in time of inflation when carriers' unit costs were increasing by ten percent a year. But in a time of stable or even slowly rising unit costs—and absent the threat of competitive entry—this provision could result in fare levels out of line with reasonable costs.

Finally, although the Administration bill proposes rigid deadlines in some areas, in others it could slow down the Board's functioning. For instance, it would empower the Attorney General or Secretary of Transportation to require the Board to hold a full hearing before approving any intercarrier agreement, however innocuous it might be, without giving any reason. In the areas of mergers, the bill would enable the Attorney General to secure a trail de novo in the District Court after the Board has completed its hearing and decision on a proposed merger. This provision would, as a practical matter, effectively preclude virtually any merger opposed by the Attorney General, regardless of its merits.

The Administration's bill, in summary, although its objective is similar to the Board's contains many provisions that are insufficiently thought out, and could have, it seems to us, incalculable and unintended effects on the carriers and the air transport system. Moreover, contrary to its stated purpose to promote new entry, it has provisions which may actually impede new entry.

By removing virtually all Governmental powers to monitor, supervise, and oversee the air transport system during transition, they fail to provide any safeguarding mechanism to protect the consumer or the air transport system from unanticipated and possibly serious adverse consequences. This is the bill's most serious and dangerous drawback.

THE BOARD'S REFORM PROGRAM

The Board proposes a program of regulatory reform in which it would be given a new policy directive by the Congress, a number of new standards to apply, a variety of new tools with which to accomplish the changes in regulatory policy which Congress wants accomplished, and flexibility to phase in change. Within the scope of the new statutory mandate, and with appropriate Congressional guidance for orderly transition, we would monitor the transition to a more market-based regime, and take protective action where needed to prevent unacceptable disruptions in the system. We ask Congress to take out of the existing Act some of its existing rigidities and arbitrary features, not to bring new ones in, as the Administration's bill would.

Time does not permit me in my testimony to discuss all the features of our reform program. At this time I want to mention a few of its principal thrusts.

In the materials submitted to you today the elements of the Board's program are set forth in some detail. These will, we hope, receive scrutiny and discussion as you consider the basic issues of the direction of regulatory policy. As you decide these issues, the Board is prepared to work with this Committee in the development of specific legislative language.

One further caveat is essential. The Board has pending before it a number of extremely important proceedings. We are, as you know, a regulatory agency required to decide specific cases on the basis of the evidence produced for the record in those proceedings. The pendency of these matters does not relieve the Board of its responsibility to offer the Congress its best judgment on the future of aviation regulatory policy. I can assure this Committee that all cases brought before the Board will be decided on the basis of the record and in light of our understanding of the existing statutory mandate.

The Board's recommendations cover the broad range of its regulatory responsibilities. The first major portion of our program is designed to reduce the scope of regulation by increasing the number of unregulated zones of activity in specialized areas of air transportation. Specifically, the Board supports legislation which would essentially remove existing economic regulation of charter transportation and domestic air freight. We also support amendments which would expand the zone of unregulated air-taxi and commuter operations.

These zones—charters, freight and air-taxi and commuter operations—are specialist areas where free competition should benefit all concerned and where Board regulation serves only limited purposes even at present.

Open entry into these fields could—as it has done in the past—provide a training ground for companies that aspire to trunkline or local service status. In all these areas, the Board proposes to retain its powers regarding unfair practices and unfair methods of competition.

In addition, we propose that the Board's mandatory jurisdiction over mergers, consolidations, acquisitions of control, and the like, be modified in those areas in which entry regulation has been removed so as to eliminate routine and unnecessary procedures and replace them with discretionary jurisdictional powers.

The second major element of the Board's program contemplates that regulation of the trunkline and local service sectors should place greater emphasis on the promotion of competition and carrier efficiency. This part of our plan calls for substantially increased price flexibility and greater opportunity for competition, particularly by encouraging new entry into the various levels of the industry.

Of crucial importance to these goals is a revision of the statutory declaration of policy currently set forth in Section 102 of the Federal Aviation Act. We view as essential, an amendment of the policy statement which would unambiguously favor competition and new entry and, at the same time, explicitly relieve the Board from the responsibility of protecting the "security of route" which is a major underpinning of the current statutory concept of air transportation regulation.

We also propose that the Federal Aviation Act be amended to authorize the Board to adopt regulations providing for expansion of existing route systems, including the removal of existing certificate restrictions and the limited creation of new route systems, by carriers demonstrating fitness, through procedures which are less cumbersome than those presently required. We recommend repeal of the existing statutory restriction which prohibits a single carrier from holding certificates for both scheduled and supplemental service. This is a key element of the reform program because, as a practical matter, potential competition in the scheduled field is most likely to come from existing supplemental carriers, rather than completely new entrants. Such entry would not be automatic, but the legal impediments to its authorization should be removed.

On the pricing side of the regulatory equation, we recommend that Congress amend the rule of ratemaking in section 1002(e) of the Federal Aviation Act to indicate clearly a statutory preference for competitive interplay. Coupled with this we have suggested specific amendments to the Board's suspension and investigation powers over tariffs.

We would retain the existing tools for dealing with problems of discrimination, preference and prejudice, but beyond that, the Board's power over fare filings would be limited only to those fares which are higher than a Board-determined reasonable maximum, which are predatory or so low as to cripple adequate service. However, as the effects of freer entry and competitive pressure are felt within the system, the carriers would be given greater flexibility to raise fares, as well as lower them. Our proposal would place additional limits on the Board's powers over rates charged in the segment of the industry—such as air freight—in which we favor removal of entry and exit restrictions.

There are several other important facets to our recommended program. Procedural expedition, changes in antitrust immunity, subsidy reform, charter liberalization, and amendments to the sections governing the carriage of mail are all proposed. In particular, we propose an amendment which would make the termination of service a decision dictated by the marketplace to a much larger extent than may be the case today, subject only to a permissible period of delay to allow substitute service to be arranged.

In many cases these proposals are closely interrelated. For instance, reorganization of the subsidy program must be considered in conjunction with the authorization of air taxi operators to use larger aircraft, since this creates the possibility of direct competition on certain subsidized local service routes. Therefore, the Committee should consider our proposed reforms as an integrated package. You should also recognize that our evaluation of these reforms and others which you have or will have before you is not yet complete.

If the Congress concludes that changes to the regulatory system should be made, the Board has presented what it believes to be a workable alternative to the proposals already before you. We offer to the Congress for its consideration a comprehensive program for regulatory reform designed to maximize carrier efficiency and lower the cost of air transportation to the consumer by placing primary emphasis on the natural forces of the marketplace to regulate the aviation industry and by de-emphasizing the extent of Government—rather than management—decision-making. Unlike the Aviation Act of 1975, our program would preserve in the Board's hands some essential regulatory tools and procedures with which to cope with the hazards of the transition period. This is necessary, we believe, to protect the traveling and shipping public to assure the maintenance of vital air transportation services.

CONCLUSION

The Congress will have to decide the issues we are discussing today. The Committee system places upon this Committee the responsibility in the Senate for the primary analysis and the initial judgments as you attempt to reconcile conflicting views.

The choices are difficult. Whatever Con-

gress decides brings with it risks and uncertainties. For us to ignore those risks and uncertainties would be a disservice to you and we have tried to address them forthrightly. We have also tried to provide you with our best judgment regarding the direction of the regulatory policy governing commercial aviation. In short, the current recipe, which has as its primary ingredient Government regulation, should be gradually but definitely altered so that the primary ingredient becomes the forces of the marketplace. Our view of public responsibilities leads us to believe that the process of change should be gradual and provide some safeguards during the transition. The management of this change will not be easy, but we believe it can be done.

The specific provisions of the various proposals now pending before you are vehicles for further deliberation as you shape your decisions.

Mr. Chairman, the Civil Aeronautics Board has the responsibility of assisting you and your colleagues in thinking through these difficult issues. We are prepared to work with the Committee to further your deliberations and to develop the specifics of any legislation which reflects your best judgment.

ISRAEL INDEPENDENCE DAY AND THE JEWISH HERITAGE OF AMERICA

Mr. KENNEDY. Mr. President, today marks the 28th anniversary of the founding of the State of Israel. It is a special day which all Americans can join Israel in celebrating. On this day we pay tribute to a people and a nation whose struggle for peace and freedom is one very much our own. And in this Bicentennial Year it is also especially appropriate that we honor the role our Jewish ancestors played in the development of our great Nation.

No nation merits our continuing support more than Israel. During her first 28 years, the State of Israel has endured more trials, fought more battles, and overcome more obstacles to its survival than most nations experience in 200 years of history.

Yet, in many respects, Israel's struggle for liberty goes back centuries. For the dream of a Jewish homeland is as ancient as the heritage of Israel itself. And that vision has been kept alive throughout the ages by the faith of all Jews, and in their continuing belief in the words of Israel's prophets.

That spirit triumphed 28 years ago. And the land of Israel—a land of immigrants and a land of hope—became a free and independent nation where Jews in exile could return to the land of their fathers—to be in Jerusalem once again. For Israel is a haven—perhaps the only one there is—for a people who have given the world so much and have been its victims all too often.

And since that hour when Israel's first Prime Minister—David Ben-Gurion—proclaimed a new freedom in an ancient land, the United States has stood side by side in Israel's quest for peace. A peace that would end the suffering, a peace that would end the hatred, and a peace that would last forever.

I am proud of our special relationship with Israel and her people. I am proud of her accomplishments. For these 28 years have been a time of fulfillment and a time of realization, and a time of building.

It is not always easy for Americans to understand the unique burden of the people of Israel.

We do not live in a sea of threat and hostility. We do not pass each day in the face of war. And we do not lose our sons and fathers in the constant defense of our homeland. But the people of Israel do.

Yet Israel is like the United States in many ways—we share much in common. And these similarities are the cornerstone of our bonds of friendship, and the foundation of our support for this beleagured nation.

Both nations won bitter fights for independence. Both acknowledge the supremacy of moral law. Both believe in individual as well as national liberty—and both will fight to maintain that liberty. For the values of American democracy and social justice course through the history and life of Israel. And whether here, or in Israel, we must stand for their preservation and protection.

The United States is the oldest republic, and so it is fitting in this Bicentennial Year that we, the oldest republic and the youngest people, pay tribute to Israel, the youngest republic and the oldest people, and reaffirm our commitment to her today.

Let all nations know that our commitment to Israel is continuing and real. Our pledge is firm, the bond will not be broken. The United States will do all it can to provide Israel with the means to defend her security until she enjoys a peace which she has sought for 28 years.

No people deserve this more than those we honor today.

Two hundred years ago, just as 28 years ago, the Jews of Europe came to a new land in search of freedom, and a haven from oppression and tyranny. Even before our Nation's independence, Jews could be found in the new world.

The first organized settlement of European Jews in the United States dates back to the 17th century when several families organized the first Jewish congregation in Newport, R.I. And according to historians, it is claimed that the earliest recorded date of a European Jew arriving in America is in 1648, when in my home State of Massachusetts, Issac Abraham—a respected man of commerce—sold one of his vessels in Boston.

The ordinary men who fought for America's independence, and at times just endured, were the men who fought for America's freedom, and among them were Jewish Americans.

One was Issac Solomon, a member of the Marblehead, Mass., colonial regiment that fought against the British at Bunker Hill. He is the only revolutionary soldier who signed a payroll by writing his name in Hebrew letters.

To this day their monuments endure. In Boston, when the Bunker Hill Monument was under construction in 1840, the civic leaders of Boston could build no more from lack of funds and community support. Then one of New England's most famous citizens—Judah Touro—came forward and rallied the citizens of Massachusetts to complete the task.

Others soon followed. From Russia and Holland, from England and Ireland, from every European nation, the Jewish people joined the steady tide of new immigrants to a new land. They came to Boston, to New York, and the cities and towns of America. They pioneered their way across the Nation. And as they reached the shores of America, they soon began to leave their legacy in all facets of American life.

Wherever we look, in business and the labor movement, in literature and the law, in medicine and public service, in defense of the equality of all Americans, at every level of our Government, we find citizens of American Jewish heritage. Indeed the Jewish experience in America serves as an inspiration to all Americans and people everywhere who treasure man's greatest right—his right to be free.

In many respects, it is far too difficult to list the accomplishments of America's Jews. From a heritage, a culture, and a religious tradition comes a spirit which is fully integrated into the values of America and her way of life. And that spirit of righteousness and equality is the pillar of our Nation's democratic heritage.

In this Bicentennial Year, in my home State of Massachusetts as across the Nation, let us honor the people of Israel on their independence day. Let us pay tribute to America's Jewish heritage. Let our two nations join together to bring security and peace to the Middle East. For Jewish Americans have found a home in a grateful nation. Their spirit and determination to pursue a life dedicated to the preservation of America's heritage serves well to remind us that we are a nation of immigrants.

"MICHIGAN DAY" IN THE NATION'S CAPITAL

Mr. GRIFFIN. Mr. President, earlier this morning, my senior colleague from Michigan (Mr. PHILIP HART) and I took part in a ceremony on the Capitol steps to launch "Michigan Day" here in our Nation's Capital throughout this day. There are a number of programs planned to focus on the many important historical and cultural contributions made by our great State of Michigan to our Nation.

"Michigan Day"—which was set up by the District of Columbia Office of Bicentennial programs—will be marked by a number of appearances by outstanding Michigan artists performing the works of native-son composers. Among those performing today are: The Wayne State University Band; Mountaineer Magic of Iron Mountain High School; the Queen's Guard Drill Team of Central Michigan University; the Menominee High School Swing Choir; The Jills of Bloomfield Hills; the Detroit Mormon Choir; the Okemos High School Orchestra; and the Pernambuco Quartet of Western Michigan University.

"Michigan Day" is a happy day for all Michiganders; it gives us an excuse to do even more boasting about the wonders and achievements of our State.

A little later in this month we will be observing "Michigan Week," May 15–20, back in our State. I am now wearing one of this year's booster buttons that proclaims our theme, "Michigan—Pioneer in Progress."

"Pioneer in Progress." That sums up Michigan pretty well. There is a lot we are proud of about our State, and for a great many reasons.

Many people who think of Michigan, I suppose, think first of cars. And football teams. And breakfast cereal. And the Motown sound. But there is more, much more.

First, there is her scenic beauty, nestled among the Great Lakes and carpeted with rich forests and rolling farmlands. With 11,037 inland lakes—Minnesota claims only 10,000—and with 36,000 miles of rivers, you can stand anywhere in Michigan and be no more than 6 miles away from a lake or stream. No State save Alaska has a longer shoreline and none has more parks and recreation areas.

Then, there is Michigan's strategic location, so crucial to the development of the continent that it was bitterly fought over for centuries. Four flags—those of England, France, Spain, and the United States—have flown over Michigan during her colorful history.

Today, Michigan is a strategic link in the St. Lawrence Seaway and boasts four international seaports. One of them, at Detroit, is actually closer by sea to London than is New York City. At Sault Ste. Marie—which incidentally was founded in 1688 and is the oldest town between the Alleghenies and the Rockies—the shipping locks handle more traffic every year than does the Panama Canal.

Michigan's size also makes her special. The Upper Peninsula alone is bigger than Connecticut, Delaware, Massachusetts, and Rhode Island combined; Ironwood in the Upper Peninsula is as far west as St. Louis, Mo.; Port Huron in "the thumb" is as far East as Greenville, S.C., or Asheville, N.C.; Hancock, also in the Upper Peninsula, is farther North than Montreal.

In Michigan you will find the largest limestone quarry, the largest commercial copper deposit, and the largest variety of minerals in the world.

From these blessings of nature, our State has developed important lumbering, fishing, mining, and farming industries. That Senate bean soup you had for lunch is made from Michigan beans and your next piece of cherry pie will probably be made of Michigan cherries. We grow more of both than anybody else.

One thing that might make our friends in California and New York a little nervous—Michigan now is the third-leading wine-producing State in the country and growing fast.

And we build cars, millions of them every year, leading the world in automotive production.

All of that is the Michigan that people can hear, see, touch, and taste.

But her contributions to the world of ideas are more intangible. Michigan has drawn her citizens from all over the world—Germans to Frankenmuch, Dutch to Zeeland and Holland, Finns to the Upper Peninsula, Poles to Hamtramck. Five of our 83 counties are named for counties in Ireland, and one for Queen Isabella of Spain.

Her universal appeal has made Michigan a leader in education. The University of Michigan was the first State university established by vote of the people through their constitution. Michigan State University was the first land-grant college. Michigan was the first State to guarantee every child a tax-paid high school education and the first to provide for public libraries in its constitution.

This is part of what makes Michigan a true pioneer in progress.

But the secret of that progress lies not in our State's beauty, or in her wealth of resources, or in her economic and intellectual strength. It lies in Michigan's people—Michiganders like those who are celebrating here today.

People are Michigan's most important product.

Out of our great ethnic diversity have sprung outstanding industrial and labor leaders, distinguished scientists and educators, great athletes and artists, astronauts and artisans, public servants in the courts, the Congress and in the Presidency of the United States.

Michigan's Number One Citizen, our friend, President Ford, joined in the "Michigan Day" observance by sending a message to the many who were gathered on the Capitol steps. I ask unanimous consent that a copy of President Ford's message be printed in the RECORD.

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

THE WHITE HOUSE,
Washington, D.C., May 5, 1976.

We now mark the beginning of our Third Century as an Independent Nation as well as the 200th Anniversary of the American Revolution. For two centuries our Nation has grown, changed and flourished. A diverse people, drawn from all corners of the earth, have joined together to fulfill the promise of democracy.

America's bicentennial is rich in history and in the promise and potential of the years that lie ahead. It is about the events of our past, our achievements, our traditions, our diversity, our freedoms, our form of government and our continuing commitment to a better life for all Americans. The Bicentennial offers each of us the opportunity to join with our fellow citizens in honoring the past and preparing for the future in communities across the Nation. Thus, in joining together as races, nationalities, and individuals, we also retain and strengthen our traditions, background and personal freedom.

I am most happy to welcome the fellow Michiganders who are gathering in our Nation's Capital for the District of Columbia's Salute to Michigan program. Special activities such as "Michigan Day" are helping to make our great national celebration a memorable and meaningful one for all.

GERALD R. FORD.

PERFORMANCE OF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. WILLIAMS. Mr. President, yesterday, Senator JAVITS and I issued a statement, as chairman and ranking minority member of the Senate Labor and Public Welfare Committee, containing our views on the performance of the Equal Employment Opportunity Commission. Our statement reflected, in part, an update on the committee's oversight of the Commission and, in part, our views on the recent spate of news media coverage of the Commission's operations. I ask unanimous consent that this statement be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. WILLIAMS. Nearly 1 year ago, Senator JAVITS and I reported to the Senate on the committee's continuing oversight of the Commission and about our concern about the need for effective equal employment opportunity enforcement by all responsible Government agencies. At that time, we indicated that we would continue our efforts to work with the Commission to more effectively administer its mandate, and expressed a hope that cooperation with the committee would improve the Government's overall equal employment enforcement effort as well as increase benefits to those individuals who continue to suffer discrimination in the workplace.

During the last year, this cooperative effort has, I believe, been beneficial. The flow of information between the Commission and the committee has been constructive, both for us and for the Commission. We have been able to express our concerns about the operations of the Commission to the top management personnel of the agency, and they, in turn, have kept us informed of improvements and changes that have been made. Last fall, for example, the Chairman of the Commission, at the committee's request, submitted to us a comprehensive and detailed report on changes in the management of the Commission and improvements in its operations. I felt this report indicated a good direction. And there has been progress during the last year, both in the increased level and effectiveness of enforcement and a higher rate of charge resolution. It is unfortunate that the pending departure of the current Chairman, Mr. Lowell Perry and other top management personnel, as well as the recent press coverage of the Commission's activities, may now set back some of this progress.

This is not to say that the Commission does not have many continuing problems in its administration and operations, and I do not think that the news media has either distorted the facts or has been unfair. We are all aware of the continuing intolerable backlog of pending charges at the Commission and the relatively low level of compliance activity. We are also aware of the continuing internal problems. But I believe, Mr. President, that these problems can be overcome, they must be overcome. Equal employment opportunity continues to be an issue of high national priority, and the Commission must fulfill its responsibility to effect this important goal. The committee will continue its cooperative efforts in this regard, and we look toward further improvement in the implementation of this important law.

EXHIBIT 1

JOINT STATEMENT OF SENATORS WILLIAMS AND JAVITS ON EQUAL EMPLOYMENT OPPORTUNITY ENFORCEMENT

A recent series of articles, editorials and extensive commentary in the news media has once again drawn public attention to the Equal Employment Opportunity Commission. These have raised serious questions about that agency's ability to fulfill its obligations under Title VII of the Civil Rights Act of 1964. As the Federal agency to which Congress has assigned the predominant responsibility for insuring that all American workers—not just minorities or women—have an equal right to work up to their full potential, it has a vital role in promoting this nation's economic growth and social development.

As the Chairman and ranking minority member of the Senate Labor and Public Welfare Committee, which has oversight responsibility over the Commission, we are concerned by the continuing failure of that agency to fulfill the important obligations assigned to it in 1964 by the Civil Rights Act, and the enforcement responsibilities assigned to it in 1972 by the Equal Employment Opportunity Act. Nearly one year ago, we reported to the Senate our continuing concerns in this regard and admonished the Commission to correct its problems and get about the business of enforcing its mandate. We also noted at that time that we would continue our investigation and monitoring of the agency, and would take whatever actions are within the Committee's authority to improve the Commission's performance.

We regret that continuing committee oversight appears to confirm the disheartening conclusion that this afflicted agency, over its more than ten year history, has had meager impact on employment discrimination which continues to pervade many employment practices in this country. Especially in our society, which so often equates vocational accomplishment with individual worth and social status, the moral and legal standards of equal opportunity set forth in the Civil Rights Act must be rigorously pursued by all of our institutions. Failure to establish and follow a strong leadership role at the Federal level through the Equal Employment Opportunity Commission is unacceptable. The Committee on Labor and Public Welfare will pursue its evaluation of the Commission to identify its weaknesses, and strengths, and recommend corrective action.

We also call on the President to bring the weight of his office to bear on EEOC's problems, and ask him to evaluate the resources and support provided to this agency. The President can complement our efforts by pursuing his own evaluation of the Commission and recommend the steps necessary to reform and to strengthen its operations.

The most recent public revelations of problems besetting the operation of the EEOC stem from information contained in a series of internal audits initiated by its Chairman, Mr. Lowell Perry. These reports have been made available to the Labor and Public Welfare Committee and are currently being reviewed and evaluated. Although the charges and allegations contained in these reports have not been verified, they certainly raise serious questions about the organization and management of the Commission's 32 district offices and of its headquarters as well. The Committee will examine these reports in light of its continuing investigation of the Commission. We note that at the Commission's last meeting on April 27, it adopted a resolution calling for its own analysis of these reports, which contemplates disciplinary proceedings in cases of individual misconduct if substantiated, and referrals to the Department of Justice when possible violations of criminal laws are found.

Our view that the important goals embodied in Title VII of the Civil Rights Act must be fully attained has prompted us to monitor and evaluate the Commission's performance continuously through ongoing oversight by the Senate Labor Committee. Our actions in this regard, which have also involved extensive staff effort, have unfortunately continued to reinforce our findings that the Commission is still plagued by internal problems which significantly hamper the attainment of Title VII's objectives.

In order to provide the committee with a thorough report on the Commission's operations, we requested the GAO, shortly after the adopting of the 1972 amendments to Title VII, to conduct a comprehensive investigation of the Commission's operations. This GAO investigation has been in progress since that time and has been an important part of the Committee's continuing oversight of the agency. In August of 1974 the GAO provided a preliminary staff report of its findings which noted a number of problems experienced by the Commission and offered preliminary corrective suggestions. At that time we requested the GAO to continue its investigation and to provide the Committee with an expanded and more detailed report. The GAO has nearly completed a comprehensive program review of the EEOC, and we have requested it to expedite this report and submit it to the Committee at the earliest practicable date.

It is vitally important that we have the most current and accurate information about the organization and management of the EEOC, by hearings or otherwise, to evaluate the Commission's effectiveness in bringing relief to individuals who have suffered employment discrimination and in reforming systematic discriminatory practices where they are found to occur. We are examining, for example, the allocation of the resources to the Commission's field activities, the staffing and performance of district and regional offices and litigation centers, the utilization of state fair employment practice agencies, and the systems used to measure the quality of investigations in the entire compliance effort. We are also evaluating the Commission's strategy in investigating systemic discrimination to determine whether its resources are being brought to bear where they will have the greatest impact. Further, the Committee is analyzing the use of employment statistics required of employers, the effectiveness of the EEOC's follow-up of conciliation agreements and consent decrees, and the extent of coordination with other Federal agencies having equal employment responsibilities.

Deficiencies in these and other areas have been noted in previous reports of our Committee. Nevertheless, it appears to us that the Commission has failed to correct the majority of these problems, and continues to fail in fully and effectively implementing its mandate.

It is particularly disturbing that the EEOC also continues to suffer from a lack of continuity in its top management. This problem may well be a substantial underlying cause of many of its problems. Since its inception, the Commission has had seven chairmen or acting chairmen, and ten executive directors or acting executive directors. Although policy responsibility is shared among the five commissioners, administrative responsibility rests with the Chairman who has the power to appoint the executive director and other senior officials of the agency. Therefore, continuity in almost all of the Commission's operations, including supervision of field compliance activities, has been sorely lacking.

This leadership turnover persists, as evidenced by the recent announcement by Chairman Lowell Perry that he is resigning effective May 15, 1976. Because these frequent changes in leadership and policy direction complicate and frustrate management control, and contribute to fragmentation, we call on the President to exercise great care in the prompt selection of a new Chairman for the agency. The candidate must be both committed to the purposes of Title VII and to staying on the job, and must be willing to take prompt and decisive action to correct the problems besetting the Commission. The EEOC cannot afford either ineffective leadership or a short-term commitment. We will certainly cooperate with the President in every way possible to achieve this aim.

The failings of the Commission are both disturbing and disheartening to us. The high expectations with which the Civil Rights Act established the Commission in 1964 have not been fulfilled. Such empty promises underlie the distrust of many citizens with government. The Commission's supporters in the Congress cannot countenance such a disappointment.

The Commission's continuing failure to implement Title VII may well prompt the Congress again to seek legislative solutions to achieve the results embodied in the law. We will continue our efforts in this area, and will keep the Senate fully informed of the Committee's actions and our recommendations for the attainment of the goal of equal employment opportunity.

THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, many opponents of the Genocide Convention have voiced concern that the "international penal tribunal" mentioned in article VI poses a serious threat to the constitutional rights of American citizens. I have heard it said that Americans will be deprived of their right to trial by jury, or that they will be forced into a trial in some foreign court where our constitutional procedures are not followed.

If we actually read the full text of article VI, we will see that it poses no threat whatsoever to the rights guaranteed American citizens. Article VI says:

> Persons charged with Genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which have accepted its jurisdiction.

Since no such tribunal exists at present, those accused would be tried in an American court. Furthermore, there is nothing in the convention which mandates our participation in an international tribunal if one should ever be created. If the United Nations did in the future adopt a treaty providing for a tribunal, then the President would have to approve it and submit it to the Senate for ratification before the treaty became effective.

Mr. President, like most other objections to the Genocide Convention, this one concerning the international tribunal is on very shaky ground if we examine the actual wording of the Convention. There is absolutely no reason to believe that any American citizen will be deprived of his constitutional guarantees. What the Genocide Convention does in fact is reaffirm our support on an international scale of the basic human rights guaranteed in our own Constitution.

MRS. HELEN STRUBLE MELDRUM, WYOMING'S "MOTHER OF THE YEAR"

Mr. McGEE. Mr. President, a delightful lady graced my office yesterday morning. She is Mrs. Helen Struble Meldrum of Buffalo, Wyo., and I am pleased to announce she is Wyoming's "Mother of the Year" as chosen by American Mothers Committee, Inc., of the Washington, D.C., Bicentennial Conference.

Since my own mother continues to enjoy good health and happiness, I take great delight in remembering other mothers as well. It is especially delightful to pay accolades to Mrs. Helen Struble Meldrum, Wyomings "Mother of the Year."

EXPLANATION OF VOTE ON THE FIRST CONGRESSIONAL BUDGET RESOLUTION

Mr. STENNIS. Mr. President, on April 12 the Senate passed by a vote of 62 to 22 Senate Concurrent Resolution No. 109, the first congressional budget resolution. The recorded vote is shown on page S5526 of the CONGRESSIONAL RECORD for that date. I voted yea, in favor of the passage of the resolution.

As I intended to do at the time but did not have the opportunity due to the pressure of time. I wish to make a brief explanation of my vote on this legislation.

The first concurrent resolution on the budget for fiscal year 1977 establishes budgetary targets for outlays and new budget authority, estimates revenues, and from these sets forth the anticipated deficit in the budget and the resultant level of the public debt. In doing so it sets a ceiling, or cap, on spending for the year.

My vote of "yea" on this budget resolution was a vote in favor of establishing a finite cap on the amount of money that can be spent in the coming fiscal year. As a procedural matter it was the lowest spending ceiling that could reasonably be expected to receive a majority vote. Although it is too large it is better than no ceiling at all. Accordingly, I voted for it.

My vote of "yea" on this measure does not mean that I approve of the very large projected deficit. I disapprove of it. Neither does my vote mean that I intend to vote for all of the appropriations that will be proposed to carry out the expenditures set forth in this budget resolution. My vote made no such commitment, and as far as I am concerned every appropriation item must stand on its own demonstrated merit.

Mr. President, this new congressional budget procedure holds great promise for an ultimate return to balanced budgets. I approve of the procedures in the new system even though I do not endorse the large projected deficit. I hope and believe that these procedures, as they are refined and tested by time, will turn the tide against deficit spending and put the Government back on a pay as we go basis. This must be done, for the future of the Nation is at stake.

B-1 BOMBER ANALYSIS BY THE PACIFIC NORTHWEST RESEARCH CENTER

Mr. PROXMIRE. Mr. President, in order to continue the debate on the B-1 bomber, today I am placing in the RECORD an analysis of that program by the Pacific Northwest Research Center in Eugene, Oreg. This organization has examined the B-1 bomber in considerable detail and has produced a provocative article. It was written by Paul Fitzgerald, John Markoff, Roger Walke, and John Woodmansee with an introduction by G. William Domhoff.

Although I do not agree with all aspects of this analysis, it is a useful contribution to the national debate on the wisdom of procuring the B-1 at a cost of over $21 billion.

In keeping with the concept of having all sides heard in this debate, should the Air Force find any part of this analysis not consistent with their position and should they wish to make a detailed rebuttal to this article, I would be pleased to have the Air Force reply printed in the RECORD.

Mr. President, I ask unanimous consent that the analysis of the B-1 program by the Pacific Northwest Research Center be printed in the RECORD.

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

A BOMBER OBSOLETE TEN YEARS BEFORE ITS TIME

Over the past twenty years, Defense Department officials, Congressmen, and corporate lobbyists have all played their part in moving the B-1 bomber off the drawing boards and into the stratosphere. At the heart of the B-1 lobby have been a few powerful, well-connected individuals. These men have sat on the boards of America's largest corporations, bankrolled presidential candidates, occupied key posts in government, and after hours have gathered informally in the most elite social clubs.

It is this small group which is the real show behind the B-1 bomber. They are centered in Rockwell International, prime contractor for the B-1, Mellon National Bank, the seat of what may be America's largest fortune, and Hewlett-Packard, a giant electronics corporation, whose multimillionaire cofounder shepherded the B-1 bomber program through the Defense Department.

Obsolete ten years before it was built, the Rockwell International B-1 Advanced Manned Strategic Bomber will cost the American people $92 billion over the next thirty years. This cold war relic is being kept alive today by a lethal combination of powerful corporate oligarchs and aging Strategic Air Command generals.

The American people do not need a new jet bomber to protect them or to make their cities safe places to live. But because giant multinational corporations like Rockwell International have continued to guard their lucrative profit opportunities by building defense boondoggles, the taxpayers shell out for an absurd variety of new superweapons.

This new generation of death-delivering arms will cost untold billions which might have been spent on social needs in this country; education, housing, rebuilding our cities, or quick and comfortable mass transportation.

Instead, a distorted collection of corporate-dictated national priorities are leading America to the brink of disaster. These policies are fueling inflation and causing the deterioration of our communities at home, while overseas they are buttressing repressive governments to ensure the continued flow of profits back to a powerful American corporate elite.

Even though it was declared obsolete by defense experts over a decade ago, this new Air Force Strategic Bomber won't be cheap. In fact, the first prototype models cost more than their weight in gold. Weapons like the B-1 are built in part to support "Aerospace Dinosaurs," ten or twenty top-heavy corporations which depend on building these weapons for their continued existence.

Each year Rockwell International ranks among the largest defense corporations and in 1974 it was the 9th largest supplier of military hardware to the U.S. government.

In the same year, largely because it is developing the costly B-1 for the Air Force, Rockwell was the nation's largest military research and development contractor. Right behind Rockwell in second and third place were General Electric, who developed the B-1 jet engines, and the Boeing Company, who is supplying its electronic gear. The B-1 bomber is big business!

For all that it will cost them, what will the taxpayers get for their money? The B-1 is supposed to replace the B-52 stategic bomber, a somewhat dubious weapon whose only claim to fame in the last twenty years is that it dropped more tons of bombs on Indochina than were dropped during the entire course of World War II. Notably, despite all the pain and suffering that was inflicted, the B-52 had no decisive effect on the Vietnamese people's struggle for self-determination.

The B-1 is designed as a strategic bomber and is intended to join the "triad" of deterrence with America's vast arsenal of land- and sea-based missiles. As one pundit phrased it, the triad (composed of bombers and land- and sea-based missiles) is "as mystically enshrined in American military theology as the Holy Trinity."

The U.S. military has 1,710 land- and sea-based missiles which carry 7,274 separate nuclear weapons. This figure does not include the number of weapons which can be carried by the current B-52 force. If the military is allowed to deploy a fleet of new B-1s, it will expand the number of missiles to 7,566 and the number of warheads to a mind-boggling 13,130, more nuclear weapons than there are major cities on the face of the earth.

While this course of action may seem irrational to most Americans, it spells profit, huge profits, to the corporations. They are plunging ahead. Some of the biggest power-brokers in the country are pushing a fleet of 244 titanium-plated B-1s through Congress.

THE B-1 FINDS A HOME IN SOUTHERN CALIFORNIA

Without a bomber to fly much of the excitement and glamour of the Strategic Air Command would slip away. If no replacement is built for the B-52, Strategic Air Command Officers will be left tending missile silos in the Dakotas. It certainly won't be the prestigious and powerful Air Force of the past.

The Air Force is painfully aware of this and they have been hard at work to replace the B-52. "Once the bomber admirals are dead," points out I. F. Stone, "the clamor for a new bomber will die out too."

For the time being the "bomber admirals" are alive and kicking. More importantly, they have friends in high places. The Air Force has been cooking up schemes for new "follow-on" jet bombers since before the last B-52 rolled off the assembly line back in 1962.

A previous candidate to replace the B-52 was the B-70, built by North American Avi-

ation (the Southern California military-bound corporation which merged in 1967 with Pittsburgh-based Rockwell-Standard to become North American Rockwell). Only two of these space-age monsters were built because defense experts concluded that they were obsolete, even in the sixties. One crashed and the other made its last flight in 1969 to Dayton, Ohio, where it now rests in an Air Force museum.

After the B-70 was stopped the military and the corporations developed in quick succession a flock of new design studies for yet another manned bomber. Plans were developed for a Subsonic Low Altitude Bomber (SLAB), followed by the Extended Range Strike Aircraft (ERSA), Low Altitude Manned Penetrator (LAMP), Advanced Manned Precision Strike System (AMPSS), and finally the Advanced Manned Strategic Aircraft (AMSA).

The manned bomber stayed on a back burner throughout the Johnson Administration and re-emerged after Hubert Humphrey's defeat in November of 1968. During the short lame duck period before Nixon took office, McNamara's successor at Defense, Clark Clifford, a well-connected Wall Street lawyer who had made a million dollars helping the duPonts pass a special capital-gains law through Congress, put into the defense budget $77.2 million, allowing AMSA to enter the competitive design phase. When the Nixon Administration came into power, Melvin Laird, the new Secretary of Defense, accelerated the initial request by raising the budget to $100.2 million. Under the new Nixon Administration the Advanced Manned Strategic Aircraft became "our most urgent requirement."

While the more congenial relations between the bomber admirals and their new civilian colleagues in the Nixon Administration is perhaps one of the reasons for the reappearance of the manned bomber in 1969, the key reason was the new strategic and conventional military doctrines which were developed by the Nixon Administration to deal with the post-Vietnam world situation. For a variety of strategic reasons the Nixon Administration wanted a new heavy bomber very badly.

A STRATEGY TO START WORLD WAR III

Today the American people find themselves confronted with a group of leaders who are making nuclear war a matter of fundamental policy. On July 2, 1975, the Washington Post ran a headline reading: "U.S. 'First Strike' Called Conceivable." The story under the headline documented how American policy-makers were prepared to use nuclear weapons in a first strike attack:

"Under certain circumstances, the United States 'conceivably' would fire its nuclear missiles at the Soviet Union before being fired upon, Secretary of Defense . . . Schlesinger said yesterday."

In an era of proclaimed "detente" with the communist world, where giant corporations are eagerly seeking trading agreements with the Soviet Union and the People's Republic of China, our government has embarked on a perilous course, deploying an incredible assortment of new nuclear superweapons. Within three years of the signing of two separate Strategic Arms Limitation Agreements, Americans have suddenly discovered that their government is constructing an armory of new weapons which threaten the very existence of our planet.

The strategic bomber, like the aircraft carrier, is a perfect implement for an aggressive foreign policy like the new Nixon-Kissinger Doctrine. Henry Kissinger developed the Nixon Doctrine when it became clear that the United States couldn't win the ground war in Vietnam. It was designed to allow America to maintain repressive regimes around the world, but instead of sending U.S. troops, the burden of fighting was placed on native mercenaries with the support of American airpower.

The Ford Administration, which retains Henry Kissinger, the architect of the Nixon Doctrine, and James Schlesinger, one of its most articulate spokesmen, is committed to a foreign policy based on the principle of propping up dictatorships around the world which are friendly to American business. In the years ahead this will lead increasingly to the exercise of American military strength in opposition to movements for national liberation and economic justice around the world.

To borrow a phrase used by American policy makers, it will mean that the U.S. will find it continually necessary to demonstrate "a visible show of resolve" in order to maintain the status quo.

When the veil of rhetoric and equivocation is stripped away from the statements of the military and corporate supporters of the B-1 bomber, it is revealed that the B-1 will be used as an instrument of a foreign policy which has been designed solely for the advantage of American multinational corporations.

Having failed to win in Vietnam with the "science" of counterinsurgency which was developed during the Kennedy Administration, American leaders are turning increasingly to nuclear sabre-rattling today.

At least twice since 1960, American presidents have put the B-52 fleet in the air on full alert, threatening the Soviet Union with nuclear destruction if they refused to accede to U.S. demands. "The most dramatic example" of American big-bomber diplomacy, boasted Readers Digest, "was the 1962 missile crisis. For 30 days and nights, the Strategic Air Command (SAC) kept a substantial percentage of its B-52 force crowded against the U.S.S.R.'s air-defense radars. . ."

Recently Kissinger put the SAC B-52 force on strategic alert again during the 1973 Middle East War, and when he was criticized for his nuclear brinkmanship, promised a full explanation. No such explanation was ever forthcoming from the State Department.

However, there is an explanation. This aggressive style of diplomacy which relies on military power is based on the principle of the "graduated application of force." Kissinger first wrote about force and the role of strategic bombers two decades ago, long before he assumed his role as the modern Metternich of the West:

"A doctrine of graduated employment of force would enable us to escape the vicious circle in which we find ourselves paralyzed by the implications of our own weapons technology . . . If the military position of an enemy became untenable and if he were offered choices other than unconditional surrender, he might accept local withdrawals without resorting to all-out-war. If S.A.C. . . . retains its retaliatory capacity, the other side may decide that amputation is preferable to suicide. . ."

The strategic bomber has replaced Teddy Roosevelt's Big Stick as the instrument of an aggressive U.S. foreign policy. In a world where many countries will soon possess nuclear weapons this military strategy will have the effect of creating more crises than it contains. When this doctrine is viewed against the background of recent statements by President Ford and Secretary Schlesinger, indicating that the U.S. would use nuclear weapons first, it is clear that it will lead to a renewed Cold War and a new spiral of the arms race.

Even within the defense community there are significant doubts as to whether the B-1 will ever be a viable weapon in the missile age. It will take intercontinental ballistic missiles less than a half hour from launch to target. The B-1 bomber will take a full 8 hours to reach its targets.

In a nuclear war, missiles would arrive first, and strategic bombers like the B-1 would find only "empty holes" when they reached their targets. Additionally, due to the slow speed of bombers compared to missiles, it is increasingly likely that the planes will be destroyed on the ground before beginning their mission of nuclear destruction.

Bombers have become the most vulnerable of America's nuclear weapons. This vulnerability makes it much more likely that bombers will be launched early during an international crisis. This would increase the likelihood of nuclear war during such a crisis by constituting a clearly aggressive escalation. Therefore the very "flexibility" of which military planners boast makes a bomber force volatile kindling for starting nuclear wars.

The tanker fleet which is necessary for both the B-52 and the B-1 to complete their missions is also extremely vulnerable. Tankers are slow and "soft" targets. They would be sitting ducks in a nuclear war. Without tankers, even if the B-1 managed to take off, the crew would run out of fuel long before it reached its target.

There is also real skepticism among many defense experts that the B-1 can accomplish its primary mission of penetrating sophisticated air-defense systems in the 1980's. According to a report issued by the Center for Defense Information in January of 1973 the B-1 would represent very little increase in real performance capabilities over the B-52, its predecessor.

The likelihood of Soviet improvements in their air-defense system, including the development of an interceptor with "look-down-shoot-down" capability (the ability to shoot down low flying bombers like the B-1), makes a penetrating manned bomber a hopeless anachronism, produced more for the benefit of the Air Force bureaucracy and the corporations than for the defense of the United States.

These startling inadequacies have not deterred the power brokers behind the B-1 who intend to use a fleet of new bombers as a versatile tool.

* * * * *

Reagan's announcement cast a shadow of suspicion on the Pentagon's statement that the Rockwell bid had been the best deal offered, a statement which they were forced to make in the face of mounting criticism several days after the B-1 contract had been awarded.

North American Rockwell chairman Willard Rockwell Jr. admitted just one month after the B-1 contract was awarded that winning the B-1 sweepstakes was a do or die effort. "We knew that as a business we had just one more chance—the B-1," Rockwell was quoted in the July 1970 Fortune magazine. Prior to the award of the B-1 contract Rockwell was in a slump. North American Aviation, which was incorporated as the weapons and space manufacturing division of North American Rockwell, had never recovered from the blow of the Apollo Space Program disaster which killed three astronauts in a fire on the launching pad. Now with the multi-billion dollar B-1 development program Rockwell felt confident that they would turn around their ailing aerospace division.

Within two weeks after Rockwell had been awarded the contract for the B-1, Aviation Week & Space Technology, a weapons industry trade journal, reported that on the estimated $1.35 billion airframe contract Rockwell stood to gain an "incentive fee" of $115.75 million just for meeting the terms of the contract. The original contract called for the development of seven airframes, but within two years, as costs skyrocketed and it became obvious that Rockwell management could not run the B-1 program adequately, the Air Force cut that number back to four.

In 1975 the B-1 appeared to be a prime candidate for the honor of being the first major weapon-system ever turned down by Congress. A combination of cost-overruns and performance-underruns, coupled with program mismanagement and inflation nearing 100% appeared ready to shoot down the B-1 before it ever reached Russian air-defense systems.

The B-1 bomber promises to be the most expensive in a long line of exotic and incredibly costly military weapons. When it was on the drawing boards in 1969 the original estimate was a cost of $29.2 million per plane. This in itself is a startling figure, more than three times the cost of its predecessor the B-52, however, this was only the beginning of the B-1 cost spiral.

By the time the contract had been awarded to Rockwell International, the cost had already gone up $15 million per plane, before so much as a rivet had been put in place. And once Rockwell went to work, the familiar story of other military-industrial-complex cost-plus adventures was repeated.

In June 1970 when Rockwell International was awarded by B-1 research and development contract the official cost estimate stood at $44.1 million per plane for a fleet of 246 planes, including five test planes and two airframes for ground testing. At this early date in the program the projected "Buck Rogers" capabilities were beginning to be struck one by one before the first plane left the ground.

Additionally, just days after the contract award was announced, the Philadelphia Inquirer reported that the Air Force already had two sets of cost estimates for the plane, one for the public, and a real one. In a private briefing an Air Force spokesman admitted to Inquirer reporter Saul Friedman that the 20-year cost of the B-1 and its necessary accessories would be at least $43.9 billion. Despite these early admissions, the Air Force and Rockwell were to continue to deny these high cost estimates on the record for the next five years.

The first public estimate of the B-1 cost was fictitious because the Air Force had never released the original cost estimates. Instead they undertook a cost cutting effort and managed to "trim" $752 million off their first public cost estimate. This cost cutting project was known as Project Focus. It was completed by September of 1970. According to the Wall St. Journal: "It lopped off $752 million from the $10.8 billion estimate. Then in violation of Defense Department Directive 7000.3, the GAO says the Secretary's bookkeepers credited these savings retroactively, holding the bomber's first year cost growth to $1.3 billion instead of $2 billion."

The American people were not to find out about the B-1 cost-overruns for several years afterwards, but one of the immediate effects of Project Focus * * *

This was not new to the program. Before the B-1 award was given to Rockwell in June of 1970, Secretary of Defense Melvin Laird had scrapped a requirement that the B-1 be able to fly supersonically at sea level. Later, according to the same Wall St. Journal article which revealed the existence of the Project Focus overruns, Laird forced the Air Force Generals to accept reductions in payload, navigational accuracy and engine thrust. Suddenly, early in the B-1 program, the Air Force no longer seemed to have a super-duper bomber. The B-1 would now require more runway to take off from and about half of the costly avionics gear was cut out of the design . . . supposedly to lower the cost of the bomber.

By the middle of 1971, B-1 system costs had begun to shoot through the ceiling. Besides the cost of the new bomber being on the way up, the price of its nuclear tipped short range attack missiles (SRAM) was reported by the press to be nearing the $1 million mark per copy, up from a 1965 estimate of $335,000. The mission plan of the B-1 calls for it to carry up to 24 SRAMs. These missiles have always constituted one of the hidden costs of the B-1, adding billions of dollars to the final weapon system cost.

In the face of these cost difficulties Pentagon weapon managers cut back the B-1 development program during 1971. The Air Force announced that the B-1 program would be "restructured," only three airframes instead of the initial 7 would the built and only 27 F-101 jet engines would be purchased from General Electric instead of 40. These program changes took place only 8 months after the B-1 contract had been given to Rockwell International. A year before critics of the new swing-winged bomber had begun to organize efforts to stop its construction, the Air Force knew that their new space-aged flying machine was in trouble.

This new restructured program meant that B-1 performance capabilities had been downgraded for at least the third time since 1969. On February 22, 1971 Aviation Week & Space Technology announced that the B-1 "take-off performance was reduced by about 10% to cut costs," making it no quicker than the giant wide-bodied jets like the Boeing 747.

These setbacks for Rockwell and the Air Force were only the start, for it would soon become obvious that the B-1 was in real trouble. Within the next year it was announced that the weight of the B-1, a factor which was absolutely crucial to the supposed advantages of having a B-1 rather than a B-52, had begun to rise ominously. It had already risen 11,000 pounds or 7% of the total empty weight of the plane.

At the same time it was announced that the rough-landing-field capability was going to be "relaxed somewhat." This implied a further setback for B-1 proponents. Like the ill-fated C-5A before it, one of the big selling points of the B-1 had been that it would be able to be dispersed widely on many small and previously unused airports, making it a more difficult target to hit. (This was ignoring the fact that the wide dispersal of B-1s all over the country would make many places targets in a nuclear war which had not been targets before.) Losing its ability to land on short-rough fields meant that the B-1 performance characteristics were already dipping toward being no improvement at all over the B-52, and thereby effectively undercutting the Air Force's case for a new manned bomber.

At this time the Air Force admitted to the public for the first time that their development of a new-fangled crew escape capsule had fallen behind schedule. The capsule, which was being used by Rockwell as a big selling point for the B-1, was supposed to allow the crew to operate the bomber in a "shirt sleeve" environment and also allow them to "rocket to safety" if the B-1 was shot down. Perched precariously on the nose of the airplane it was supposed to drop lightly to the ground suspended by an Apollo spacecraft-type parachute after separating from the B-1. In their publicity campaign for the B-1, Rockwell ignored the fact that such a crew capsule had never been built before, and as it turned out later, it never would be put into production.

1973 was a bad year for the B-1. It was also a very bad year for Major General Douglas T. Nelson, Air Force Chief of the B-1 program, who was kicked out and replaced the next year by Major General Abner B. Martin in a general management shakeup.

"OLD-FASHIONED VIRTUES"

The year started with the release of a General Accounting Office (GAO) report which warned Congress of cost growth in the B-1 program. The GAO report revealed that one area of potential growth would be in the area of avionics (avionics are the aircraft's electronics gear), where the Air Force seemed to be intentionally underdesigning in order to hold costs down. The B-1 had the capacity to carry up to 10,000 pounds of avionics, but as designed less than half that amount was in place. The cost even for understated avionics payload was astronomical. This electronic gimmickry is so expensive that they figure its cost by the pound. In 1973 a pound of the stuff cost $1,231.

Early in 1973 Major General Nelson was still publicly saying that the final per plane cost of the B-1 program would be $35.2 million, more expensive than any plane in history, but still only a fraction of the current cost estimate of $84 million. Nelson's words in Ordnance Magazine strike a note of irony only two years after they were written:

"Don't forget some of the old-fashioned virtues: low costs from cradle to grave, reliability, and reasonable performance without trying to increase performance above that which is required."

Two years later no one around the Rockwell plant says very much about the "old-fashioned virtues."

In the middle of 1973 a second program restructuring was instituted. On July 16, 1973 it was reported that B-1 prototype production was to be "stretched" by approximately ten months and that the first flight of the B-1 was to be pushed back by two months into mid-summer of 1974. Ultimately the program fell even farther behind schedule and the first flight did not take place until December of 1974. Within a week of this announcement Secretary of the Air Force John L. McLucas revealed under questioning before the Senate Armed Services Committee that Rockwell would lose its B-1 "incentive fee." McLucas stated:

"One of the features of the contract is the so-called award fee, which is a fee which the contractor will receive depending on how well he does on the job. And obviously having gone through this slip just now, he is not going to get this award fee. The fee is based on his ability to meet the schedule, to meet the obligation which he is committed to."

Under further questioning McLucas disclosed that Rockwell was "about 15% behind schedule" when the decision to stretch the B-1 program was made. In the face of all this, by September the Air Force was putting the cost of the B-1 at about $56 million per plane. Shortly after this announcement the Senate Armed Services Committee reported that they were cutting the Air Force B-1 research and development request for the next year by $100 million. The Committee stated that the $100 million cut was an expression of their "dissatisfaction and serious concern regarding the management of this program." Later in House-Senate Conference negotiations the cut was softened to $25 million. The Air Force was going to have to take drastic steps to save their new plane, with even the most loyal military supporters in Congress beginning to ask what a plane that cost over $50 million per copy could do that was so unusual.

The biggest jolt was yet to come. In November of 1973 the Bisplinghoff Committee released its review of the management of the B-1 program. Dr. Raymond Bisplinghoff, the Deputy Director of the National Science Foundation, had been called in earlier in the year by Secretary McLucas to put together a panel of "experts" to review the B-1. Bisplinghoff was known for his close links to the defense industry and he had been called in before when another costly weapon-system, the C-5A, was in trouble. His panel of "experts" consisted almost entirely of military-industrial-complex scientists and managers. Some panel members even came from corporations like the Boeing

Company which stood to gain billions of dollars in sales if the B-1 fleet was built. Four members of the Bisplinghoff Committee were Boeing employees, but B-1 proponents chose not to see the obvious conflict of interest.

Despite the controversial circumstances under which the B-1 review took place, the findings of the Bisplinghoff panel still were a setback for Rockwell and the Air Force. They reported that the total development costs of the B-1 program, which had already gone up to $2.79 billion could increase as much as 10% more and that performance figures along a wide spectrum would be lower than the Air Force had specified. For example; the most probable empty weight of the B-1 was judged to be up 19%, while the range of the B-1 was reported as being down anywhere between 10% and 20%. Additionally, takeoff weight, thrust margin, and maximum refueled weight all had been downgraded.

Faced with an airplane which would perform at best only marginally better than the B-52, the Air Force decided on a new strategy to get their new fleet of "superbombers" through Congress. They requested that Congress fund a fourth "pre-production" prototype plane. This strategy according to analysts quoted by the Wall St. Journal, "would blur the line between development and full production, enabling the Air Force to move the plane into production a little bit at a time."

The move constituted a real gamble for the Air Force. It was one they took in the face of mounting Congresssional opposition to their new jet bomber. By this time the per plane cost of the B-1 had hit $84 million and it was obvious that the plane was headed for defeat if strong measures weren't taken.

Against the background of continually rising costs and a seemingly endless array of "cost-saving" performance cutbacks the Air Force undertook yet another study of the B-1 in attempt to quell critics. Known as the Joint Strategic Bomber Study Group Report, this one was strictly an in-house affair.

According to a letter written by Senator Thomas McIntyre, Chairman of the Research and Development Subcommittee of the Senate Armed Services Committee, 24 of the 30 study contributors were Air Force officers or civilian employees of the Air Force, and one of the three advisory committee members was an Air Force general officer. Apparently the Air Force was more interested in being able to present a classified report which argued that the B-1 was more "cost-effective" compared to alternative weapon systems of similar cost, than in evaluating whether or not there is actually a need for a new bomber at all.

McIntyre wrote in his letter to Defense Secretary Schlesinger:

"Despite this unmistakably clear Congressional interest in having a full and objective evaluation of the B-1 and its alternatives, I am writing to you now to express my deep disappointment that the Joint Strategic Bomber Study failed to meet these standards of completeness and objectivity and, therefore it is most inadequate as a tool in forming a Congressional decision about the B-1."

McIntyre's attack on the Air Force study, which had been designed to show that the B-1 was the best deal for the money, no matter how great the sums were, forced the Air Force to abandon this line of argument when they appeared before Congress this year. With the official estimate of the cost of a fleet of B-1s, without weapons, a new tanker fleet, adequate avionics, or operation, maintenance or spare parts, already reaching $20.6 billion in real dollars, the Air Force decided to blame skyrocketing costs on inflation.

There are at least two things wrong with the Air Force's claim that most of the growth in the B-1 program cost is due to inflation. First, military spending on tremendously costly weapons like the B-1 is one of the principal causes of inflation.

Thirty years of vast military spending since World War II has had an incredible inflationary effect on the American economy and the price has been paid by people on low and fixed incomes. They have seen their ability to buy the things they need to live stolen from them by an all-pervasive military-industrial machine created by the corporate elite.

Second, although the Air Force claimed in testimony before Congress this year that only 12% of the total cost increase of the B-1 program was from "real" cost growth (the rest was blamed on "inflation") their figures are deceptive because growth estimates are based on an original plane (the one of the drawing board in June 1969) which is very much different than the real plane that is flying today.

Since making the original cost estimate the Air Force has made the following major design changes:

The crew capsule which was supposed to allow the crew to "rocket to safety" was dropped after it proved impossible to engineer one that would work at speeds in excess of 300 MPH. It was replaced by individual ejection seats after the Air Force had spent over $100 million attempting to develop the crew capsule and Rockwell had advertised it widely as a "state of the art" wonder.

The ability of the B-1 to fly supersonically at sea level was dropped by Secretary of Defense Melvin Laird in 1969. Six years later on June 16, 1975 the Air Force announced that it was dropping the B-1's projected capability to fly faster than twice the speed of sound at high altitude by taking special variable engine inlets out of the B-1. Shortly after this, Representative Les Aspin of Wisconsin charged that the B-1 would never fly supersonically on its missions: "Because of the high fuel consumption involved in supersonic flight, it is expected that the B-1 with current and projected Soviet defenses will never fly a supersonic mission."

The B-1 will weigh more, possibly as much as 26% more than the original design called for according to the Bisplinghoff report. This not only will mean that the B-1 would need longer runways to takeoff from, but it will seriously impair the all-important thrust-to-weight ratio which determines the plane's agility while in the air.

The highly publicized ability of the B-1 to carry more than twice the bomb load of the B-52 may be a myth. General Ryan, the Air Force Chief of Staff estimated that a "normal payload" for the B-1 would only be 15,000 to 20,000 pounds, possibly even less than the B-52.

As a consequence of these and other design changes, the $35 million Air Force swing-winged wonder has turned out to be a $84 million slow-flying turkey. Although Rockwell and the Air Force claim that inflation explains most of the program cost growth, they are comparing two different planes. The B-1, if it ever goes into full production, will not be a miracle of Rockwell International Twenty-First Century know-how, but rather, merely another example of defense industry cost-plus-blundering.

THE REAL COST

What will the real cost of the B-1 be? Today the Air Force is admitting to a per plane cost of $84.43 million, which would mean a total cost of $20.6 billion between 1970 and 1985. In common language this would mean $100 for every person in the United States. This Air Force estimate is barely the tip of the iceberg. One independent estimate made by Princeton engineer Bruce MacDonald, and reprinted in the Congressional Record on May 6, 1971, indicates that the total cost including procurement of SRAM missiles, warheads, a new fleet of 255 jet tankers for refueling the B-1, a 13 percent overrun allowance, and operation and maintenance of the B-1 fleet until 1995 will cost a staggering $75 billion.

Spokesmen from Rockwell International have professed astonishment at these figures, but have not refuted them. One Rockwell official wrote in a letter:

"Contrary to published reports, there is no production contract for the B-1, so estimates (and some I've seen are so wild that they are ludicrous) about huge overruns on B-1 production are just so much guessing. In fact with inflation going the way it is today who can guess what anything will cost in 1979 or 1980. It might cost 25 cents to buy a daily newspaper by that time!"

If you were going to buy a house, what would you think if your contractor told you that its price was "just so much guessing?". By saying that there is no production contract yet awarded on the B-1 Rockwell has cleverly avoided admitting the stunning total cost of building a new fleet of useless strategic manned bombers.

A more recent estimate by the authoritative Center for Defense Information indicates that the ultimate cost of buying a new fleet of bombers may be even higher than the $75 billion figure first estimated by MacDonald in his 1971 study. A $75 billion B-1 bomber would equal $348 for every man, woman, and child in the United States. However, the Center for Defense Information study released in June of 1975, predicts that the actual cost of producing and maintaining a fleet of B-1s for thirty years will reach $92 billion!

This amount is so great it defies comprehension. The entire war in Vietnam cost $110 billion. Now Rockwell International and the Pentagon are planning on spending almost as much on a titanium-plated, swing-winged flying dinosaur.

What will the American people get for their $92 billion? The Pentagon claims that they will be getting national security and the ability to "deter" aggression around the world. But a down-to-earth assessment of the B-1 bomber reveals that the billions for bombers will really buy international crises and the danger of new world wars, the continued existence of a massive militarized sector of our economy which produces nothing of social value, millions of unemployed put out of work by a type of government spending which creates far fewer jobs than equal spending in the social sector, and perhaps most ironically, it will buy a weapon which was obsolete ten years before it was built.

GAO REPORT GIVES EVIDENCE OF PERFORMANCE SLIPPAGE OF B-1 BOMBER

Mr. PROXMIRE. Mr. President, since my first speech on the B-1 bomber on April 26, the issue of performance slippages in the B-1 has grown increasingly important. On two occasions I have asked the Air Force for a full comparisons of the characteristics of the B-1 as first presented to Congress in June of 1969 with its present characteristics. That information has not been forthcoming.

In view of the absence of a response from the Air Force on this issue, today I am including in the RECORD two detailed charts from the General Accounting Office study of the B-1 aircraft program dated March 5, 1976. The first chart from page 13 of the GAO report,

outlines, the B-1 bomber cost estimates from 1969 to September 1975.

This data indicates that the B-1 was originally presented to Congress as a program that would cost $8.8 billion. Today the total stands at $21.2 billion. Escalation accounts for $10.2 billion.

The second chart is most interesting. It compares the changes in B-1 performance or technical characteristics since the planning estimate to Congress in June of 1969. Although some of this material has been deleted from the chart, it can be seen that the B-1 bomber's supersonic penetration speed has declined 27 percent, its payload has decreased from 32 to 24 SRAMS internally, its takeoff gross weight has been increased by 11 percent and the takoff distance has increased by 15 percent.

The Air Force has classified the statistics for changes, if any, in subsonic range, supersonic range, and maximum speed at sea level.

I do not understand why this data could not be declassified at least to the extent of allowing the public to determine if decreases in performance have occurred in these areas as well. If there have been performance degradations in these areas, the case against the B-1 would be overwhelming.

Mr. President, I ask unanimous consent that the two charts from the General Accounting Office report be printed in the RECORD.

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

B-1 SAR COST ESTIMATES

[In millions]

Description	Planning estimate June 1969 [1]	Development estimate June 1971 [2]	Current estimate [3] September 1974	Current estimate [3] September 1975	Net change
Development	$1,800.0	$2,685.0	$3,615.6	$3,884.0	+$268.4
Procurement	7,000.0	8,533.8	15,017.0	17,312.0	+2,295.0
Subtotal	8,800.0	11,218.8	18,632.6	[3] 21,196.0	+2,563.4
Logistic support and additional procurement costs	(4)	829.5	388.7	(4)	−388.7
Total	8,800.0	12,048.3	19,021.3	21,196.0	+2,174.7
Escalation included above	0	1,499.9	6,422.8	10,172.4	+3,749.6

Description	Planning estimate June 1969 [1]	Development estimate June 1971 [2]	Current estimate [3] September 1974	Current estimate [3] September 1975	Net change
Quantity:					
Development	5	5	5	4	−1
Production	241	241	239	240	+1
Total	246	246	244	244	0
Procurement unit cost	29.0	35.4	62.8	72.1	+9.3
Program unit cost (development and procurement)	35.8	45.6	76.4	86.9	+10.5

[1] Stated in 1968 dollars.
[2] Estimates are in then year dollars.
[3] As of Dec. 31, 1975, program costs had increased to $21,419,000,000 and the Air Force advised us that it is expected to increase an additional $200,000,000. They stated these increases were due to reductions in requested funding.
[4] Not reported.

CHANGES IN ESTIMATES FOR SELECTED B-1 PERFORMANCE OR TECHNICAL CHARACTERISTICS

	Subsonic range (nautical miles)	Supersonic range (nautical miles)	Maximum speed sea level (mach)	Supersonic penetration speed (mach)	Payload-internal SRAM's (number)	Takeoff gross weight (pounds)	Takeoff distance (feet)
Planning estimate, June 1969	[Deleted.]			2.2	32	358,000	6,000
Development estimate, June 1970				2.2	24	356,000	6,500
June 1971, estimate				2.2	24	360,000	6,500
June 1972, estimate				2.2	24	368,500	6,760
June 1973, estimate				2.1	24	389,772	6,950
June 1974, estimate				2.1	24	395,000	7,500
September 1975, estimate				1.6	24	395,000	7,500
Degradation—Development estimate to September 1975 estimate				.6	0	39,000	1,000
Percent				27		11	15

RESEARCH AND TRAINING NEEDS IN GERONTOLOGY

Mr. WILLIAMS. Mr. President, research and training provide valuable support activities for solving every day problems of older Americans and delivering vital services.

But as things now stand, research and training have a low priority in the field of aging.

This is particularly evident in the administration's fiscal 1977 budget request.

No funding, for example, is recommended for title IV training under the Older Americans Act. Yet, a critical shortage of adequately trained personnel constitutes one of the most serious problems in the entire field of aging.

This need is likely to intensify in the years ahead. In a recent report—entitled "Research and Training in Gerontology"—the Gerontological Society gave this candid assessment:

> The gap between the need for trained personnel and the capacities of present training programs is so great that there is no danger in overtraining for several decades.

Estimates made in 1973 of projected 1980 manpower requirements provide clear and convincing evidence for stepping up our training efforts, instead of pursuing a policy of retrenchment as advanced by the administration.

In 1973, there were about 5,000 managers for retirement housing. By 1980, the projected need ranges from 32,000 to 43,000. Nearly 47,000 social workers for long-term care facilities will be needed by 1980, or 27,000 more than in 1973.

Like training, money spent on research has proved to be a sound and prudent investment.

The title VII nutrition program, for example, is a direct result of nutrition demonstration projects funded by the Administration on Aging.

Today the nutrition program for the elderly provides 245,000 meals a day at 5,500 sites located throughout the country.

With the new funding under the fiscal 1976 Labor-HEW Appropriations Act, nearly 360,000 meals can be served daily.

Recently, Dr. Carroll Estes—a member of the Gerontological Society's Public Information Committee—presented compelling testimony about the need to fund research and training programs in the field of aging.

Mr. Preident, I commend Dr. Estes' testimony before the House Labor-HEW Appropriations Subcommittee to my colleagues, and ask unanimous consent that it be printed in the RECORD.

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

TESTIMONY BY CARROLL L. ESTES

Representative Flood and distinguished members of the Subcommittee, my name is Carroll Estes and I am an Associate Professor at the University of California, San Francisco. I am a member of the California Commission on Aging for which I Chair the Committee on Older Americans Act programs and the subcommittee on Constituency Concerns. I am a member of the Gerontological Society's Public Information Committee and an Executive member of one of the Society's four Sections.

I have been conducting research and teaching in gerontology for more than twelve years and have published research articles on organizational and political problems in implementing state and area programs under the Older Americans Act and on Revenue Sharing issues as they concern the aging. My most recent study was of innovative legislative and programmatic developments in aging for a sample of states (just published by the California Commission on Aging under the title, *Developments and Trends in Aging*).

The Gerontological Society is comprised of more than 4200 persons engaged in research, training and direct services to older people. As such, the Society is the largest multidisciplinary, scientific organization in gerontology in the world and it provides the leadership in the international community. The Society is concerned with the application of knowledge to services, and its accomplishment through integrated and expanded efforts between and among training, research and practice. I am here today to

share with you the concerns and recommendations of the Gerontological Society regarding FY 1977 appropriations in these areas.

The President's Budget request for FY 1977 will seriously hamper the efforts of the three units which currently fund most of the federally-supported research, training and service programs in gerontology—the Administration on Aging (AoA), the National Institute on Aging (NIA), and the National Institute of Mental Health, Center on Aging (NIMH). The Administration request for AoA for FY 1977 of $192 million represents a cutback of $52 million over FY 1976.

If you and the full Congress support the President's Budget, this would mean that more than one out of every five dollars spent by AoA in 1976 will not be available in 1977. Similarly, NIMH would suffer an 86 million dollar reduction if the Administration's request succeeds, and one out of every four dollars to be spent in 1976 would not be available in 1977. This incidentally, would virtually extinguish any hope for fiscal support for NIMH Center on Aging projects in research, training and services. Finally, the President's Budget for the NIA, while allowing for a modest increase over FY 1976, does not begin to accommodate the unique circumstances wherein these funds must support the *development* of this new Institute, which just this Spring will be acquiring its first Director and which is already delayed in being organized. NIA is the smallest of 11 Institutes of the National Institutes of Health—ranking 11th of 11—with the nearest Institute in size of resources having nearly two times the support currently envisioned for NIA. Further, the funds initially provided NIA did not represent NEW money in that they were essentially drawn (almost in toto) from the National Institute of Child Health and Human Development (NICHD) in FY 1976 (the NIH unit which previously supported research and training in biological, psychological, medical and social aspects of aging).

ADMINISTRATION ON AGING—AOA

Model Projects (Title III, Sec. 308, Older Americans Act):

The President's Budget Request for FY 1977 for Title III (Sec. 308) for Model Projects is zero. This figure is $8 million lower than the amount available in FY 1975, which had included a $3 million Congressional supplement to a continuing resolution of $5 million. This is the first time since the inception of Model Projects (FY 1974) that the Administration has requested no funds for this Title. Yet Congress has just assigned (in the 1975 amendments to the Older Americans Act) new major priorities for model projects: nursing home ombudsman, legal services, day care, and projects for older Americans not receiving emphasis under other provisions of the Act, e.g., Indians, limited English-speaking, rural elderly.

Model Projects provide a crucial mechanism for demonstrating new and innovative approaches to service delivery. Appropriations which support the demonstration of the viability of alternative strategies for the provision of social services under this Act are essential. It is worth recalling that the current Title VII Nutrition Program was begun under the Model Project strategy, which permitted the initial testing of what is now regarded by many as the most successful aspect of the Older Americans Act.

The Gerontological Society advocates an appropriation for FY 1977 of at least $10 million (the FY 1975 operative level) so that Model Projects in these innovative program and direct service areas may be carried out.

Training (Title IV-A, Older Americans Act):

Possibly no field of human and social concern more critically needs trained qualified manpower at all levels than does the field of aging. Further, gerontology is also one of the most vulnerable fields both in institutions of higher education (because of the fact of its recent developments) and in the recruitment of competent professionals, semi-professionals and para-professionals because of the prejudice and low status assigned to older persons and the pervasive negative myths and stereotypes of old age.

Although it was only in the late 1960's that small amounts of federal monies were appropriated specifically for the development of beginning programs in gerontology, the Administration proposes to eliminate all Title IV training funds for the fourth consecutive year. The Society believes that continued and increased support of training is essential if programs for the aging are to be staffed by those with adequate knowledge and skill.

As you know, training under Title IV A is divided approximately equally between short-term, in-service and longer term, career training. The portion of Title IV A funds currently supporting short-term and in-service training is administered by state agencies and focussed on strengthening program management and capability at the state and area level for both Title III and VII programs. The long-term training activities funded under Title IV-A now support programs at 58 colleges and universities, most of which are at the undergraduate, certificate or master's level, with only 11 awards in FY 1975 including doctoral training as a component.

Since reaching a high of $10 million in FY 1974 (of which $0.5 million was withheld), training support under this Title has already been effectively reduced $1.5 million (in FY 1976 and 76). What is not widely recognized is that academically-based career training was reduced more than half in FY 1974, when half of all AoA training monies went to short-term training (a pattern which has continued to the present time).

To eliminate (or severely reduce) Title IV-A training would not only result in a major setback in the educational gains which have only recently been achieved, but also in the dismal prospect of having to fund such programs in the future at many times the cost of the investment of continuing these education programs now. Also of great importance is the fact that terminating Title IV-A training in 1977 would mean the end to all training to build the capacity of state and area agencies—resulting in a direct impact on services for older persons.

To summarize, the purpose of Title IV-A training funds is to develop educational resources critical to successfully implementing the intent of the Older Americans Act. Virtually eliminating the capacity for short- and long-term training (as the President's Budget request suggests) precisely as the government augments its support of programs for the aged appears highly inconsistent with expressed Congressional goals. The Gerontological Society recommends that for Title IV-A (in-service and university programs), $18 million be appropriated for FY 1977.

Research (Title IV-B, Older Americans Act):

Research and demonstration (under Title IV-B) is primarily devoted to improving services for the elderly. In contrast to NIMH and NIA research, AoA research is related to service delivery strategies and focussed on non-biological (social) problems of aging described in the Older Americans Act (e.g., transportation, nutrition, educational needs of older persons). Research supported under this Title is particularly important in that it (1) provides knowledge critical to effective management of AoA's legislatively mandated Title III and VII programs, and (2) represents "a primary source of basic knowledge required by AoA in carrying out the legislative mandates of the Older American's Act, as amended." (Select Committee on Aging Hearing, September 24, 1975:50.)

If the President's Budget Request is accepted by the Congress, appropriations for Title IV-B research will have been reduced 36% (from $9.0 million in FY 1972 and 1973 to $5.8 million in FY 1977), precisely as the total AoA program has increased more than 180% in the same time period. The $5.8 million Administration request is barely enough to continue existing projects, not to mention the funding of new projects. The $10 million which we are requesting for research would augment the $7 million level which has been in effect for the past three fiscal years. It will deal with increased costs and provide some new funds to support research into new and important areas.

Currently the Administration is attempting to reduce the FY 1976 Title IV-B research budget by $1.2 million (cutting back AoA research from $7 million to $5.8 million) to provide for the Congressionally mandated increase in the support of State Administration (Title III) by the same amount. The Administration also proposes to institutionalize this reduction by recommending a 1977 support level for Title IV-B which represents the same 1.2 million dollar decrease suggested for FY 1976. We urge that research monies not be robbed in order to provide adequate funding for State Administration. The Gerontological Society supports the increment to State Administration but also urges the appropriation of $10 million to support the important policy-relevant research carried out under Title IV-B for FY 1977.

Multidisciplinary Centers on Aging (Title IV-C, Sec. 421, Older Americans Act:)

We were extremely gratified that the House Select Committee on Aging recommended to you the initial funding of 1 million dollars for multidisciplinary centers in the FY 1976 Supplemental Appropriations Bill. This is recognition that the Congressionally mandated multidisciplinary centers of gerontology finally must be funded. These centers would differ from Title IV-A and other federal training programs in bringing together specialists in many different fields of research and practice to learn from each other new and more comprehensive perspectives on problems of the elderly, and to improve their programmatic and legislative solutions. The most advanced training and research findings and techniques would be gathered from and disseminated to a number of fields. These centers would assist in the improvement of programs and services through technical assistance to state and area agencies.

The significance of the multidisciplinary center concept as formulated in Title IV-C, Part C (Sec. 421) is that it would link basic and applied research to practice on the regional and community levels, both in terms of the training of and consultation to staff members of public and voluntary organizations with respect to the needs of older people and the planning and development of services for them. Major advantages would accrue from the opportunities which such centers would provide for innovative, multidisciplinary efforts in teaching, research and demonstration projects with respect to the aging.

The Gerontological Society, which consists of members from many disciplines has long recognized the essential interdisciplinary nature of research and services for older people and of training for work in these aspects of the field.

The Gerontological Society urges that $8 million be appropriated for FY 1977 to carry out the intent of Title IV-C of the 1973 amendments to the Older Americans Act.

NIMH CENTER ON AGING

The Gerontological Society is pleased to recommend your support for the newly created NIMH Center on Aging by directly appropriating 5 million dollars for research

and training and services for FY 1977. Why is such a Center needed and what would it do?

The NIMH Center on Aging is needed and must be funded. *First*, because of the magnitude of the problem of mental illness among the elderly. Although representing 10% of the U.S. population, 15 to 25% of persons 65 and over suffer mental illness; they commit 25% of the suicides, and they comprise nearly one forth of all annual mental hospital admissions. *Second*, the "dumping" syndrome of older persons into institutions (and most recently, out of them) without adequate support systems is a national disgrace. This phenomenon is attributable at least in part to the myths about old age, many of which are unfortunately shared by large numbers of health and mental practitioners. *Third*, the mental health problems of the old age have created a serious economic issue; alternatives must be found to expensive institutionalization (costing approximately an average of $10,000, and in some states up to $18,000, annually for each institutionalized older American). Such alternatives are lodged in the prevention and early treatment of depression and other symptoms of mental disorders and in the development of community support systems. *Fourth*, we know that without a specific commitment to aging research, training and service, the problems of older persons will be given insufficient attention. *Fifth*, less than 1% of training and 3% of research in aging are currently supported by NIMH funds.

As it stands now, any major hope for the expansion of and gerontological progress in the field of mental health and aging probably will have to come from congressional support and continued interest. If funded, the NIMH Center on Aging would immediately—without administrative costs—involve itself in three major types of activities: (1) research; (2) training; and (3) services. *Research* will be supported which focuses on specific mental health problems of the aged, (e.g., organic brain syndrome, depression, paranoia), on the impact of institutions on the mental health of the aged; and on the relation of service delivery and family support systems to the etiology and amelioration of mental illness in aging.

The NIMH Center on Aging will involve *training* in geriatric aspects of mental illness for the staff members of the 500 Community Mental Health Centers (which, as a result of the 1975 legislation are mandated specifically to provide programs for older persons); it will stimulate the development of similar training for psychiatrists and psychologists; and perhaps most important, if funded, the NIMH Center on Aging will provide continuing education and other experimental education programs for the family members, friends and neighbors of older persons to bolster, activate and effectuate support systems available to the elderly.

Services offered by the NIMH Center on Aging will be community services, on a demonstration basis, involving the development of different models of service delivery (primarily associated with the CMH Centers). This aspect of the NIMH Center on Aging is of far-reaching and immediate importance because of the projected 50 million dollars to be spent in CMH Centers. Thus, your support for the initial investment in the NIMH Center on Aging by a direct appropriation for FY 1977 of 5 million dollars is likely to have a demonstrable impact on the entire Community Mental Health program nationwide.

Finally, the Center, if funded, plans to initiate a program of "Matching funds" with other units within NIMH, NIH, AoA and additional governmental agencies to stimulate their overall investment in research related to aging. This approach will foster multifaceted and coordinated efforts to solve problems of the aged. The area of senile but also specialized education in Geriatric Medicine and mid-career training (re-training) for those professionals who in mid-life desire to undertake work in the geriatric or gerontological fields.

It needs to be stressed that the activities of the NIA are in no way duplicative of those of AoA or of those to be undertaken by the NIMH Center on Aging. All three of these units are actively engaged in mutually shaped efforts, including participation in one another's task forces and advisory committees.

For FY 1977 the Administration has asked for an increase from $17.5 million to $26.2 million but has allocated none of this amount for training activities. Most of the amounts requested by the Administration will in fact support on-going programs only and developmental costs for this new Institute, allowing little for growth in research intended by the creation of NIA. It is known, for example, that NIA currently has a backlog of more than $7 million dollars of high-priority, approved, research proposals.

The scientific community has indicated that there are many avenues of research which are likely to produce significant advances in the area of health, reducing the necessity for and cost of institutionalization and increasing the quality of life of older persons. The Gerontological Society urges that you appropriate $30.1 million for FY 1977 to the National Institute on Aging in order to get expanded research and training underway. This additional funding for NIA will enable the Institute to extend its training scope from its current emphasis on biological sciences into clinical medicine and the behavioral and social sciences.

GERONTOLOGICAL SOCIETY RECOMMENDATIONS FOR FEDERAL FUNDING

[Dollar amounts in thousands]

Federal agency	Fiscal year 1976—Appropriated or continued (1)	Fiscal year 1976—President's supplemental budget request for fiscal year 1976 (2)	Fiscal year 1976—Supplement recommended by Gerontological Society (3)	Fiscal year 1976—Total recommended by the Gerontological Society (4)	Fiscal year 1977—Requested by the administration (5)	Fiscal year 1977—recommended by the Gerontological Society (6)
NIA (National Institute on Aging)	[1] $17,526	0	[2] $1,762	$19,288	$26,220	[3] $30,100
AOA (Administration on Aging):						
Title III:						
State Administration	15,000	[4] $16,200	16,200	16,200	16,200	17,000
State and Commission Services	76,000	76,000	93,000	93,000	82,000	125,000
Model projects	[5] 5,000	5,000	10,000	10,000	0	10,000
Title IV:						
Pt. A (Training)	8,000	0	15,000	15,000	0	18,000
Pt. B (R. & D.)	7,000	[1] 5,800	8,000	8,000	5,800	10,000
Pt. C (Multidisciplinary Centers)	0	0	1,000	1,000	0	8,000
NIMH (National Institute of Mental Health): Center on Aging	0	0	0	0	0	[6] 5,000

[1] Without training.
[2] For training.
[3] The Gerontological Society recommends the authorization of 215 staff positions for the NIA n fiscal year 1977.
[4] Note: The administration proposes reducing the research budget by $1,200,000 and increasing the support of State administrations by that same sum. The Gerontological Society supports the mandated increment to State administrations but also firmly supports a continuing level of $7,000,000 for research in the AOA budget for fiscal year 1976.
[5] Actual appropriations in fiscal year 1975 were $8,000, including a $3,000 congressional supplement.
[6] Little or no funds are currently available for programs, research and education in mental health and aging. The amount suggested above is in keeping with the general agreement at the White House Conference on Aging as the minimal amount necessary.

FINANCIAL STATEMENT OF SENATOR MOSS

Mr. MOSS. Mr. President, for the last 12 years, I have made public disclosure of my income and financial assets. The disclosure I make today updates the record through April 1976.

This statement has been prepared by Touche Ross & Co., of Salt Lake City, certified public accountants, based upon my tax returns and based upon the cost figures at the time of purchase.

Last year I received lecture fees of $6,100; royalties of $122 on my book, "The Water Crisis," and small dividends of $32 from marketable securities that I hold. These are my only earnings outside my Senate salary, with the exception of $509.64 gross a month—net $455.58—which I draw as retired military pay for my service in the U.S. Air Force. My wife has no separate assets or earnings.

I ask unanimous consent that my current financial statement be printed in full in the RECORD.

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

Senator Frank E. Moss—Statement of assets and liabilities, April 30, 1976

Assets	
Cash	$6,200
Marketable securities	241
Notes receivable	8,007
Cash surrender value of life insurance policies	19,100
Automobiles	2,000
Real estate:	
House in Washington	46,000
House in Salt Lake City	31,086

Senator Frank E. Moss—Statement of assets and liabilities, April 30, 1976

Real estate:	
House in Maryland	73,000
Condominium at Bear Lake	39,500
Unimproved lot in Salt Lake City	8,000
Subtotal	197,586
Total	233,134
Liabilities	
Note payable	10,080
Mortgage on real estate:	
House in Washington	2,650
House is Salt Lake City	12,472
House in Maryland	60,396
Condominium at Bear Lake	33,890
Subtotal	109,408
Total	119,488
Net assets	113,646

ROBERT BUTLER: NIA DIRECTOR AND PULITZER PRIZE WINNER

Mr. CHURCH. Mr. President, the Congress in 1974 authorized establishment of a National Institute on Aging, "responsible for the conduct and support of biomedical, social, and behavioral research and training related to the aging process and the diseases and other special problems and needs of the aged."

May 31 will be the second anniversary of the signing of the NIA legislation, but until May 1 of this year, the Institute was attempting to function under a major handicap: it had no permanent Director.

Fortunately, the situation was ended when the Director of the National Institutes of Health announced at the start of this month that Dr. Robert N. Butler, psychiatrist and gerontologist, has been appointed the first NIA Director.

Dr. Butler is an excellent choice. As a psychiatrist, he has continually urged greater attention to the mental health needs of the elderly, who are so often neglected in this area. As an advocate for action on matters of concern to older Americans, he has helped our citizens to become aware of the dangers of "ageism," or negative attitudes toward the aging process and all that now goes with that process. As a consultant to the National Institutes of Health, the Senate Committee on Aging, and the Center for Law and Social Policy, Dr. Butler has helped shape national goals and actions on aging.

And as an author, Dr. Butler has made major contributions over the years, but he has now achieved a new peak of accomplishment with his book "Why Survive? Being Old in America." Coincidentally, that work received the Pulitzer Prize for nonfiction during the same week that Dr. Butler assumed his duties at NIA.

It seems to me that everyone concerned about aging should welcome the Pulitzer Committee action. Dr. Butler's book, focusing as it does on a broad range of issues related to aging, can do much to broaden understanding about the problems and vast changes, many of them positive, which occur in this Nation and others as more persons live more years in retirement.

Mr. President, an excellent article by Victor Cohn in the May 5 issue of the Washington Post reports on Dr. Butler's accomplishments and the evolution of his professional and personal interest in aging. I ask unanimous consent to have that articles, together with a letter I wrote to Dr. Butler, printed in the RECORD.

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

[From the Washington Post, May 5, 1976]

PULITZER WINNER'S BIG DAY

(By Victor Cohn)

Psychiatrist Robert Butler was raised by old people.

When he was 11 months old and his parents separated, he was taken in by his grandparents to live on a New Jersey farm. When he was 7, his grandfather, whom he loved greatly, died.

It was then that he decided he wanted to be a doctor because he thought the right kind of medicine might help people live longer.

His grandmother—"a tenacious woman of triumphant spirit" finished bringing him up despite grim depression and poverty, and from her determination and will, "I was myself helped to survive."

All these elements seemed to come together Monday when Robert Butler marked two achievements.

First, he reported for work as the first director of the new National Institute on Aging, the latest unit of the National Institutes of Health. Then, in the afternoon, he began getting phone calls from reporters telling him that he had won the 1976 Pulitzer prize for nonfiction for his much acclaimed book, "Why Survive? Being Old in America."

By the title, "Why Survive?", he explained yesterday, he did not mean old age is not worth surviving for. In fact, he said, it can be one of life's finest times, full of live.

For too many people, he said, it is instead a tragedy—this because of poverty, preventable sickness and above all "the fact that we have shaped a society which is extremely harsh to live in" for the old.

Dr. Butler, who lives with his family at 3815 Huntington St. NW., faced an audience of inquiring reporters at NIH yesterday. They were attracted by his Pulitzer prize rather than by what he considered the far more important fact that there now is a NIH institute devoted to improving the lot of the aged.

Can it be improved?

Yes, he said. "First we have to deal with the fundamental problem of increasing income," and do it by other means than "the welfare approach, which destroys pride."

Then, he said, we need to give the aged proper medical care instead of just "Medicare, which is written as though old people were in their 20s—it doesn't pay for health checkups, preventive care, hearing aids or eyeglasses, and it pays only 42 per cent of older persons' medical expenses."

Finally, he said—getting into his new role as an NIH research planner—"we need biomedical research, not so much to increase years of life as to increase its quality."

Medical training is as important as research, he noted, since "not one U.S. medical school requires students to spend a day in a nursing home, though there are now more patients in nursing homes than in hospitals."

Butler dealt with all these things in his 496-page heavily documented and footnoted—but still highly readable—book. It was praised by critics and specialists, though its sales, he said, have been "modest"—to date, 15,000 copies. And it was seen as a rare combination of warm feeling and hard analysis.

The combination was no surprise to Butler's friends, patients and students. Since 1955, he has been a Washington psychiatrist and psychoanalyst, and a teacher at Howard and George Washington universities, the Washington School of Psychiatry and the Washington Psychoanalytic Institute.

Now, 49, he built his course of treatment on a base of both caring and knowledge, obtained as a boy on the farm, as a youthful researcher at the University of California, then as an NIH research psychiatrist.

An earlier book, "Human Aging," questioned commonly held myths about the inevitability of "senility," the supposed inability of the elderly to learn and change.

"He's just full of ideas for solving human problems," one friend said. "He's interested in the whole science of human development. He's just a remarkable person."

Butler smiled yesterday about such things. It was only with some hesitation, he said, that he put into his prize-winning book a mere 25-line "personal note" about his own remarkable grandparents, and how they influenced him.

His grandfather already was in his 70s when the child, Robert Butler, was brought to live with him.

"I remember his blue overalls, his lined face and abundant white hair," he wrote. "He was my close friend and my teacher. Together we rose at 4 a.m. each day to feed chickens, candle eggs, grow oats and tend to the sick chickens. . ."

Then "he disappeared suddenly when I was 7," and his grandmother, then 58, had to go on relief. They lived in a cheap hotel and ate from "welfare" canned food with demeaning white labels.

"But she was not one to give up easily," he remembered yesterday. "She was very tenacious."

She sewed at a WPA sewing room, learned to type and lived for 20 years, giving the young Butler his lessons in cheer and persistence.

"It was easy," he said, "to be inspired by her."

MAY 4, 1976.

Dr. ROBERT N. BUTLER,
Washington, D.C.

DEAR DR. BUTLER: You have my heartfelt congratulations for the high honor announced today. I have long admired the many contributions you have made to gerontology as practitioner and spokesperson; your book, *Why Survive: Being Old in America,* sums up a great deal of your achievements and thinking in the many fields related to aging. It is therefore as much a personal tribute as a professional one that the Pulitzer Committee chose it for its award.

It's not every day that the Senate Committee on Aging can point to one of its consultants as a Pulitzer prize-winner, and it's not every day that I can extend best wishes on the same day to one person for two honors—I am delighted that you are Director Designate of the National Institute on Aging, as well.

And so I draw great satisfaction from the opportunity to do both.

With best wishes,

Sincerely,

FRANK CHURCH,
Chairman.

IMPROVING THE ADMINISTRATION OF OUR FOOD AND AGRICULTURAL POLICIES

Mr. HUMPHREY. Mr. President, I wish to share with this body an article of mine which was printed in the March–April issue of Public Administration Review entitled "Pragmatic Administration of Food Policies: Domestic and International."

In this article I pointed out some of

the recent developments in the area of our food and agricultural policies. I referred to some of the major instabilities which the chief economist of the Department of Agriculture, Don Parlberg, described at a May 24, 1975, address in Des Moines, Iowa. Dr. Parlberg indicated some of the major market fluctuations which have troubled our producers and been particularly harsh on our livestock growers.

I also indicated some of the elements which should go into a food policy in the future. I suggest that, first of all, our farmers need to be able to be assured of a reasonably stable income so that they are not ruined by one bad year. In addition, I suggest that our consumers need to be assured of a steady supply of food. Further, I indicated the need to provide some assurance to our foreign agricultural customers that we can meet our export commitments and at prices which do not bounce wildly from year to year.

It is clear we have made drastic changes both on the farm and in our agricultural policies in the last 4 years. And our consumers have paid a very high price for this instability with food prices increasing more than $57 billion in the last 3 years. This far exceeds the $40 billion which our farm programs cost from 1933 to 1972.

In spite of the likelihood of further instability and disruptions, the administration refuses to learn from these last few years. Our farmers face the prospect of increasing stocks of grains and depressed prices in the next year while the world needs this abundance. Clearly, we need to develop programs and policies which can deal with occasional surplus but at the same time realistically face the likelihood of long-term shortages on the world food markets.

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

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

[From the Public Administration Review, March–April 1976]

PRAGMATIC ADMINISTRATION OF FOOD POLICIES; DOMESTIC AND INTERNATIONAL

(By HUBERT H. HUMPHREY, U.S. Senator from Minnesota)

Food is a problem in the United States, either when there is too little or when there is too much. It is a problem when excessive amounts of grain cover the streets of small midwestern towns, or when scarcity creates lines of consumers at metropolitan store counters. It is a problem when the poorest classes of consumers face difficulty in securing minimal food needs, when amounts of food shipped abroad raise food prices at home, and when government budget deficits cause cutbacks in food stamp programs. It is a problem that is prevalent most of the time; and it requires continuous oversight by the federal government.

Oversight of food problems is carried out by a number of departments, agencies, councils, and committees of the federal government. Representation changes as the pendulum swings between too much and too little. The roster of players changes almost daily. In times of food commodity surpluses, representation is heavier from agricultural and budgetary agencies. When relative scarcity prevails, representation increases from consumer and foreign policy agencies. At all times, the national importance of these issues keeps the White House and the Agriculture Committees of Congress closely tuned in and intimately aware of day-by-day events.

The shifts from scarcity to surplus occur with a rapidity that is difficult to anticipate. The tremendous fluctuation in agricultural supplies and markets since 1972 point up the overriding importance of accurate information and pragmatic decisions in the development of agricultural policies and programs by the federal government. Differences in philosophy on the proper role of government, and on farm programs specifically, underlie the administration of food policies at national and international levels. Sharp philosophical differences currently divide the executive and legislative branches of government. It is understandable that there will be differences of opinion on the administration of food and farm programs. For the good of the nation, however, these differences must be resolved, and pragmatic decisions must replace divisive philohophies in food policy formulation.

DATA NEEDS FOR FOOD POLICY

How to resolve differences and remove "false starts" from our food policy making are questions deserving of much thought. Obviously, we have many food problems. When famine affects the world, the issue becomes how much food assistance to provide at what cost. When malnutrition exists in poverty areas of the United States, the issue is how much in food payments middle and upper income people will provide to poverty classes.

The decisions, in both instances, eventually hinge on the amount of famine and the number of malnourished. These are questions that require information for their resolution. These are questions for which the answers change monthly, or even weekly. An information network is essential, if current data is to be available on which reasonably to argue for and against policy decisions on such questions.

Some are worldwide questions, toward which the United Nations' Food and Agriculture Organization has directed its attention since its inception shortly after World War II. Quite obviously, FAO has not received adequate resources to measure famine and malnutrition around the world. Even in the United States, there has been no fully adequate measure of nutrition or the degree of malnutrition. This is true despite the White House Conference on Nutrition in 1969, and the followup establishment of a Select Committee on Nutrition and Human Needs in the United States Senate.

It remains unclear whether the state of nutrition today is better or worse than a decade ago. Unlike unemployment, where we have monthly measurements of the size and the problem, we do not have a monthly or annual measure of malnutrition or even of hunger. We do have indirect measures—the number of food stamp recipients, participation in direct food distribution programs, or attendance at senior citizen feeding programs—but we have no overall measure of the state of nutrition in the United States. It is a case where "since we can't measure it, we don't know much about it."

Until we have better data, malnutrition and hunger will continue to be argued on a philosophical basis, with those who generally oppose government assistance programs continuing their opposition to food assistance programs. On the other side will be supporters of greater food assistance. Having seen hunger and malnutrition at close range, they are convinced that more assistance is needed, or even essential. But one line of unemployed workers does not convince a government it must establish unemployment assistance; and one malnourished family does not bring about expanded food assistance programs. It requires statistical analyses—8 per cent or 9 per cent unemployment figures for the nation—and similar measures for hunger and malnutrition.

INCREASED COORDINATION OF FOOD POLICIES

Increased coordination is an essential objective for this nation's food policies, in my judgment. The temporary imposition of embargoes on exports of soybeans and other food commodities and price ceilings on meat animals are clear indications of failure in food policy administration. Both were radical departures from traditional food management policies. Both were the outgrowth of a lack of information. In the case of the soybean embargo in 1973, the government suddenly found that more soybeans were scheduled for export than were available. In the case of meat price ceilings, the government found a shortage of supplies and a public unwillingness to live with higher meat prices as the means of allocating such supplies. In both cases, it was clearly a case of trying to coordinate inadequate supplies of food using inadequate supplies of information.

Thus, one comes to the question of how to improve coordination of food programs. One obvious need is for timely and accurate information that gives an "early warning" of upcoming problems. This issue was addressed in the form of a major World Food Conference resolution in 1974, and we need to push ahead on implementing it.

A second means of improving coordination is through an increased awareness of the essential role of the federal government in managing affairs that have both domestic and foreign aspects. There is no possible way that food policy coordination can be left solely to the marketplace. The impact on the nation when the world supply picture changes suddenly, or when other governments change their food policies, or when our own production falls, is just too disruptive—to farmers, to consumers, and to our foreign policy.

The Department of Agriculture's chief economist, Don Paarlberg, cited a list of such disruptions on March 24, 1975, when addressing the 1975 National Farm Institute banquet in Des Moines, Iowa. Looking back, he made this assessment of the previous years:

Prices of farm products gyrated wildly as the familiar supply-demand benchmarks were swept away.

Net farm income almost doubled and then plunged downward again.

New export markets suddenly developed and the overseas movement of grains increased dramatically.

Reserve stocks were drawn down and we scraped the bins.

Price relationships between feed and livestock first turned very favorable to livestock and then sharply unfavorable.

Land values increased 46 per cent in two years. Some young men who went deeply into debt to buy land recently at these high prices got into difficulty.

Prices and production costs of wheat and corn rose above the loans and targets specified in the Agricultural Act of 1973, and left these producers virtually without a program.

Public concern about the price of food escalated and became a major factor in agricultural policy.

These problems indicate the importance of a positive policy for coordinating farm and food programs. They indicate that food policy in the 1970s is a complex affair. It affects production efficiency, human welfare, national security, foreign policy, and domestic tranquility. It may have greater effect on more people than any other set of policies legislated and administered by the United States government. How much food we produce, how we distribute it between domestic and foreign markets, and how much we allow the market to allocate those supplies between rich and poor consumers, are vital national decisions. In practice, the questions become: more food aid versus larger commercial exports, larger school lunch programs

as opposed to larger family expenditures for school lunches, or larger subsidies for farmers as opposed to a larger role for the marketplace in determining farm incomes.

These kinds of decisions fall into many categories. Considered independently, each of them may result in what appears to be a rational reaction to an overriding problem. When the decisions are added together, however, they often add up to more than the sum of the parts. We end up with excessive foreign demand and export embargoes, or gyrating meat prices and price controls, or consumer boycotts and producer withholding actions. There is, under these conditions, much to be gained from greater coordination of food policies and programs.

GOALS FOR AGRICULTURAL POLICY

Essential for future food policy debate is some agreement on a framework of policy goals, within which individual policy decisions can be balanced with each other. There are several goals to aim toward.

First, our policies must assure farm families of more stable incomes, so that lifetime investments will not be swept away by one bad year. One year of extremely high feed prices must not threaten livestock producers. One year of extremely low grain prices must not threaten grain producers.

Second, our policies must provide insurance for farm families against natural and economic disasters. We provide unemployment compensation to working people, and social security to retired persons. We must similarly provide farmers with economic insulation against economic disaster.

Third, we must provide opportunity for new farmers who are capable of entering farming. And we must give them some assurance that unstable farm prices will not force them out before they have a chance to prove themselves.

Fourth, we must assure the nation's food consumers that food markets will have a steady supply of food every week when they go to the store, and not only if they go early, or stand in long lines.

Finally, we must assure our foreign customers of stable grain and fiber supplies, at prices that do not bounce wildly from year to year. Otherwise, when prices and supplies move sharply up and down, either the United States may be forced into a painful last resort action to protect its own supplies (the soybean export embargo) or foreign countries may resort to equally undesirable action to protect their buyers (the recent cancellation of cotton contracts).

Clearly, we have enough first-hand experience with what extreme instability in food supplies and prices can bring. The past three years brought food shortages for consumers in 1973, feed shortages for livestock producers in 1974, and fears of grain surpluses for crop growers in 1975. That kind of instability—from feast to famine and back again—recalls the 1920s and 1930s, when farm foreclosures struck fear into the hearts of rural Americans and brought about "farmer holidays" in the grain belt of the nation.

The livestock kills and consumer boycotts of the past three years differ in form, but not in intensity for the people involved, from those earlier tragedies. As both farmers and food consumers rode the economic roller-coaster beginning in 1973, there were outcries for government action. These calls made sense. We are a civilized nation. Our destiny is in our own hands. We are not a nation that must remain at the mercy of a free and unfettered market when it brings hardship to our people. The very essence of government is to prevent this kind of hardship.

Long ago, when the Great Depression bankrupted farm families, we learned the cruel lesson of economic instability. We should not have to relive those years to relearn the lessons. We can reread the history books, if we have forgotten. While others reacquaint themselves with that debacle, if that is necessary, I will spend my time fashioning programs to reduce economic instability.

Stabilizers are needed so that farmers can, with confidence, produce the abundant food supplies that are required for school breakfast and lunch programs and for international food aid. These are programs that rank high among our national priorities, but instability of commodities and supplies will not give this nation the stable food supplies necessary to carry them out. It may do so during one year of surpluses, but not year after year.

We must remember that our people must eat in both good years and bad, when weather is kind and when weather is hostile. It is too much to ask our poorest consumers to eat only in good years, when favorable weather or economic cycles result in abundant food supplies.

RECENT ADAPTATIONS IN AGRICULTURAL POLICY

Since the 1930s, there has been a succession of agricultural acts. Passed by Congress and signed into law by the President, these acts initially established a comprehensive set of government programs that required individual farmers to reduce production of specific crops and, in some instances, of livestock. Acreage quotas limited production of individual crops, and marketing orders and allotments managed production of many fruits and vegetable items. In turn, price supports were provided to farmers in order to assure stable production, prices, and profits—all in a manner beneficial to both farmers and consumers.

For a number of reasons, both political and economic, these programs were revised to allow for greater flexibility in farm operations. A major change was made in 1961, when the concept of voluntary participation was established for feed grain diversion programs. That change was followed in 1964 by the establishment of voluntary programs for wheat producers, and in 1966 for cotton producers.

After five years of experience with these individual programs, the Agricultural Act of 1970 established a "set-aside" concept to allow for substitution of cropland between crops. After a farmer withdrew the required acres from production, the remainder could be planted to whatever crop promised the greatest economic return. The set-aside program allowed expanded production of specific crops in areas where irrigation or other technological improvements had increased the profitability of such crops, and allowed substitution to alternate crops, or to grass for livestock, in regions where new conditions rendered that advantageous. In general, no wholesale shifts of crop production occurred, but individual producers did readjust their farm operations to take advantage of changed production and market conditions.

Two additional, major changes in the agricultural policy situation occurred beginning in 1972. One of these was the sharp upturn in farm prices which commenced in late 1972, and which resulted in the termination of all restrictions on crop production. The second was passage of the 1973 Agriculture and Consumer Protection Act, which established the concept of target prices. Under the target price system, government payments to farmers no longer are determined by the number of acres diverted from production. They are determined, instead, by the extent (if any) to which market prices during any year are below the target price guarantees. Diversion (set-aside) of cropland may be required if necessary to prevent stock buildup but it is not mandatory in order to qualify for government payments. Farmers produce at maximum levels with no restrictions on production, and receive payments at the end of the crop year if market prices fall below the targets.

Passage of the 1973 Farm Act was, in some ways, a "final step" in releasing agricultural producers from the restraints imposed on their individual operations by the long succession of government-sponsored farm programs. With the type of deficiency payment program now in effect under the 1973 Act, farmers operate in nearly a free market environment. Decisions on what to produce, how to produce it, where to sell it, and when to sell it are all made in response to market prices. As market prices fluctuate, producers respond by changing their production or marketing plans. Since market prices are currently well above government support levels, prices are free to fluctuate in both directions—a distinct change from past years when prices rested near support levels and could only move upward.

Without the floor that was previously imposed by government supports, price uncertainty has been greatly enhanced. Fluctuations in markets—especially foreign markets—have led to dramatic surges and declines in commodity prices. This price volatility is reverberating into secondary sectors of agriculture, especially the livestock, dairy, and poultry sectors. The producers in those sectors face uncertainty in planning their investments, as prices of feed and other inputs change substantially over production and feeding cycles. Profits or losses occur that are far different from those expected at the time of the initial investment. Producers are developing strategies to minimize their potential losses. Mostly, these have involved reductions in the size of animal herds, and the sale of cash grain for eventual export to other nations rather than use of the grain domestically for animal feed.

Cutbacks in production of meats and other high-protein foods generally consumed by the American public cannot continue indefinitely. There are ever more consumers to be fed, even though a low birth rate prevails in the United States. Also, most will have more income when the economy expands again. Thus, food production, and especially production of meat, milk, eggs, fruits, vegetables, and sugar, will eventually have to expand. If high enough prices prevail relative to costs, the farmers will undertake to expand production despite the uncertainty and risk.

The major question is whether the nation should pay a continuously rising level of food prices that may be necessary to bring forth a growing food supply under conditions of great price uncertainty, or whether it would rather use some new government policies and programs to reduce farm price uncertainty and hence the average level of prices necessary to give producers an incentive toward larger production.

The answer to that question depends on whether the present price uncertainty is inherently a part of a market-oriented agricultural economy as now exists, or whether it is an outgrowth of the unusual events of the past three years. Or, stated differently, is the instability of the type experienced in the last three years inherent in a free market agricultural economy?

NEW STRAINS ON THE MARKET AS ALLOCATOR

Until 1970s, countries facing food shortages during periods of grain scarcity were largely unable to import the necessary amounts of grain through commercial channels of trade. This was true of India in 1965 and 1966, when the monsoon failure made large imports necessary on short notice. The Indian government was unable to command enough foreign currencies to buy the grain in commercial channels, and the result was an appeal to the United States government for food assistance under Public Law 480 (Food for Peace). This placed the U.S. government in the position of allocator of the scarce supplies of grain. President Johnson announced a "short tether" policy on grain shipments, in order to assure that domestic markets would not be left short and to prompt needy nations into taking the hard steps necessary to balance their future food supplies and requirements.

A similar environment prevailed in previous periods of scarcity, such as the Korean hostilities of 1951–53, and during World War II. Needy countries were dependent on other countries to supply the necessary food, without immediate payment. As a result, decisions on how much food to supply were made by government agencies. While actual purchases and shipments were handled by commercial companies, governments were fully informed and in full control of quantities purchased and shipped. All market participants were aware of intended purchases, and higher prices rationed the availalbe supplies.

That situation no longer prevails, and the change has imposed increased strains on market prices as a reliable allocator. The primary change represented by the soybean shortage of 1973 and the grain shortages of 1974 and 1975 was that purchases by importing countries were made from commercial grain exporting firms, not directly from governments. As a result, the extent of prospective purchases was not known until after a sizeable amount of the grain was already sold. Then market prices began to rise sharply to ration the remaining supplies of grain among the competing domestic and foreign buyers. That meant, however, that large foreign buyers already had satisfied major needs before market prices rose. For that reason, market prices were ineffective in allocating scarce grain supplies.

It is not easy to determine why market prices do not operate effectively in such instances of international commercial sales. Otherwise, the answers would have been forthcoming after the soybean embargo of 1973; market operations would have been changed; and the problem would not have reoccurred.

Some changes were made in government monitoring of export markets. A reporting system was established, under which exporting firms had to report future export commitments within seven days after a sale. This reporting period was later reduced to 48 hours and still later to 24 hours, and after cancellation of the Russian grain sale in late 1974, prior permission had to be obtained to make large export commitments.

These restraints were later removed as grain supplies became less scarce in early 1975, when the Soviet Union again commenced large purchases of U.S. grain. It still is not evident, however, whether or not such regulations function so that the public is adequately informed before the grain companies enter the market to buy grain to cover foreign sales. Unless such information is made available to the public on a timely basis, prices cannot perform their rationing function effectively.

BUFFERS AGAINST MARKET DISRUPTIONS

The background of recent export sales discussed above may indicate problems that will arise with future U.S. farm exports. A year of favorable weather for crop production in other nations and the resultant reduction in U.S. farm exports, or an unfavorable year abroad and extra large U.S. exports, can place considerable pressure on our supplies and markets unless we construct buffers between our markets and world markets. One type of buffer is timely and accurate information on production prospects in other countries. This need has grown in almost direct proportion to the expansion in U.S. agricultural exports, although the worldwide reduction in grain reserves has also increased the sensitivity of our grain markets to changes abroad.

The establishment of an adequate information system is not achievable overnight. It must be built over time, by continuously improving the flow of information from national and international agencies. The United States must strive to develop a system of foreign agricultural information that is similar in timeliness and accuracy to the system already available on domestic agricultural production. The domestic system, built up over the decades in the Statistical Reporting Service of the U.S. Department of Agriculture, provides estimates of agricultural output on a regular schedule as prescribed by law. It was recognized long ago that information on domestic agricultural conditions was of great economic importance to domestic producers and handlers of food products, and was crucial to the smooth functioning of commodity markets.

The recent experience with export controls and price gyrations has demonstrated the importance of foreign market information. There is need to expand and improve all aspects of foreign market information, including both grain production and utilization. Whether the traditional methods of gathering information on crop production are most appropriate, or whether the development of a satellite survey system with computerized data analysis would be more accurate and useful, is yet to be determined.

Improved information on foreign markets and supplies, while essential, will not be adequate to prevent sharp fluctuations in our grain markets in the future, when foreign production changes dramatically. To soften that kind of impact, we need actual quantities of grain—buffer or reserve stocks—to substitute for lost production. Such stocks must be built up during periods of adequate production, in order that periods of shortfall do not create havoc in grain and livestock markets. A system of international rules for managing reserve stocks of food commodities must also be developed and agreeed to, to assure equitable allocation of commodity supplies in times of severe shortage. When and how such rules would be put into effect must be understood and stated explicitly before any shortage occurs.

Such buffers against market disruptions as improved information systems and reserve stocks are essential elements in future food and agricultural policies of the United States.

CONCLUDING REMARKS

Issues involving food policy and administration are always troublesome, and have bothered mankind throughout his existence. European nations, with their longer historical perspective, have isolated their food supplies from the remainder of the world in a vain attempt to prevent sudden shocks to their economies. Although there is stability in their food systems, the cost of this stability has been high, with food budgets taking a much higher proportion of consumer incomes than in the United States.

The United States also had relative stability in food prices when this nation held large stockpiles of grain and fiber products. That also entailed a significant cost. If in the future U.S. crop production is favorable, and agricultural exports should be reduced, the nation could once again hold significant quantities of grain in storage. Grain prices paid to farmers could stabilize near government support levels, and livestock products could become relatively more abundant. Food prices could stabilize and then increase at more traditional rates, and concern over food problems could abate for an indefinite period.

On the other hand, if U.S. crop production levels were to drop significantly, or if major additional Soviet purchases occur, farm prices for grain will again rise sharply and livestock products will remain in short supply. The likely result would be another round of food price increases, and renewal of the feed and food crisis for livestock producers and consumers.

Given the uncertainty about how the future will actually unfold, we must formulate pragmatic and flexible food policies and administrative machinery if the United States is to avoid recurring crises in the food sector of our economy.

NATIONAL PARKING ASSOCIATION'S 25TH ANNIVERSARY

Mr. ROBERT C. BYRD. Mr. President, the National Parking Association, the trade organization representing the commercial off-street parking industry, is celebrating its 25th anniversary this year. The organization's convention is scheduled for June 20–24 at the Washington Hilton Hotel. I ask unanimous consent to have printed in the RECORD a summary of the association's progressive history beginning in 1951.

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

NATIONAL PARKING ASSOCIATION: A QUARTER CENTURY OF PROGRESS

Letters from NPA's Washington, D.C. headquarters to people unfamiliar with the association often begin like this: "National Parking Association is the 1,300-member trade organization representing the commercial, off-street parking industry in the United States and 21 foreign countries. Its membership is made up of operators, owners and developers of parking facilities as well as parking consultants, architects, engineers, real estate interests, municipal parking authorities and institutions such as banks, hospitals, colleges and universities." All this is accurate but only begins to describe the National Parking Association of 1976.

1951

The association, with headquarters now located at 1101 17th Street, N.W., Washington, D.C., was formed in the fall of 1951. Parking industry leaders, meeting in Chicago, decided they could benefit from a national organization as so many other industries had. Their goals: an exchange of knowledge and promotion of the free enterprise system.

That group elected B. M. Stanton of Norfolk, Virginia as the association's first president. It chose Fritz W. Drybrough of Louisville, Kentucky as vice president; Charles Gallagher of Dallas, secretary; and entrusted its meager funds to Earl J. Mendola of New Orleans, the first treasurer.

These NPA founders were aware that parking was becoming a greater problem every year in most American cities. In their initial action, the new association's members called on cities with parking problems to review their current off-street parking supply and make better use of it. Then, if more were needed, private industry and business should do the job.

NPA held its first convention in Cincinnati on October 1, 1952. L. B. Doggett, Jr., of Washington moved in as vice president and Manny Schubiner of Detroit took over as secretary. By this time the association boasted a magazine, a legal advisor, a legislative representative, a public relations program, an ethical code and its first executive director, Charles T. McGavin. In 1953, the group's second convention was held in Washington, D.C. where John F. Hendon of Birmingham, Alabama was elected president, Walter Briggs of Los Angeles, vice president and Arthur G. Debendorf of Washington, treasurer.

By the time of the 1954 convention, Doggett took over as president and NPA had come up with concrete goals for the industry to seek and offered the services of its executive director to help attain them.

The U.S. Chamber of Commerce, which had been holding parking clinics of its own around the country, announced a parking policy statement in 1955. The statement called for private capital to "be given full encouragement without hindrance, competition or subsidization by government" to set

up off-street parking. If the parking was to be free or below cost, the Chamber said, "the businessmen and property owners benefiting therefrom should provide same without subsidization by government."

The Chamber asked for a ban on government condemnation of land for commercial parking facilities, encouragement of "first priority in street and highway use to movement of people and goods with such restrictions on curb usage as this principle may dictate." The statement also asked for "a proper balance between public and private transportation," without overloading street access facilities.

National Parking Association went beyond the Chamber statement, calling for well-lit, clean and attractive parking facilities, clearly posted pricing information, and community service by its members.

In 1956, William G. Barr, who was to take over the industry's story throughout the country for nine years, took over as the association's executive director.

By the time NPA held its seventh annual convention in New York City in 1958, the group was offering the parking industry ideas on building and employee training, park-and-shop programs, and bookkeeping and management training.

In 1959, the association developed a 10-point program for parking progress which could be used as a community-wide effort to improve parking and traffic problems. Implicit in the program was cooperation by city officials and local merchants. The program suggested, among other things, that: the best located on-street spaces should be reserved for short-term shoppers; "meter-feeding" parkers should use fringe parking; short-term parking zones must be enforced; traffic could be facilitated by the use of tandem parallel parking; merchants should conduct parking supply surveys, publicizing the results; directional signs should be fully used; Park-and-Shop and Ride-and-Shop plans should be implemented; rates for third and fourth parking hours in off-street lots should be increased encouraging long-term parkers to use fringe lots; and all on-street parking should eventually be eliminated opening additional street space to traffic.

1976

Today's National Parking Association has an annual budget of more than a quarter of a million dollars and represents members in all 50 states and more than 20 foreign countries. Regular members pay from a minimum of $75 a year to a maximum of $5,000. Dues are based on gross parking revenue. Allied members, primarily suppliers to the industry, pay $200 annually.

Publications include Parking Magazine, sent quarterly to more than 5,500 members, subscribers and others; Parking World Newsletter, sent monthly; Parking Angle, a monthly newsletter reserved for regular members; and NPA Reports on EPA, an environmental newsletter published at least 12 times a year. NPA also publishes a Canadian newsletter.

Regular members also receive state legislative notices alerting them to pending state and local action that could affect their businesses. Special reports from the Washington office keep them informed on such things as tip reporting, unemployment compensation, minimum wage requirements, environmental regulations, occupational safety and health rules and other government activities.

The association has published special reports on construction methods and costs, asphalt and concrete maintenance, building standards, legal liability, new car sizes and parking feasibility. Its annual reports include a record of garage construction and a compilation of state and local environmental regulations affecting parking.

In 1972, the Parking Consultants Council of National Parking Association was formed, its membership restricted to individuals in the private practice of parking consulting. The Council now consists of 35 members chaired by Ricard F. Roti of Ventura, California.

THE STAFF

Since 1965, the association's business has been handled by Noreen Dann Martin. She was named executive vice president in 1968. Before coming to NPA in 1953, Mrs. Martin was an editor for the Macmillan Company in New York. Holding a B.A. from Black Mountain College in North Carolina and an M.A. from Columbia University, she is perhaps the nation's foremost authority on the parking industry. Mrs. Martin sits on advisory boards of the Highway Users Federation and the National Bank of Washington and serves as a member of the Transportation Committee of the Highway Research Board. She is also active in United Cerebral Palsy and the Episcopal Church.

Sandra Kay Ferrell, born and educated in the District of Columbia, joined NPA's staff in 1969. Now holding the position of Bookkeeper/Office Manager, she is active in Washington's Officers Service Club.

NPA's first in-house legislative representative, David L. Ivey, joined the staff in 1973. Ivey, who is active in Democratic Party affairs, came to the association after service as a newspaper reporter and an aide to former Senator J. W. Fulbright (D-Ark). His legislative work on behalf of NPA has been aimed at comprehensive amendments to the Clean Air Act of 1970 and new federal legislation providing funds to states and localities for balanced land use planning programs.

With this additional investment in what goes on in Washington, NPA has become increasingly active on Capitol Hill and within the federal agencies. When the Environmental Protection Agency proposed targeting the parking industry for special enforcement under the Clean Air Act, NPA responded calmly. The association worked quietly with the agency pointing out the obvious defects in its proposed regulations and the harm those rules could do to urban areas. The regulations were modified.

When, after facing a court order requiring certain parking-related controls, the agency again turned to commercial parking operations, NPA, in concert with other real estate-related organizations, worked closely with members of Congress to have the law changed.

The Congress is now poised to pass the first comprehensive changes in the Act in six years.

NPA's annual conventions have become important business gatherings where parking people, suppliers and others exchange information and ideas and learn specific ways to improve both efficiency and service.

Since 1974, for example, NPA conventions have heard Senators Lloyd Bentsen (D-Tex), Robert Byrd (D-W. Va.), and Jennings Randolph (D-W. Va.) along with numerous government officials and spokesmen for nationally prominent business groups. Panels have included presentations on energy, security, revenue control, employee relations, labor and environmental laws, graphics in parking facilities and construction and operating techniques.

With its increasingly influential role in Washington and around the country, National Parking Association will be heard from for a long time to come.

GRAND JURY REFORM—A HISTORICAL PERSPECTIVE

Mr. ABOUREZK. Mr. President, yesterday I had printed in the RECORD the first of three articles by Richard Harris dealing with abuse of the grand jury system and government disregard for the fifth amendment. Today I submit the second of these articles, which have been serialized in the New Yorker magazine.

Mr. Harris' second article does an impressive job of tracing the origin of the right against compulsory self-incrimination. He focuses on the story of John Lilburne, a 17th-century Englishman who endured torture and imprisonment rather than incriminate himself against his will and his principles. Despite the passing of over 300 years and the suffering of men and women such as John Lilburne, many Americans today face similar crises of conscience when forced grants of use immunity require them to choose between self-incrimination and imprisonment.

Mr. Harris' article makes fascinating reading and I commend it to be the Members of this body.

I ask unanimous consent that Richard Harris' article from the April 12 issue of the New Yorker magazine be printed in full in the RECORD.

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

TAKING THE FIFTH—II

(By Richard Harris)

Late in 1637, an English Puritan by the name of John Lilburne was arrested for importing seditious books from Holland into England. From the government's viewpoint, the arrest was to prove a calamitous mistake, for Lilburne, who was then a twenty-three-year-old clothier's apprentice with little formal education, turned out to be one of the most effective revolutionaries in English history. A volatile, contentious, unyielding, self-righteous, and abrasive man, of whom a contemporary said, "If John Lilburne were the last man in the world, John would fight with Lilburne and Lilburne with John," he was also, as he described himself, "an honest, truebred freeborn Englishman that never in his life loved a tyrant nor feared an oppressor." By the time he died, twenty years later, Lilburne had brought the British government to its knees.

After his arrest, Lilburne was turned over to the Attorney General, who assigned an aide to question him. The aide told Lilburne what he was charged with and informed him that a confederate had sworn to an affidavit against him. Lilburne replied that he had indeed visited Holland and that he had talked to some people and looked at some books there, but he claimed that he was innocent of the charge against him, and refused to say more about the affair. "I see you go about by this examination to ensnare me, for seeing [that] the things for which I am imprisoned cannot be proved against me, you will get other matter out of my examination," he said. The aide finally gave up and passed Lilburne on to the Attorney General, who had no more luck and sent him back to jail. After a couple of weeks, Lilburne was taken before the Court of Star Chamber—an inquisitorial body that functioned as the sovereign's personal tribunal for trying matters of state. A clerk handed him a Bible and told him to swear by it.

"To what?" Lilburne asked.

"That you shall make true answer to all things that are asked of you," the clerk said.

"Must I so, sir? But before I swear, I will know to what I must swear."

"As soon as you have sworn, you shall, but not before."

Lilburne refused to take the oath, was sent back to prison, and a few weeks later was again brought before the Star Chamber, this time for trial, together with an alleged accomplice, and elderly bookseller named John Wharton. The Attorney General charged them with refusal to take the required oath,

and then read the affidavit against them. Declaring that the charge was "a most false lie and untrue," Lilburne once more refused to take the oath, as did Wharton, and the two were returned to their cells. A week later, they were brought back for trial before the same court, and repeated their refusal to take the oath, which, Lilburne told his judges, was "both against the law of God and the law of the land." This time, the Star Chamber found them guilty of contempt, and sentenced them to fines of five hundred pounds each, punishment in the pillory, and imprisonment until they took the oath and testified as ordered; Lilburne was additionally sentenced to be whipped through the streets on the way from Fleet prison to the pillory, a distance of two miles.

Tied to the back of a cart and stripped to the waist, Lilburne was lashed every few steps by an executioner wielding a three-thonged whip, and at the end the prisoner's shoulders "were swelled almost as big as a penny loaf," a contemporary reported, and the "wales on his back . . . were bigger than tobacco pipes." The streets along Lilburne's route were lined with spectators, who moaned at his agony and shouted words of encouragement. Once in the pillory, Lilburne dumbfounded everyone by proceeding, despite his pain, to deliver a stirring half-hour oration to the crowd, which was spellbound by the account of his ordeal, including his trial, which, he told them, was "absolutely against the law of God, for that law requires no man to accuse himself."

The oath that Lilburne refused to take was known as the oath ex officio, which had an ancient lineage reaching back to the thirteenth-century oath *de veritate dicenda*—swearing to speak the truth in answer to all questions. This device, an invention of the Catholic Church in 1215, had quickly become one of the most feared instruments of the Inquisition's attempts to stamp out heresy, and was subsequently used by a long series of British clerics and British monarchs to suppress religious and political unorthodoxy. Suspects who were given the oath were not told the evidence of their misdeeds, the identity of their accusers, or the charges against them. If they refused to take the oath, they were considered guilty of the offenses being investigated; if they took the oath and lied, they were guilty of perjury, and swearing falsely was not only a grave sin against God but was taken as evidence of guilt in the offenses at issue; and, of course, if they told the truth they might condemn themselves.

In short, the oath had one purpose: to trap witnesses into betraying themselves and others. Official reliance on the oath—and the physical and mental torture often inflicted on those who resisted it—became so widespread and abusive in England that bitter opposition to it rose among members of Parliament and of the common-law bar, who saw the overweening power of royal and ecclesiastical courts as a threat to both the common law and all free Englishmen. Protests were mounted, petitions were signed, and early in the fourteenth century Parliament outlawed the oath. Both Crown and Church ignored the prohibition.

Throughout the remainder of that century, opponents of the inquisitorial system fought for its replacement by the common law's accusatorial system, through which the state had to prove an accused person's guilt without his assistance and under prescribed rules. To this end, they repeatedly invoked Magna Carta, then over a century old, and contended that its command to the sovereign to obey "the law of the land" guaranteed everyone accused of any crime the right to a formal accusation and to a trial by jury under common-law procedures. There was no justification whatever for the claim, but the myth that Magna Carta spoke for the freedom of all men of the realm and not, as it clearly had, solely for the rights of the barons who forced King John to sign the document at Runnymede was to survive and ultimately to be widely accepted as fact. And, of course, history has repeatedly demonstrated that myth is a far more powerful influence in human affairs than truth.

During the sixteenth century, resistance to use of the oath in the Court of Star Chamber and its ecclesiastical equivalent, the Court of High Commission, mounted. Sir Thomas More, who as Lord Chancellor had compelled many heretics to take the oath ex officio and had sent them to their deaths for what they revealed, refused to take the oath himself and reveal why he opposed Henry VIII's claim to be head of the Church in England. More argued that he was being forced to condemn either his soul (if he lied) or his body (if he told the truth); the dilemma was resolved when the King had him beheaded and the Church made him a saint. A few years later, Mary Tudor devoted most of her five years on the throne to wiping out all traces of Protestantism by killing Protestants.

Not long after her death, John Foxe wrote "The Book of Martyrs," which recounted the history of Christian martyrdom since the eleventh century, including the fate of Bloody Mary's victims. He described how innocent people in her reign were ordered to answer on oath all questions about their beliefs and associations, were tortured if they resisted, were forced to accuse themselves and their friends and relatives of crimes that often had not been committed, and then were burned alive at the stake. "The Book of Martyrs" went through many revised and expanded editions, and it became a sort of primer of the theory that there was an inherent personal right to freedom of religious conscience, and that there were also inviolable legal rights such as the guarantee of a formal accusation and a fair trial, and the right to refuse, as Lilburne was to refuse some eighty years later, to incriminate oneself. For over a century, "The Book of Martyrs" was, after the Bible, the most popular book in the English-speaking world.

Around the time that Foxe's book was first published, Chief Justice James Dyer ruled for a unanimous Court of Common Pleas that a witness who refused to take the oath ex officio was justified by the maxim *"Nemo tenetur prodere scipsum,"* or "No man is bound to betray himself." This appears to have been the first common-law use of the principle that was to be embodied more than two centuries later in the Fifth Amendment to the United States Constitution: "No person shall be . . . compelled in any criminal case to be a witness against himself." According to Professor Leonard W. Levy's splendid book "Origins of the Fifth Amendment" (the basic work on the subject, winner of the Pulitzer Prize for history in 1969, and the source for this historical résumé), Chief Justice Dyer's ruling was apparently aimed at Queen Elizabeth, to discourage her from following Mary Tudor's oppressive example. As it turned out, Elizabeth's aims were somewhat different from her predecessor's, for under Good Queen Bess's rule subjects were persecuted for political rather than religious heresy when they persisted in clinging to religious beliefs that denied supremacy of the state in matters both mundane and religious. "Politics, rather than religion, had become the basis of government policy," Professor Levy explained, and added that while the distinction may have seemed slight to those who were executed, it contributed a small advance to the English legal system, for although they underwent inquisitorial examinations at the hands of the State Chamber or the High Commission, at least they were later tried under the common law's accusatorial system. More and more Catholics and Protestants responded to the Queen's determination to bring their God to his knees before the throne with the plea *"Nemo tenetur prodere scipsum,"* which by now was probably believed to be a firm principle of Magna Carta, too. They still went to their gory deaths—not at the stake but at the gibbet, where they were hanged, cut down while alive, and disembowelled—and yet their claims that all subjects possessed a natural right against compulsory self-incrimination slowly began taking hold in the minds of lawyers and judges. Originally, resistance to forced self-betrayal had developed as an outgrowth of religious conscience, but as the use of the oath ex officio became secular so did the resistance to it, and gradually a belief emerged that to force a man to inform on himself not only violated the natural law of self-preservation but destroyed his dignity and self-respect and undermined justice itself. However, official acceptance of this view was still many years away.

Lilburne's bravery while being whipped through the streets and his dramatic speech while locked in the pillory made him famous throughout London overnight. In retaliation, the Star Chamber judges ordered that he be "laid alone with irons on his hands and legs . . . where the basest and meanest sort" of prisoners were kept, and that he be denied all books, writing materials, and visitors. His warders went further by chaining him to the bare floor, without the usual pallet, and giving him no food for ten days. Suffering from his beating and a higher fever that followed it, Lilburne would probably have died if his fellow-prisoners hadn't slipped food to him through cracks in the floor. He recovered from his illness, and after four months in solitary confinement he was transferred to a more hospitable part of the prison, where he was confined for the next two and a half years. During this period, he secretly wrote and smuggled out of prison nine pamphlets attacking the Star Chamber and demanding the natural rights due every Englishman. With the appearance of each pamphlet, which the authorities were unable to suppress, Lilburne's popularity soared anew.

Charles I was on the throne, and his inept policies were bringing England closer to civil war by the day. Desperately in need of money to raise an army and defend himself, he called Parliament into session in 1640—the first time he had allowed it to sit in eleven years—but when its members refused to appropriate funds until he agreed to their demands for reform, he dissolved the session, known as the Short Parliament, after three weeks. A little later, a Scottish force defeated a royalist army and occupied the north of England, and then a London mob of two thousand people broke into and sacked the hated Court of High Commission. A few days afterward, Charles called Parliament into session again—in the Long Parliament, which was to sit, with intermissions, for twenty years—as his only hope of getting money to save his crown. The Long Parliament was dominated by Puritans, one of whom was Oliver Cromwell, a newly elected member from Cambridge, whose maiden speech was a plea for the release of John Lilburne. A few days later, popular support, forced the King to free Lilburne, who immediately began demanding an end to the Courts of Star Chamber and High Commission and abolition of the oath ex officio. Petitions in support of his stand poured into the House of Commons from around the country, and the following summer Parliament enacted a bill outlawing the two courts and the oath, which the King reluctantly signed on July 5, 1641. After four centuries of torment and bloodshed, the inquisitorial power of church and state seemed at an end.

In 1642, the outbreak of civil war—fought to determine whether England would be ruled by Parliament or the Crown—brought Lilburne into the Parliamentary army as a captain. He was fiercely devoted to the popular cause, and was as fearless a soldier as he

had been a pamphleteer. During a battle, he was captured and sentenced to death for treason, but when Parliament sent word that it would execute a batch of royalist prisoners if he was harmed, Lilburne was freed. He returned to London, where immense crowds greeted him, a contemporary reported, "with public joy, as a champion that had defied the King." Lilburne turned down Parliament's offer of a high post, saying of himself that he would "rather fight for eightpence a day, till he saw the liberties and peace of England settled, than set him down in a rich place for his own advantage."

Returning to the front, he soon became a lieutenant-colonel and a confidant of Cromwell's. In time, though, Lilburne grew alarmed by the anti-libertarian spirit that was overtaking the Puritan movement, which was becoming as tyranically repressive as any British monarch. Presbyterians controlled Parliament, and they began demanding that their faith replace the Anglican Church as the official state religion and that various other forms of Puritanism, which contained scores of factions and schisms, be suppressed.

These new demands for orthodoxy were too much for Lilburne, and after Parliament awarded itself the power to censor all publications in England, he quit the army and went back to pamphleteering. He was soon in trouble again—this time for attacking religious persecution in general and censorship in particular—and after one of his pamphlets appeared he was summoned before the House of Commons Committee on Investigation, which found the tract "scurrilous, libellous, and seditious." According to Professor Levy, Lilburne was let off because of his great popularity and his service to the Parliamentary cause, but he refused to remain silent, and was soon arrested and dragged back before the committee for libelling the Speaker of the House.

Determined to challenge the right of Parliament to inquire into his opinions or to force him to accuse himself, Lilburne refused to testify, and demanded that the legislature obey the rules of common-law courts. The committee rejected his demand, and when Lilburne persisted in refusing to testify and claimed "a right to all the privileges that do belong to a free man as [to] the greatest man in England," he was sent back to prison. Taking up his pen again, Lilburne wrote a furious tract accusing the committee of trying "criminal causes betwixt man and man concerning life, liberty, estate" without observing the ordinary rules of justice. The committee summoned him again, and again he refused to testify and was sent back to his cell. But the Parliamentary army considered Lilburne one of its own, and its mutinous mutterings about his treatment finally prompted Cromwell to persuade Parliament to let Lilburne go after he had served four months in jail.

The following year, Lilburne was arrested and taken before the House of Lords for criticizing one of its members in another pamphlet, and he refused to testify before that august body. He was thrown back in jail and then ordered to reappear before the Lords to be tried for his pamphlet. Lilburne refused to go, and had to be dragged there. Once before the assemblage, he not only refused to kneel but stopped up his ears so that he couldn't hear the charges against him. He was found guilty, fined two thousand pounds (more than most Englishmen could earn in a lifetime), disqualified for life from holding any public office, and imprisoned indefinitely in the Tower of London. "By its injudicious treatment of the most popular man in England," a historian of that period observed, "Parliament was arraying against itself a force which only awaited an opportunity to sweep it away." By the following spring, Cromwell's army was said to be "one Lilburne throughout," and its soldiers regarded his writings not as commentaries on the law but as the law itself. Under pressure from the army, Parliament, released Lilburne in 1648, and he immediately set about attacking Cromwell himself. After enduring the attacks for several months, Cromwell dispatched a force of two hundred armed men, who surrounded Lilburne's house, arrested him, and dragged him and three friends before the Council of State.

The prosecutor asked him whether he had written the defamatory pamphlet against Cromwell. Lilburne, retorting that he was amazed after all that had happened that such a question could even be asked, declined to answer. He and his friends were taken out of the room, and Cromwell pounded on the table and shouted at his colleagues, "I tell you, sirs, you have no other way to deal with these men but to break them in pieces. . . . If you do not break them, they will break you!" Committed to the Tower on suspicion of high treason, Lilburne wrote and smuggled out one fiery pamphlet after another, and soon petitions with tens of thousands of signatures supporting him poured into Parliament, and the army threatened to revolt. In Cromwell's view, "the kingdom could never be settled so long as Lilburne was alive," and in the fall of 1649 he was charged with high treason and put on trial for his life.

The trial took place in London before an Extraordinary Commission of Oyer and Terminer, made up of eight common-law judges, four sergeants-at-law, the recorder of the city, twenty-six special judges (including some city aldermen and members of Parliament), and the Lord Mayor. The trial was held in the great Guildhall, the streets around it were lined with troops to prevent demonstrations against the government, and Lilburne was kept under constant guard to prevent his rescue by the angry crowds that gathered throughout the city to protest what was being done to the man they knew as "Freeborn John."

Although Lilburne had no legal training, he soon demonstrated to the court his forensic abilities. "His great achievement at the trial was holding at bay the judges and ... his prosecutor while he expounded to them and to his fellow citizens in the jury box and in the audience the fundamentals of fair criminal procedure from the time of arrest through trial," Professor Levy wrote. "He placed the right against self-incrimination in the context of what he called 'fair play,' 'fair trial,' 'the due process of the law,' and 'the good old laws of England.'" Lilburne railed on endlessly over the smallest points of law and legal procedure. He insisted on having a copy of the indictment and a lawyer to represent him (rights that were still half a century in the future), and when he was refused both he said, "Then order me to be knocked on the head immediately in the place where I stand, without any further trial, for I must needs be destroyed if you deny me all the means of my preservation." When the presiding judge begged him to be silent and promised, "Hear me one word, and you shall have two," Lilburne retorted that since he was on trial for his life he must be free to speak, and if they would neither let him speak nor allow a lawyer to speak for him they might as well murder him and get it over with. "O Lord!" he cried, "was there ever such a pack of unjust and unrighteous judges in the world?" The chief judge sternly told him that no one had ever been tried by "so many grave judges of the law," whereupon Lilburne denounced the proceedings for being extraordinary, and asserted that he would rather have been tried by one judge in an ordinary court of law.

The chief judge replied, "If you had not had this great presence of the court, you would have outtalked them, but you cannot do so here." Lilburne raised himself up indignantly and said, "Truly, sir, I am not daunted at the multitude of my judges, neither at the glittering of your scarlet robes, nor the majesty of your presence and harsh, austere deportment towards me. I bless my good God for it, who gives me courage and boldness." He defiantly refused to answer any questions about his authorship of the pamphlet at issue, on the ground that under the good old laws of England he could not be compelled to accuse himself. Then he triumphantly pointed out to the jury that his indictment was based partly on a pamphlet that had been published while he was in the Tower—that is, after his arrest—while the law making such statements as those in the pamphlet treasonous had been passed during his imprisonment, making it an illegal ex-post-facto use of the law.

When Lilburne finally rested for the defense, the audience broke out in loud shouts of "Amen! Amen!" and, a report on the event noted, these were followed by "an extraordinary great hum," which so alarmed the judges and the military commander in charge that three more companies of soldiers were dispatched to guard the hall. The chief judge then delivered a hanging charge, in which he accused Lilburne of fomenting a plot the likes of which "never . . . was seen in the world before." The jury was out for an hour and returned to find Lilburne not guilty. "The whole multitude of people in the hall, for joy of the prisoner's acquittal, gave such a loud and unanimous shout, as is believed was never heard in Guildhall, which lasted for about half an hour without intermission," the report said. When word of the verdict spread throughout the city, there were wild public celebrations and "the people caused that night abundance of bonfires to be made all up and down the streets."

In 1651, Lilburne wrote another pamphlet attacking an influential member of Parliament, was summoned before the bar of Commons, convicted without formal accusation or trial, and by means of a bill of attainder was fined seven thousand pounds, banished from England for life, and sentenced to death if he returned. Helpless this time, he fled to Holland. But a year and a half later, when Cromwell dissolved the Rump Parliament that had convicted him, Lilburne assumed that there would be a freer mood at home, and returned to England. He was clapped into Newgate prison and again put ontrial for his life.

There were countless demonstrations on his behalf, and petitions circulated around the country came back to London with thousands upon thousands of signatures demanding his release and pardon. The furore led a contemporary to remark, "It is not to be imagined how much esteem he hath got, only for vindicating the laws and liberties against the usurpations of this time." This response in turn, led Cromwell to clamp a virtual state of martial law on London. At the trial, held in the Old Bailey, Lilburne argued that the Rump Parliament had been illegally constituted, so the bill of attainder it had enacted must be illegal, too.

Then Lilburne solemnly warned the jurors that if he died on Monday, on Tuesday Parliament could pass sentence on every one of them, on their families, on all the people in London, and eventually on everyone in England. The jury found him not guilty. "Joy and acclamation" were said to have resounded for "an English mile," except among members of the Cromwellian party, whose leader was "infinitely enraged." At his direction, Parliament ordered the jurors examined on their verdict before the Council of State, but once there the jurors refused to speak, on the ground of conscience.

When all else failed, Cromwell had Lilburne secretly moved at night from Newgate to the Tower, rejected all writs of habeas corpus, and put the prisoner under such strict guard that he managed to write

and smuggle out only one more pamphlet—his last. The government's refusal to free him after he had been found innocent by a jury of his peers provoked plots against the government and attempts on Cromwell's life. To remove the rebellious symbol from the center of unrest, Cromwell ordered Lilburne taken from the Tower and transported to a fortress on the island of Jersey. The following year, when the tumult over his case had subsided, he was moved to a house in Dover, where he was imprisoned until he died, two years later, at the age of forty-three.

"Lilburne had made the difference," wrote Professor Levy. "From his time on, the right against self-incrimination was an established, respected rule of the common law, or, more broadly, of English law generally." Of far greater importance, though, the fight that Lilburne had led sparked into a conflagration the movement that would ultimately overthrow tyranny—the people's growing belief that each of them possessed a personal right to be free under just laws that had to be obeyed by the highest as well as the lowest person in the realm. The concept of the individual as a being whose self-respect and dignity and privacy were inviolable had been born. According to the historian Margaret Atwood Judson, this movement was "the first great outburst of democratic thought in history, with John Lilburne . . . leading the way."

One of the basic causes of the American Revolution was England's failure to give colonists here the common-law rights that it professed to assure them. Although the common law was extremely reactionary in many ways—it severely restricted freedom of expression, for example, and its courts were used to punish criticisms of church and state long after the Courts of High Commission and Star Chamber were abolished—still the American colonists looked upon that legal system as a shield against official abuse of their basic rights. The slow, diverse, and uncertain growth of the legal protection of those rights under American colonial law is unclear, for, Samuel Eliot Morison has written, "legal development is probably the least known aspect of American colonial history." Records are fragmentary, and much of the evidence that was recorded is more confusing than enlightening.

By the late eighteenth century, however, the specific rights that were to be embodied in the Bill of Rights existed, in one form or another, in colonial laws. After the Declaration of Independence was issued, eight states adopted constitutions that included prohibitions against compulsory self-incrimination. When Rpresentative James Madison, the "father of the Constitution," submitted a bill of rights to the First Congress, in 1789, his proposed guarantee against forced testimony stated "No person shall be . . . compelled to be a witness against himself." As far as written records show, Madison said nothing to explain this proposal, either then or later. In order to avoid conflict with a statute setting up the federal court system, a colleague in the House suggested that the proposal be changed to read, "No person shall be . . . compelled in any criminal case to be a witness against himself," and the alteration was adopted unanimously and, as far as the record shows, without further debate in either house. In 1791, the amendment was approved, along with the rest of the Bill of Rights, and appended to the body of the Constitution.

With this monumental event, Levy—then Earl Warren, Professor of Constitutional History at Brandeis University—concluded his account of the Fifth Amendment's origins:

"With good reason the Bill of Rights showed a preoccupation with the subject of criminal justice. The Framers understood that without fair and regularized procedures to protect the criminally accused, there could be no liberty. They knew that from time immemorial, the tyrant's first step was to use the criminal law to crush his opposition. Vicious and *ad hoc* procedures had always been used to victimize noncomformists and minorities of differing religious, racial, or political persuasion. The Fifth Amendment was part and parcel of the procedures that were so crucial, in the minds of the Framers, to the survival of the most treasured rights. One's home could not be his "castle," his property be his own, his right to express his opinions or to worship his God be secure, if he could be searched, arrested, tried, or imprisoned in some arbitrary or ignoble manner. . . . The Framers of the Bill of Rights saw their injunction, that no man should be a witness against himself in a criminal case, as a central feature of the accusatory system of criminal justice. While deeply committed to perpetuating a system that minimized the possibilities of convicting the innocent, they were not less concerned about the humanity that the fundamental law should show even to the offender. Above all, the Fifth Amendment reflected their judgment that in a free society, based on respect for the individual, the determination of guilt or innocence by just procedures, in which the accused made no unwilling contribution to his conviction, was more important than punishing the guilty."

In 1803, Chief Justice John Marshall delivered the Supreme Court's opinion in the case of Marbury v. Madison, which made the Court the ultimate arbiter of what the Constitution means by giving the Court the authority to overrule acts of Congress and the executive branch that violate the nation's fundamental law. Along the way in that case, Marshall ruled for the Court that a witness did not have to answer a question if he felt that his reply might incriminate him. Four years later, Marshall was riding the circuit, as justices then did, and presided over the trial of Aaron Burr for treason, in the Circuit Court for the District of Virginia. When a witness refused to answer a question on the ground of possible self-incrimination (or "crimination," in the usage of the time), the Chief Justice said, "If the question be of such a description that an answer to it may or may not criminate the witness . . . it must rest with himself, who alone can tell what it would be, to answer the question or not. If, in such a case, he say upon his oath that his answer would criminate himself, the court can demand no other testimony of the fact. . . . While that [fact] remains concealed within his own bosom, he is safe; but draw it from thence, and he is exposed to a prosecution. The rule which declares that no man is compellable to accuse himself would most obviously be infringed by compelling a witness to disclose a fact of this description. What testimony may be possessed, or is attainable, against any individual, the court can never know."

For half a century, Chief Justice Marshall's words were taken as the highest judicial support for a witness's absolute right to remain silent. But in 1857 Congress—in an inquiry into charges that some of its members had extorted money from special interests in exchange for favorable legislation—abrogated this right by passing an "immunity" statute that protected any witness who was compelled to testify "before either house of Congress or any committee of either house" from prosecution for "any fact or act touching which he shall have testified." The law uncovered more corruption and provided less opportunity for doing anything about it than anyone had anticipated, because members of Congress and those who had bribed them appeared before the investigating committee, confessed to innumerable crimes of all kinds that they had committed, and were automatically relieved under the new law of any liability for them. Recoiling at these "immunity baths," Congress repealed the law and replaced it in 1862 with a narrower "use immunity" statute, which provided not full immunity from prosecution for certain crimes revealed in compelled testimony before congressional committees but only immunity from use of the specific evidence thus extracted.

Criminal proceedings could still be brought against witnesses who testified against themselves, as long as the prosecution based its case on other evidence. Then, in 1868, Congress expanded this law to cover federal judicial proceedings in specific categories of criminal cases, and when the Interstate Commerce Commission was set up, in 1887, Congress gave it the same power to compel testimony from witnesses who were granted use immunity. If witnesses refused to testify after being given immunity, they could be fined and imprisoned until they talked.

In November, 1890, a federal grand jury in Illinois that was looking into possible violations of the Interstate Commerce Act of 1887 summoned a grain dealer by the name of Charles Counselman and asked him about his dealings with several railroads that were suspected of giving illegally low freight rates to favored customers. Counselman, who had been granted immunity, asserted his Fifth Amendment right and refused to answer several questions; the grand jury reported his refusal to the presiding judge; he ordered Counselman to answer the questions; Counselman again refused; and the judge found him in contempt of court, fined him five hundred dollars plus the cost of the proceedings, and sent him to jail until he decided to talk. He decided, instead, to appeal the order. It was upheld by the Court of Appeals, so he took the case to the Supreme Court. Justice Samuel Blatchford, in a unanimous opinion of that Court, declared that the Fifth Amendment "privilege is limited to criminal matters, but it is as broad as the mischief against which it seeks to guard," and that "the liberal construction which must be placed upon constitutional provisions for the protection of personal rights" obliged the Court to find the use-immunity law unconstitutional, since it didn't protect witnesses from the later use of their testimony, by way of its leads to other evidence, to prosecute them. "We are clearly of opinion that no statute which leaves the party or witness subject to prosecution after he answers the criminating question put to him can have the effect of supplanting the privilege conferred by the Constitution of the United States," the Court concluded, for the statute did not give witnesses "complete protection from all the perils against which the constitutional prohibition was designed to guard." That made it less than "a full substitute" for the amendment, and for such a law to be an adequate substitue it would have to provide "absolute immunity against future prosecution for the offense to which the question relates."

The notion that there could be a "substitute" for constitutional mandates was a curious one, since the primary purpose of the Framers in formulating a written constitution in the first place was to put its mandates beyond the reach of the national legislature. The only way in which the fundamental law of the nation could constitutionally be changed was by way of amendment, and the Framers had given Congress a limited role, which was shared with the people at large, in the amending process. Now, though, the Supreme Court's conclusion that the Fifth Amendment could be supplanted by a federal law effectively gave Congress the power to amend the Constitution on its own initiative and without public approval. Finally, since the Constitution flatly states, "No person shall be . . . compelled in any criminal case to be a witness against himself"—not that a person can be compelled to be a witness against himself

as long as he isn't prosecuted for what he says—the Supreme Court failed to place even a literal, much less a liberal, construction on "constitutional provisions for the protection of personal rights." Rather than giving absolute protection to those rights, the Court actually limited them in the case of the Fifth Amendment by handing the state the power to compel what the Constitution said could not be compelled.

Congress wasted no time in rushing through the door that the Court had opened. Sixteen days after the decision in Counselman was handed down, a bill was introduced in Congress guaranteeing that after immunity was granted to witnesses before the Interstate Commerce Commission "no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify." The bill—providing a form of absolute immunity that was to become known as transactional immunity—was soon enacted, and was judicially tested when the auditor of the Allegheny Valley Railway, a man named Brown, refused to answer questions put to him by a federal grand jury about low freight rates to good customers. Granted the new form of immunity, Brown pleaded the Fifth Amendment and remained silent, and the presiding judge found him in contempt of court, fined him five dollars, and sent him to jail until he agreed to testify. The Court of Appeals upheld this ruling, and the case—Brown v. Walker—went to the Supreme Court.

By a five-to-four vote, in 1896, the Court upheld the new immunity law. Justice Henry B. Brown delivered the majority's opinion, which was wholly based on the conclusion in Counselman that if absolute immunity was granted a prospective witness his Fifth Amendment right was fully protected. According to Justice Brown, that right could be looked at in one of two ways: it could be interpreted literally, as "authorizing the witness to refuse to disclose any fact which might tend to incriminate, disgrace, or expose him to unfavorable comments," or it could be viewed as an attempt "to secure the witness against a criminal prosecution."

The Court concluded that "the clause should be construed, as it was doubtless designed, to effect a practical and beneficent purpose—not necessarily to protect witnesses against every possible detriment which might happen to them from their testimony, nor to unduly impede, hinder, or obstruct the administration of criminal justice."

There was no historical justification whatever for the conclusion that this was the purpose for which the Fifth Amendment was "doubtless designed." Indeed, since the "practical and beneficent purpose" that Justice Brown mentioned entirely served the interests of the state rather than those of the individual citizen, that alone betrayed the intent of the Framers—to protect the individual against the state. To get around this point, Brown took refuge in an ancient judicial sanctuary—the tradition that courts should not overturn congressional acts unless they are flagrantly at odds with fundamental law. This tradition is based on the theory that since the members of Congress are democratically chosen and directly represent the citizenry, their decisions should not be overruled arbitrarily by the courts, which are essentially undemocratic in that their members are appointed rather than elected. In our system, the theory is absurd—even a cowardly abdication of judicial responsibility—for the Framers specifically designed our federal judicial system to serve as an undemocratic check on the democratic excesses that so often seize legislators. In any event, Justice Brown conceded that the colonists had so feared the inequities of the inquisitorial system of justice that they, "with one accord, made a denial of the right to question an accused person a part of their fundamental law." But then he went on to find ample justification for compelling one who was not formally accused of a crime—who was, in fact, given immunity against any such accusation—to tell of others' crimes. That power, he claimed, was "within the control of the legislature." And to contend, as the defendant had, that "he would incur personal odium and disgrace from answering these questions seems too much like an abuse of language to be worthy of serious consideration," the Justice said. Above all, though, the Court majority relied on the needs of government to justify transactional immunity on constitutional grounds. "Every good citizen is bound to aid in the enforcement of the law, and has no right to permit himself, under the pretext of shielding his own good name, to be made the tool of others who are desirous of seeking shelter behind his privilege," Justice Brown declared, and thereby accused the defendant in the case of a crime that no one had charged him with—conspiracy to conceal a crime. (Although the Fifth Amendment says only that no one shall be compelled to testify against himself, testifying against others may involve admitting that one did not report a crime, and not reporting a crime is, of course, a crime.)

The Court majority's reliance on the principle of good citizenship was utterly untenable, for the duties of citizens are nowhere mentioned in the Constitution. The authors of the Fifth Amendment did not speak of good citizens or bad citizens, they merely said that no citizen could be forced to accuse himself. And, of course, the Bill of Rights was written not to help the government enforce its laws but to restrain it from abusing *any* citizen through unjust laws and unfair enforcement of them. But to the majority of the Court the needs of government were paramount, and since, Justice Brown stated, "enforcement of the Interstate Commerce law or other analogous acts . . . would become impossible" without compelled testimony, testimony must be compelled. In short, the Supreme Court declared that if legislative acts could not be enforced without violating the Constitution, then the Constitution would have to be violated to uphold those acts.

The four justices in the minority dissented vigorously, and at points bitterly, from the majority opinion. Justice George Shiras, Jr., for instance, pointed out that the immunity law specifically provided that a witness who was forced to testify was not given immunity from the crime of perjury when he testified, whereas if he were allowed to assert his constitutional right to remain silent he could not incur a charge of perjury for what he had not said. Beyond that, Shiras went on, "a moment's thought will show that a perfectly innocent person may expose himself to accusation, and even condemnation, by being compelled to disclose facts and circumstances known only to himself, but which, when once disclosed, he may be entirely unable to explain as consistent with innocence." Another dissenter in the case was Justice Stephen J. Field, who used the defense counsel's arguments verbatim in describing the rule against compulsory self-incrimination as the "result of the long struggle between the opposing forces of the spirit of individual liberty on the one hand and the collective power of the state on the other." That power is absolutely limited under our form of government, he added, for "the proud sense of personal independence which is the basis of the most valued qualities of a free citizen is sustained and cultivated by the consciousness that there are limits which even the state cannot pass in tearing open the secrets of his bosom." Above all, Field argued in a long and passionate section of his dissenting opinion, there could be no assurance that the authors of the Fifth Amendment had not intended it to protect a witness against self-infamy as well as against self-incrimination. "Both the safeguard of the Constitution and the common-law rule spring alike from that sentiment of personal self-respect, liberty, independence, and dignity which has inhabited the breasts of English-speaking peoples for centuries, and to save which they have always been ready to sacrifice many governmental facilities and conveniences," the Justice said. "In scarcely anything has that sentiment been more manifest than in the abhorrence felt at the legal compulsion upon witnesses to make concessions which must cover the witness with lasting shame and leave him degraded both in his own eyes and those of others."

Legal scholarship of the time—especially on the Supreme Court—was so inadequate and slipshod that apparently Justice Field was unaware of an ancient sanction against compulsory self-infamy that strongly supported his argument. As far back as 1528, William Tyndale's "The Obedience of a Christian Man" had condemned the legal practice of forcing a man "to shame himself." By the late seventeenth century, this principle was embedded in English law, and in a notable case in 1679 a judge ruled that a witness could not be asked about his misdeeds even after being assured that he would not be prosecuted, because "neither his life nor name must suffer, and therefore such questions must not be asked him." And in 1696 Lord Chief Justice George Treby said, "Men have been asked whether they have been convicted and pardoned for felony, or whether they have been whipped for petty larceny; but they have not been obliged to answer, for though their answer in the affirmative will not make them criminal or subject them to a punishment, yet they are matters of infamy; and if it be an infamous thing, that is enough to preserve a man from being bound to answer." Sir William Blackstone's "Commentaries on the Laws of England," which was published in the mid-eighteenth century and was considered the leading text on the law by the Framers, stated that "no man is to be examined to prove his own infamy."

Two years before the Supreme Court upheld the immunity act in Brown v. Walker, a lower federal-court judge named Peter Grosscup had rejected the statute as unconstitutional. In his opinion, delivered in 1894, he addressed himself to the issue of self-infamy, among other matters, as making up an integral part of the Framers' design when they drew up the Fifth Amendment:

"Did they originate such privilege simply to safeguard themselves against the law-inflicted penalties and forfeitures? Did they take no thought of the pains of practical outlawry? The stated penalties and forfeitures of the law might be set aside; but was there no pain in disfavor and odium among neighbors, in excommunication from church or societies that might be governed by the prevailing views, in the private liabilities that the law might authorize, or in the unfathomable disgrace, not susceptible of formulation in language, which a known violation of law brings upon the offender? They, too, if the immunity was only against the law-inflicted pains and penalties, the government could probe the secrets of every conversation, or society, by extending compulsory pardon to one of its participants, and thus turn him into an involuntary informer. Did the Framers contemplate that this privilege of silence was exchangeable always, at the will of the government, for a remission of the participant's own penalties, upon a condition of disclosure, that would bring those to whom he had plighted his faith and loyalty within the grasp of the prosecutor? I cannot think so. . . .

"The oppression of crowns and principalities is unquestionably over, but the more frightful oppression of selfish, ruthless, and merciless majorities may yet constitute one of the chapters of future history. In my opinion, the privilege of silence against a criminal accusation, guaranteed by the Fifth

Amendment, was meant to extend to all the consequences of disclosure."

Both the Supreme Court's narrow endorsement of transactional immunity and its rejection of the theory that the Fifth Amendment prohibited the government from forcing one to disgrace oneself were ultimately to abet the tyranny of the majority that Judge Grosscup foresaw. As a result of anti-Communist hysteria, which had spread throughout America from the time of the Bolshevik Revolution in 1917 until it burst out into a national nightmare of repression in the late nineteen-forties and early nineteen-fifties, Congress, which had created most of the hysteria in the first place, responded to it by enacting some of the most repressive laws ever to be placed on this nation's books.

Armed with these laws, congressional committees and federal grand juries summoned their victims, who were forced to admit their radical political beliefs and associations and to inform on their friends or go to prison. In one of the most famous of these cases, which reached the Supreme Court in the mid-fifties—Ullman v. United States—the Court upheld a transactional-immunity statute that Congress had passed to implement one of the more far-reaching anti-radical laws. Since the statute provided absolute immunity, Justice Felix Frankfurter said for the seven-man majority, it was consonant with the decision in Brown v. Walker, which had "consistently and without question been treated as definitive by this court." Of the two dissenters, Justice Hugo L. Black opposed the decision on the ground that if the Constitution said, "No person shall be . . . compelled in any criminal case to be a witness against himself," that was what the Constitution meant. The other dissenter, Justice William O. Douglas, called upon the Court to overturn the five-man majority opinion in Brown and to raise the four-man minority opinion there to the status of constitutional doctrine by ruling "that the right of silence created by the Fifth Amendment is beyond the reach of Congress."

Above all, Douglas shared the concern expressed sixty-odd years earlier by Judge Grosscup and Justice Field about self-infamy, and he appealed to the Court to stand up for "conscience and human dignity and freedom of expression" by giving a person's reputation and his sense of independence and self-respect the full protection accorded it before the Supreme Court went to work on the Constitution. "The critical point is that the Constitution places the right of silence *beyond the reach of government*," he repeated. "The Fifth Amendment stands between the citizen and his government." But the Court's majority refused to listen.

After Brown v. Walker, the most important case concerning compulsory self-incrimination to be decided by the Supreme Court was Twining v. State of New Jersey, in 1908. In a state criminal trial, a judge had noted in his charge to the jury that the defendants had declined to take the stand in their own defense, and they appealed this act as a violation of their Fifth Amendment rights as interpreted by the Fourteenth Amendment. That amendment says, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Fourteenth Amendment was adopted in 1868, and many legal scholars and judges believed that its purpose was to make the entire Bill of Rights binding on the states. But, in 1873, five years after the amendment was adopted, the Supreme Court decided that it guaranteed citizens of the states only those rights the states said they possessed—that is, the Fourteenth Amendment was meaningless. Four members of the Court led by Justice Field, bitterly contested the 1873 decision, for if the Fourteenth Amendment did no more than the majority held, he said, "it was a vain and idle enactment, which accomplished nothing, and most unnecessarily excited Congress and the people on its passage."

In Twining v. New Jersey, the defendants reopened the argument by contending that the Fifth Amendment right against compulsory self-incrimination had been "incorporated" through the "privileges or immunities" clause of the Fourteenth Amendment to cover state criminal proceedings. But the Court rejected this view, and cited its 1873 decision as binding.

To buttress this conclusion, Justice William H. Moody, speaking for the Court in Twining, pointed out that the rights and privileges of national citizenship so far recognized by the Supreme Court were "the right to pass freely from state to state the right to petition Congress for a redress of grievances, the right to vote for national officers, the right to enter the public lands, the right to be protected against violence while in the lawful custody of a United States marshal, and the right to inform the United States authorities of violation of its laws." The rights enumerated in the Bill of Rights, among them freedom of religion, speech, press, and assembly; the right to be secure against unreasonable searches and seizures, against indictment for felony except by grand jury, against double jeopardy and against involuntary self-incrimination; the right to a speedy and public trial by an impartial jury, to a public accusation describing its nature and cause, to be confronted by one's accusers, to have the power to summon witnesses, on one's behalf, and to have a lawyer; and the right not to be subjected to excessive bail or fines or to cruel and unusual punishment—all these fundamental rights were the privileges and immunities of citizens only when they came up against the authority of the federal government.

Not one of these rights, the Court declared, was guaranteed to citizens against the authority of individual states unless specifically provided for under the laws of those states. In fact, the states could suspend or abolish any of the rights they had guaranteed their citizens, and no power, including that of the national government, could stop them. Accordingly, Justice Moody asserted, the right against compulsory self-incrimination was not a privilege or immunity of a citizen in a state criminal proceeding.

Going on to the defendants' further claim that compulsory self-incrimination also denied them due process of law, as guaranteed by both the Fifth and Fourteenth Amendments, Justice Moody stated that to constitute due process any legal principle had to be shown to be an intrinsic part of "the law of the land," as that phrase was meant by the authors of Magna Carta. He then asked rhetorically whether the prohibition against compulsory self-incrimination was "a fundamental principle of liberty and justice which inheres in the very idea of free government and is the inalienable right of a citizen of such a government." He answered that it was not, because a search through English and American history prior to the Revolution revealed "nothing to show that it was then thought to be other than a just and useful principle of law."

In England, he went on, the "privilege was not dreamed of for hundreds of years after Magna Carta (1215), and could not have been implied in the 'law of the land' there secured."

The test Moody proposed was faulty. For one thing, many of the principles that had been considered fundamental at the time the American Constitution was adopted had not been dreamed of for hundreds of years after Magna Carta. Indeed, if the founding of the United States was nothing more than a repetition of that document's principles, then six centuries had passed with no political progress to be shown for them. For instance, when King John signed the Great Charter even jury trials in criminal cases were unknown in England. In addition, Magna Carta contained almost no fundamental rights of ordinary people as we understand such rights today.

Those that were claimed so fervently—by men like Lilburne, among thousands of others—to be indelibly imprinted in it were actually imposed on it by myth in the centuries after it was written. The key sentence in Magna Carta that was later believed to contain the fundamental principles of democratic law reads, "No freeman shall be taken, or imprisoned, or disseised, or outlawed, or exiled, or any wise distroyed; nor shall we go upon him, nor send upon him, but by the lawful judgment of his peers, or by the law of the land."

In thirteenth-century England, "the law of the land" meant trial by battle or by an ordeal such as being branded with a hot iron to see whether the burn healed quickly, which meant one was innocent, or became infected, which meant one was guilty, and "the lawful judgment of his peers" referred to those who umpired the battle or interpreted the reaction to the iron.

Continuing, Justice Moody pointed out that there was no reference to a guarantee against self-incrimination in the English Petition of Right, submitted to the king in 1628. Once again the Justice—that is, the Supreme Court—was wrong. As Professor Levy has pointed out, a crucial part of the Petition was designed to stop the sovereign from forcing subjects to lend money to the Crown, and from forcing those who declined to make such loans to take self-incriminatory oaths before a special royal commission. Moody also claimed that compulsory self-incrimination "was then a matter of common occurrence in all the courts of the realm."

While that was true, Moody ignored the fact that beginning a few years later and for more than two centuries afterward compulsory self-incrimination under oath was not permitted in common-law courts in England; in fact, during this period defendants were not even allowed to testify under oath, either for or against themselves, in such courts of the realm until only ten years before Moody delivered the Supreme Court's opinion in Twining. Moody claimed that the English Bill of Rights of 1689 was "likewise silent, though the practice of questioning the prisoner at his trial had not then ceased."

Actually, by that time the rule against allowing prisoners to be questioned under oath was already established. Moreover, the English Bill of Rights was largely a fraud for it contained little to assure rights to the common man—aside from sanctions against excessive bail and fines and cruel and unusual punishment—but was mainly designed to protect the government's rights. One demonstration of this purpose emerged when Thomas Paine attacked that Bill of Rights in "The Rights of Man" by saying, "The act, called the Bill of Rights . . . what is it but a bargain, which the parts of the government made with each other to divide powers, profits, and privileges?" As if to prove his point, the British government charged Paine with treason, and he was convicted of committing, among other crimes, seditious libel against the Bill of Rights.

Justice Moody then moved on to America, and asserted that only four of the original thirteen states had asked that the Constitution be amended by adding a bill of rights that included the right against involuntary self-incrimination. He did say that six of the thirteen states had such a right written into their own constitutions, but he did not mention that every state having a separate bill of rights prohibited compulsory self-incrimination. He also ignored the broadest and most pertinent document of freedom up

to that time, the Virginia Declaration of Rights, written by George Mason, which had greatly influenced all the state constitutions and the national Constitution; it, too, contained a sanction against forced self-incrimination.

And, finally, Justice Moody ignored the Supreme Court's own finding in Brown v. Walker that the American colonists "with one accord, made a denial of the right to question an accused person a part of their fundamental law." In conclusion, Justice Moody dismissed the prohibition against involuntary self-incrimination as being in any way fundamental by sayng that "it is nowhere observed among our own people in the search for truth outside the administration of the law"—in other words, the rule has no counterpart in ordinary society.

This claim, which has repeatedly been made by such eminent jurists of today as Walter V. Schaefer, of the Illinois Supreme Court, and Henry J. Friendly, of the Court of Appeals for the Second Circuit, misses a couple of basic points. For one, "the search for truth" has nothing to do with the Fifth Amendment, which was obviously written with the express purpose of allowing people to conceal the truth. For another, the world outside the law is not like the world inside the law—most notably in the respect that in civil society one cannot be imprisoned for one's transgressions. Indeed, if the rules of civil society were the standard on which our criminal law were based, then no one would be forced to talk about others or go to prison, because scarcely anyone is regarded with more scorn in the ordinary world than the Judas figure—from the childish tattletale to the adult informer.

By the beginning of the eighteenth century, criminal-court judges in England generally concluded that compelled confessions were untrustworthy, and this realization became another reason for not allowing an accused person or a witness to be tortured. But in America the use of torture went on illegally for many years—and, in fact, still goes on. As it turned out, the Supreme Court was to have as much difficulty in facing this problem as it has had in facing the problem of coerced confessions in general.

In the mid-nineteen-thirties, three black men were arrested in Mississippi on a charge of murdering a white man. Five days after the crime, they were indicted, arraigned, given court-appointed counsel, and then were taken to trial the following morning. The trial lasted less than two days, and at its conclusion the three were found guilty and sentenced to death. Aside from their confessions, there was no evidence against them, and during the trial their story of how they had come to confess was laid before the jury. The story told how a deputy sheriff had led a mob to one of the defendants, hanged him by a rope from a tree outside the dead man's house for a time, let him down long enough to hear him proclaim his innocence, hauled him up again, let him down, heard him repeat his claim, then tied him to a tree trunk and whipped him until the mob tired of it and released him, without persuading him to confess.

A couple of days later, the deputy and a colleague went to the man's house and took him to jail—by way of nearby Alabama, where they stopped and beat him some more. They vowed to go on beating him until he confessed, and finally he did, whereupon they took him to jail. The deputy then picked up two other black men who had been implicated by the first suspect, took them to jail, made them strip and lie down over chairs, and whipped them with the buckle end of a leather belt until their backs were cut to pieces. In time, they confessed, too. During the trial, they displayed the fresh wounds on their backs to the jurors, and the defendant who had been hanged showed them the rope marks on his neck. The deputy sheriff readily admitted while on the stand that he had beaten one of the men, but, he said, "not too much for a Negro." The judges of the Mississippi Supreme Court read the trial record and upheld the convictions and death sentences.

Brown v. Mississippi, unlike thousands of similar cases across the country, ended up in the United States Supreme Court. In the arguments there, counsel for the State of Mississippi contended that Twining controlled the issue and that, accordingly, the federal rule against involuntary self-incrimination didn't apply to a state case. In February, 1936, the Court announced its decision, which upheld the state's contention on this point. "The question of the right of the state to withdraw the privilege against self-incrimination is not here involved," announced Chief Justice Charles Evans Hughes for the Court. What was involved, though, he went on, was that "torture to extort a confession" was so "revolting to the sense of justice" that it constituted a denial of due process, which was a right that the state could *not* withdraw. On this ground, the Court reversed the convictions.

State courts apparently couldn't believe that the Supreme Court had been serious in finding such practices illegal, and they continued to uphold convictions based on third-degree confessions. After all, there were states' rights, and none of them was more jealously guarded than the right to assert the police power at will. And, as Sir James Fitzjames Stephen, a prominent Victorian jurist, observed, "It is far pleasanter to sit comfortably in the shade rubbing red pepper into a poor devil's eyes than to go about in the sun hunting up evidence." To give the law some semblance of integrity, state courts went through what has been called "the swearing contest," in which policemen swore that defendants hadn't been beaten, defendants swore that they had, and judges and juries invariably took the word of the policemen. Time after time when such cases reached the Supreme Court, it repeated its insistence on due process and reversed the convictions. But, again, this had little effect on the states, whose law-enforcement officers seemed unmoved by such reversals.

In 1943, the Supreme Court ruled, in McNabb v. United States, that in federal criminal cases any protracted detention of a suspect violated a federal statute ordering that suspects be promptly taken before magistrates, and that confessions obtained during prolonged detention were inadmissible. This rule, the Court explained, was meant to check "resort to those reprehensible practices known as the third degree." Of course, the rule was binding only on federal courts, but it was expected that their behavior would serve as an example to the states.

However, judges on lower federal courts also apparently couldn't believe that the justices had been serious, and began ruling that before a defendant could claim coercion under the McNabb rule he had to demonstrate that there was a causal relationship between the length of time he had been detained and his confession. To deal with this circumvention, the Supreme Court ordered in 1957, by way of Mallory v. United States, that any unnecessary delay in taking a federal prisoner before a magistrate made a confession automatically inadmissible in court. Still, the prevailing abuse of the right against involuntary self-incrimination was the continuing use of the third degree in state cases, and the McNabb-Mallory rule didn't touch those at all.

Stymied by the intransigence of state officials, the Court went off in several different directions to stem these atrociously unjust practices. One of the chief means by which police often got evidence against suspects was by searching them without a warrant and using the evidence forcibly uncovered against them. Of course, this violated the Fourth Amendment's stricture against "unreasonable searches and seizures" and ignored the requirement that the police must have "probable cause" to believe a crime has been committed before they may seize evidence or arrest a person.

Moreover, this kind of practice also violated the Fifth Amendment, since it indirectly compelled a person to betray himself by giving up evidence of his culpability through force. Finally, in 1961, the Court decided, in Mapp v. Ohio, that the Fourth Amendment was binding on the states. In effect, this meant that state violations of the amendment could be taken into federal court. That ruling made the Amendment's most effective and intrinsic element—the exclusionary rule, which prohibits unreasonably seized evidence from being submitted in court—also binding on the states. In 1963, the Court also made the Sixth Amendment right to counsel binding on the states through Gideon v. Wainwright, and a year later expanded this ruling, in Escobedo v. Illinois, by holding that the right to have a lawyer commenced as soon as a suspect was taken to a police station.

Like the Court's ruling on the Fourth Amendment, the one on the Sixth Amendment had a salutary effect on the right against compelled testimony, since the first piece of advice that any lawyer will give to a client who is suspected or accused of a crime is to say nothing at all to the police. But law-enforcement officers who were temporarily dismayed by this limitation on them soon got around it—by torturing suspects before taking them to the station house. To prevent this recourse, the Court took the giant step of applying the Fifth Amendment to the states, by way of Malloy v. Hogan, in 1964.

Then, two years later, the Court expanded its protection by ordering, in Miranda v. Arizona, that every suspect in a criminal case must be warned of his constitutional rights from the moment he becomes a suspect—including the right to have a lawyer present at any stage of the proceedings against him, the right to remain silent, and the right to be warned that whatever he says may be used against him. In time, this order created a new form of the old swearing contest, in which policemen swore in court that they had given the Miranda warning, defendants swore that they hadn't, and judges and juries invariably believed the policemen. Even so, the Miranda decision made a compelling point: If the highest court in the land could not prevent injustice, at least it would not condone it. Speaking for the five-man majority in Miranda, Chief Justice Earl Warren said that "the privilege against self-incrimination—the essential mainstay of our adversary system—is founded on a complex of values."

He went on to explain, "All these policies point to one overriding thought: the constitutional foundation underlying the privilege is the respect a government—state or federal—must accord to the dignity and integrity of its citizens. To maintain a fair state-individual balance, to require the government to shoulder the entire load [in proving a person's guilt], to respect the inviolability of the human personality, our accusatory system of criminal justice demands that the government seeking to punish an individual produce the evidence against him by its own independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth."

On the same day that the Court applied the Fifth Amendment to state criminal cases, it also handed down its decision in Murphy et al v. Waterfront Commission of New York Harbor, which resolved a jurisdictional conflict that had previously existed among the states and between the states and the federal government in regard to grants of immunity. Before Murphy, when one state granted a witness immunity another state or the federal government could then prosecute him on the basis of his testimony, since no state

could grant immunity from prosecution by another state or by the federal government.

In Murphy, the Court ruled that when a person was forced to testify in one jurisdiction his testimony could not be used to prosecute him in another jurisdiction. However, to interfere as little as possible with the federal system, the decision allowed an exception to the absolute-immunity standard laid down in Counselman and upheld in Brown, Ullmann, and other Supreme Court decisions: it permitted use immunity to be employed in a dual-sovereignty situation when only one jurisdiction has any sort of immunity provision. Although the Court thereby made use immunity constitutional in narrowly circumscribed cases, the overall effect of the Murphy decision was to broaden the coverage and scope of the Fifth Amendment privilege by making it far more difficult to prosecute a person for what he testified to in *any* jurisdiction.

That the Court meant to hold to the strict Counselman-Brown requirement of transactional immunity in all other circumstances was demonstrated a year after Murphy, when the Court struck down a congressionally authorized use-immunity statute. In that case, Albertson v. Subversive Activities Control Board, the Court unanimously found the statute unconstitutional, again cited the Counselman-Brown rule requiring absolute immunity in exchange for compelled testimony, and declared that any immunity statute must be measured by this standard.

In sum, almost everything done by the Warren Court to interpret and apply the Fifth Amendment to the whole range of criminal law in America did little more than assure everyone of the rights that most people believed they had possessed all along. Even so, the indignant outcry from police, prosecutors, judges, politicians, the press, and laymen against the Court was so immediate and so clamorous that one might have thought the Bill of Rights had been scrapped altogether rather than at last restored in one small part to the purpose that its authors had meant it to serve.

"The natural progress of things is for liberty to yield and government to gain ground," Jefferson wrote, and some years later he added, "Timid men . . . prefer the calm of despotism to the boisterous sea of liberty." The rise in crime in the United States over the past dozen years has driven a lot of timid people to seek the calm of despotism by giving up their liberty to government on every level in the name of law and order. To the ignorant citizen and to the stupid judge, the Fifth Amendment right seems like a refuge for the guilty. On occasion, the Supreme Court has tried to correct this attitude In 1956, for instance, the Court said in an opinion on a Fifth Amendment case, "At the outset we must condemn the practice of imputing a sinister meaning to the exercise of a person's constitutional right under the Fifth Amendment." But the following year President Eisenhower told a press conference, "I must say I probably share the common reaction: If a man has to go to the Fifth Amendment, there must be something he doesn't want to tell." The President's failure to see that such a man might have good and innocent reasons—and the right—not to tell something led Justice Hugo L. Black to observe a little later, "The value of these constitutional privileges is largely destroyed if people can be penalized for relying on them."

Few aspects of American law have distinguished the right wing from the left wing as clearly as their attitudes toward the Fifth Amendment. On the right, it has long been attacked as a refuge for the guilty, who, it is said, *should* be compelled to admit their crimes and be strictly punished for them. And on the left, it has long been defended as the essential bulwark against an inquisitorial government—in Jefferson's view, *all* governments—which may condemn and punish the innocent along with the guilty.

The leading spokesman for the right-wing viewpoint is Chief Justice Warren F. Burger. Long before he was appointed to the Supreme Court by President Nixon, Burger publicly attacked the Fifth Amendment sanction at every opportunity. As a judge on the Court of Appeals for the District of Columbia Circuit, he often criticized his liberal colleagues there for applying the sanction too strictly in their rulings. And at a law symposium that Burger attended the year before he became Chief Justice, he questioned the validity of such fundamental principles of our legal system as the presumption of innocence, trial by jury, and the right against compulsory self-discrimination.

On the last point, Burger said at the law symposium, "Certainly you have heard—and judges have said—that one should not convict a man out of his own mouth. The fact is that we establish responsibility and liability and we convict in all the areas of *civil* litigation out of the mouth of the defendant." To some legal scholars, it seemed astonishing that a man who made no distinction between the civil law and the criminal law—who failed to note, for instance, that their penalties are a loss of money on the one hand and a loss of freedom and perhaps life on the other—could have become Chief Justice of the United States.

Soon after the Nixon Administration took office, Attorney General John N. Mitchell ordered a secret study made of the feasibility of altering the Fifth Amendment, either by drafting a law that would weaken its stricture against compelled testimony or by abolishing its privilege altogether through a constitutional amendment. Apparently, the second course seemed too long and too uncertain, so the Department of Justice concentrated on the first approach.

A couple of years earlier, Congress had set up the National Commission on Reform of the Federal Criminal Laws, and it was still at work on its assignment when Nixon and Mitchell took over. Along the way in its deliberations, the Commission adopted a recommendation made by a consultant: that transactional immunity be replaced by use immunity across the board. In effect, the proposal endorsed a broader form of use immunity than the laws of the eighteen-sixties, which the Supreme Court first rejected in 1892 and again and again in later years.

The use-immunity proposal stated that anyone who was compelled to testify could not be prosecuted directly on the basis of that testimony or indirectly on the basis of leads from it to other evidence, but that one could be prosecuted after being compelled to testify as long as the evidence used against one was obtained independently of, and was untainted by, the coerced testimony. Early in 1970, the use-immunity proposal was drafted in a separate bill, which was introduced in the House by three repersentatives who had served on the Commission and were also members of the House subcommittee having jurisdiction over such legislation.

A single day was allotted for a hearing on the proposal to rewrite the Fifth Amendment. Of the six witnesses who testified on the subject, only one, a spokesman for the American Civil Liberties Union, opposed use immunity.

The Nixon Administration's principal legal defense for backing the innovation was that the Supreme Court's decision in Murphy v. Waterfront Commission—that is, the narrow technical exception allowing use immunity in circumscribed cases—had made use immunity in general wholly constitutional. The witness from the A.C.L.U. and various critics who were not heard by the subcommittee complained that such a law would have many drawbacks.

Once a prosecutor could force a prospective defendant to testify about his crimes, for instance, the immense advantages that the government already had in manpower, money, and official intimidation would become gigantic, for then the prosecuter could immediately confine his search and concentrate all his resources on one person—the person who was granted use immunity and forced to testify against himself. And once the main target was sighted, a less than scrupulous prosecutor could easily fabricate a claim that the evidence used in court against the witness had been uncovered independently of the testimony elicited under compulsion.

Even if a prosecutor was scrupulously fair, anyone among the many employees in large United States Attorneys' offices or in even larger metropolitan district attorneys' offices might inadvertently follow up a lead that came originally from a witness's testimony, and someone else might unwittingly offer it in court as untainted evidence. Of course, prosecutors are often exceedingly ambitious, and the best way for them to get ahead is by building a record of crime-busting—even if that means, as it all too frequently does, using illegally acquired tips from wiretaps or bugs, covertly broadening court-imposed limits on search warrants in order to pick up unauthorized material evidence, or ignoring third-degree methods used by police to extort confessions.

Since the Bill of Rights was written to control such prosecutors, critics of the use-immunity bill pointed out, it was folly to encourage such men to legally force a man to talk and then to illegally use his words against him—the course that would almost certainly be taken by the incompetent, lazy, or vicious prosecutor. Moreover, when two or more suspects were involved in a case, use immunity could be employed to force each of them to testify against the other, which, in effect, would amount to their testifying against themselves, since the testimony of one could be used as independent evidence against the other.

Finally, federal immunity laws of the past had applied only to specific crimes that were difficult or impossible to solve without the help of a confession from someone who was involved. But the use-immunity proposal being considered by the House subcommittee provided that it would replace all transactional-immunity statutes and would be applicable to all crimes covered by the federal code four years after enactment by Congress.

The House subcommittee, which was controlled by a strong liberal majority, approved the use-immunity bill with only one vote being cast against it—by William Fitts Ryan, Democrat of New York, who said that it would destroy the Fifth Amendment. Afterward, the parent Judiciary Committee, which was also controlled by liberals, approved the measure with little discussion and sent it to the floor of the House as part of the Organized Crime Control Act of 1970.

That act, which was perhaps the most undemocratic and repressive piece of legislation to be seriously considered by Congress in a generation, passed with little debate and almost no opposition; when the final vote was tallied up, only twenty-six members of the House had voted against it. In the Senate, only one member—Lee Metcalf, Democrat of Montana—voted against the measure. It was an election year, Nixon had made crime a basic issue of his Presidency, and, as fully expected on all sides, Congress was not of a mind to sacrifice itself on the altar of democracy.

In the legal community, though, it was widely believed that the use-immunity law was so flagrantly unconstitutional that not even a Supreme Court headed by Chief Justice Burger could uphold it. But few Court-watchers anticipated that Nixon would soon have four appointees on the Court. Their effect was rapidly made clear in at least one respect. "In no area of criminal justice was the Nixon Court's new departure so swift

and veering as in cases arising under the Fifth Amendment's self-incrimination clause," wrote Professor Levy—now Mellon Professor at the Claremont Colleges, in California—in his recent book "Against the Law: The Nixon Court and Criminal Justice."

He went on, "The Court decided fourteen such cases during just the first two years of Burger's incumbency. . . . In all but one of the fourteen cases the right claimed under the Fifth Amendment lost." Of the thirteen assaults on the Amendment that succeeded, the most destructive was the decision in the case of Harris v. New York, which was handed down in 1971. The opinion of the Court was delivered by Chief Justice Burger, whose target was the Miranda ruling that a suspect must be warned of the right to remain silent, of the right to have a lawyer, and of the right to be told that anything one says may be used against one in court. Although the Miranda rule made any statements obtained in violation of it inadmissible as evidence, Burger undercut this guarantee by announcing for the majority of the Court in Harris that self-incriminating statements taken in violation of Miranda *can* be used during a trial to test a defendant's truthfulness if he takes the stand.

That is, once a suspect says something self-incriminating to the police before he is warned of his rights, his words cannot be used against him at the time of his trial as evidence of his guilt but can be used against him "to impeach his credibility." Of course, the immediate, practical, and overwhelming result of the new rule was to prevent any person who had made such an incriminating statement, no matter how trivial, from speaking in his own defense at his trial, for no defense lawyer could allow a client to swallow the judicial fiction that jurors would ignore self-incriminating remarks when it came time for them to decide about overall guilt or innocence.

In effect, then, the Court wiped out under such circumstances an accused person's fundamental right to defend himself. And, perhaps worse, the decision indirectly encouraged policemen and prosecutors to ignore the Miranda rule long enough to obtain some kind of incriminating statement, even one that they knew was misleading, in order to prevent suspects from later defending themselves in court. "The opinion in Harris taught that government may commit crimes in order to secure the conviction of criminals," Professor Levy observed, and added, "It taught the odious doctrine that in the administration of the criminal law, the end justifies the means and the Constitution can be circumvented."

A few months after Congress passed the use-immunity law, several young men in California were subpoenaed by a federal grand jury investigating draft evasion in that area, and were asked questions about a dentist who was suspected of having provided them with unnecessary dental work to make them ineligible for military service. They refused to testify, were granted the newly enacted form of federal use immunity, again refused to testify, and were imprisoned for contempt of court.

The case—Kastigar et al v. United States—went to the Supreme Court, which handed down its decision in the spring of 1972. To the amazement of most constitutional scholars, the Court upheld the law without qualification by a vote of five to two, with two justices not participating. The same scholars were amazed by the majority opinion's lack of craftsmanship, logic, and awareness of legal history. The opinion, written by Justice Lewis Powell, so misinterpreted the Court's own precedents, Professor Levy said, that it "left them twisted like pretzels."

Powell's basic argument was that transactional immunity was actually *too* broad—broader, in fact, than the Fifth Amendment right itself—and that use immunity was precisely "coextensive" with that right and thus a proper substitute for it. Since this view was flatly at odds with almost everything the Court had said on the subject over a period of eighty years, Powell was obliged to reject the entire line of Court rulings during that time without expressly saying so by overruling them. To this end, he began with the Counselman decision, the first of the line, and simply declared—erroneously—that it had upheld use immunity; its statement that only transactional immunity could replace the privilege itself, he said, was merely dictum and "cannot be considered binding authority."

To be sure, the Counselman opinion on this point could be described as dictum (a statement that is less than intrinsic to the order of the Court in a given case, and is meant to serve more as a future guide than as a present command), but it wasn't dictum after the Court made it the central point, four years later, in Brown v. Walker, and in a long series of decisions that subsequently reaffirmed the doctrine of absolute immunity. The only exception in that series was the Murphy decision's acceptance of use immunity in certain kinds of dual-sovereignty cases, and Powell squeezed through this loophole, even while denying that he was doing it, to justify the Court's ruling that use immunity is fully constitutional in all cases.

With the decision in Kastigar, the long struggle to stop government from forcing its way into the innermost privacy of people's thoughts, associations, and consciences largely came to an end. The right wing's final victory in this contest between the state and the individual was doubly remarkable in that the state itself had long felt restrained by tradition against using any form of immunity frivolously. The traditional reluctance of Congress, the courts, and the executive branch to wield such a potent weapon carelessly grew out of several factors—among them the fear that corrupt prosecutors would give "immunity baths" to those guilty of serious crimes; the belief that grants of immunity constitute grave invasions of citizens' privacy and should be resorted to only when all other law enforcement methods have failed; and, finally, the knowledge that compulsory immunity turns people into informers, a despised breed throughout American history.

The danger of ignoring these factors soon became clear. After the Court's decision in Kastigar, state legislatures enacted similar laws replacing transactional immunity, and local prosecutors began summoning thousands of witnesses before grand juries. There is no record of the number of people who have been compelled in state cases to testify against themselves and others or who have been subsequently prosecuted for what they revealed. Nor are the federal records complete. But one comparison is enough to reveal the extent of the new law's use: up to the mid-nineteen-sixties, the Department of Justice had granted immunity only a few dozen times; in the eighteen-month period following the Kastigar ruling, the Department was called upon to grant immunity to more than five thousand witnesses.

Hundreds of these grants were made in political cases prosecuted by the Nixon Administration, which devised the law chiefly for that purpose. Although the Administration's ostensible social justification for use immunity was that it was essential to the fight against organized crime, use immunity, or any other form of immunity, is largely valueless in such cases. The Mafia's *omertà* code, which can be roughly translated as "death to informers," makes a few months in jail for contempt of court a comparative slap on the wrist. In fact, a mobster's insistence on silence in order to receive such a sentence is the best way for him to prove his loyalty, and is doubtless a means to promotion within a grateful mob hierarchy. In addition to organized racketeering, the kinds of crimes that have been said to be controllable only by way of enforced immunity laws are bribery, extortion, gambling, consumer fraud, bootlegging, and commercial larceny—all but the last of which are most often committed by organized criminals, too.

For those crimes that aren't, probably the most effective and certainly the fairest kind of immunity would be voluntary immunity, which a prospective witness who wants to talk could accept as protection from prosecution; those who don't want to talk often lie anyway when they are forced to, and while they are sometimes convicted of perjury, that doesn't generate the information that immunity is supposed to produce.

In any event, before 1970 federal immunity statutes were specifically designed to be used only in those cases where little else would work. Now, with use immunity having replaced *all* federal immunity laws and covering *all* federal crimes, the government can, in Judge Grosscup's words, "probe the secrets of every conversation." Today, any person can be summoned before a grand jury, a court, or a legislative committee and forced to answer all questions that may be asked. The opportunities for political oppression that this opening provides are practically unlimited. Of course, political freedom was the primary goal of men like John Lilburne and the Framers of the Constitution, and political freedom was one of the basic reasons behind the adoption of the Fifth Amendment. But an even more fundamental goal of the amendment, like the rest of the Bill of Rights, was to preserve and nourish that fragile, necessary, and wondrous quality that gives meaning and purpose to human life—individuality.

RHODESIAN CHROME

Mr. CANNON. Mr. President, the subject of Rhodesian chrome is once again becoming a congressional issue. The Senate's Foreign Relations Committee is staffing S. 2111, a bill to prohibit the importation of Rhodesian chrome so long as United Nations sanctions against Rhodesia are in effect. In that regard an article written by Milton Friedman, a noted economist, which appeared in the May 3, 1976, issue of Newsweek appears to be most apropos. I accordingly commend it to my colleagues for reading and request unanimous consent that it be printed in the RECORD.

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

RHODESIA

(By Milton Friedman)

Of the 49 countries in Africa, fifteen are under direct military rule and 29 have one-party civilian governments. Only five have multiparty political systems. I have just returned from visiting two of these five—the Republic of South Africa and Rhodesia (the other three, for Africa buffs, are Botswana, Gambia and Mauritius). If this way of putting it produces a double take, that is its purpose. The actual situation in both South Africa and Rhodesia is very different from and very much more complex than the black-white stereotypes presented by both our government and the press. And the situation in Rhodesia is very different from that in South Africa.

Neither country is an ideal democracy—just as we are not. Both have serious racial problems—just as we have. Both can be justly criticized for not moving faster to eliminate discrimination—just as we can. But both provide a larger measure of freedom and affluence for all their residents—

black and white—than most other countries of Africa. Both would be great prizes for the Soviets—and our official policy appears well designed to assure that the Soviets succeed in following up their victory in Angola through the use of Cuban troops by similar take-overs in Rhodesia and South Africa.

The United Nations recently renewed and strengthened its sanctions against Rhodesia. The U.S. regrettably concurred. We have, however, had enough sense to continue buying chrome from Rhodesia under the Byrd amendment, rather than, as we did for a time, in effect forcing Rhodesia to sell its chrome to Russia (also technically a party to the sanctions) which promptly sold us chrome at double the price.

THE BACKGROUND

Rhodesia was opened up to the rest of the world less than a century ago by British pioneers. Since then, Rhodesia has developed rapidly, primarily through its mineral production—gold, copper, chrome and such—and through highly productive agriculture. In the past two decades alone, the "African" (i.e., black) population has more than doubled, to 6 million, while the "European" population (i.e., white) has less than doubled, from about 180,000 to less than 300,000.

As Rhodesia has developed, more and more Africans have been drawn from their traditional barter economy into the modern market sector. For example, from 1958 to 1975, the total earnings of African employees quadrupled, while those of European employees a little more than tripled. Even so, perhaps more than half of all Africans are still living in the traditional subsistence sector.

Europeans have a much higher average income than Africans in the market sector—perhaps in the ratio of as much as 10 to 1. But Africans in the market sector have a much higher average income than their fellows in the traditional sector—in about the same ratio. Both Europeans and Africans have benefited from their cooperation. Modern cities like Salisbury, an extensive network of roads and communications, productive farm lands, mines and industrial works—all this would have been impossible for a population of whites that even today totals fewer than 300,000. On the other hand, without the knowledge, skill and capital provided by the whites, Rhodesian blacks would today be many fewer and far poorer. To judge from the crude evidence that is available, the Rhodesian blacks in the modern sector enjoy an average income that is considerably more than twice as high as that of all the residents of the rest of Africa, excluding only South Africa.

RACE RELATIONS

The relation of the whites to the blacks is complex: a large dose of paternalism, social separation, discrimination in land ownership, and little or no official discrimination in other respects. In particular, there is no evidence of that petty apartheid—separate post-office entrances, toilets, and the like—that was our shame in the South and that I find so galling in South Africa. The education of the blacks has been proceeding by leaps and bounds. Today, half or more of the students at the University of Rhodesia are black.

Guerrilla warfare from outside and inside the country has produced a reaction by the government that can properly be described as repressive. But the provocation has clearly been great and it is important to maintain a sense of proportion. More than half the defense forces patrolling the borders are black. We were told that more blacks volunteer for the defense forces than can be accepted. The streets of Salisbury give a visual impression of a black sea with occasional white faces that brings to life and gives new meaning to the 20-to-1 numerical population ratio. It is very difficult to reconcile that visual impression with any widespread oppression or feelings of oppression by the blacks. If that existed, Rhodesia could not easily maintain such internal harmony or so prosperous an economy. During the past ten years of sanctions, Rhodesia grew in real terms more rapidly than in the prior ten years—and more rapidly than the rest of Africa.

"MAJORITY RULE"

The external pressures against Rhodesia arise from its unwillingness to grant "majority rule" within a definite and brief timetable. Whatever the merits or demerits of "majority rule" as an abstract principle, the imposition of sanctions against Rhodesia on this ground is a striking example of a double standard. The other former African colonies of Britain that were granted independence without question and without sanctions do not have anything approximating what Americans regard as majority rule. They have minority rule by a black elite that controls the one party permitted to exist. If the elite minority in Rhodesia had happened to be black instead of white, Britain would have rushed to grant them independence and provide "development assistance."

"Majority rule" for Rhodesia today is a euphemism for a black-minority government, which would almost surely mean both the eviction or exodus of most of the whites and also a drastically lower level of living and of opportunity for the masses of black Rhodesians. That, at any event, has been the typical experience in Africa—most recently in Mozambique. In his trip to Black Africa, Secretary Kissinger would do well to talk to some of the exploited masses and not only the elite—but needless to say, he will not find it easy to do so in the one-party states.

Rhodesia has a freer press, a more democratic form of government, a greater sympathy with Western ideals than most if not all of the states of Black Africa. Yet we play straight into the hands of our Communist enemies by imposing sanctions on it! The Minister of Justice of Rhodesia cannot get a visa to visit the U.S.—yet we welcome the ministers of the Gulag Archipelago with open arms. James Burnham had the right phrase for it: suicide of the West.

EXPORT-IMPORT BANK FINANCING NOTIFICATION

Mr. PROXMIRE. Mr. President, I call the attention of my colleagues to a communication I have received from the Export-Import Bank pursuant to section 2(b)(3) of the Export-Import Bank Act notifying the Congress of a pending Eximbank loan and guarantee application relating to the construction of two plants in Poland, one to produce color television glassware and the other to produce color television tubes. Section 2(b)(3) of the act requires the Bank to notify both Houses of Congress of any proposed loan, financial guarantee, or combination thereof in an amount of $60 million or more at least 25 days of continuous session of the Congress prior to the date of final approval. Upon expiration of this period, the Bank may give final approval to the transaction unless the Congress dictates otherwise. In addition, in the case of any Eximbank loan to a Communist country in the amount of $50 million or more, section 2(b)(2) of the act requires the President to determine and report to the Congress that such transaction is in the national interest. The President's determination and report to the Congress in this regard accompanies the communication from the Bank.

In this case, the Bank proposes to extend one loan in the amount of $30.5 million and another in the amount of $37.9 million, together with a guarantee of loans by private lenders in the amount of $19.4 million and $24.1 million respectively, to Bank Handlowy w Warszawie S.A., an agency of the Polish People's Republic to assist UNITRA, the Polish foreign trade enterprise, in the construction of the color television glassware and color television tube plants. Exim's total participation would cover approximately 90 percent of the total U.S. cost of the two projects. The loans will bear interest at the rate of 8¾ percent per annum and be repayable semiannually over a 4½-year period beginning April 5, 1982.

Mr. President, I ask unanimous consent that the letter from the Bank pertaining to these transactions, together with the accompanying materials, be printed in the RECORD.

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

WASHINGTON, D.C.,
April 22, 1976.

Hon. ADLAI E. STEVENSON III,
Chairman, Senate Subcommittee on International Finance, Russell Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with section 2(b)(3) of the Export-Import Bank Act of 1945, I have reported to the President of the Senate and the Speaker of the House of Representatives on two applications currently pending consideration by the Bank. Also submitted was a determination by the President that these transactions are in the national interest, as required under Section 2(b)(2) of the Export-Import Bank Act.

I respectfully furnish herewith copies of these documents for your consideration.

Sincerely,

STEPHEN M. DUBRUL, Jr.

WASHINGTON, D.C.,
April 22, 1976.

Hon. NELSON A. ROCKEFELLER,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Pursuant to Section 2(b)(3) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits the following statement with respect to two transactions involving the extension of credit to Bank Handlowy w Warszawie S.A. (Borrower) to enable the Borrower to assist UNITRA (Foreign Trade Enterprise) in purchasing United States goods and services required for the construction of a plant to produce color television glassware and a color television tube plant in Poland. The Eximbank loans for the subject transactions will exceed $60,000,000.

As required under Section 2(b)(2) of the Export-Import Bank Act of 1945, as amended, the President has made a determination that these transactions are in the national interest. A copy of that determination is attached hereto.

A. DESCRIPTION OF TRANSACTIONS

1. *Purpose*

The transactions to which this statement relates are the sale by Corning Glass Works of United States equipment, technology and technical assistance for construction of a new facility to produce glass funnels and other glassware for color television picture tubes and the sale by RCA Corporation of United States equipment, technology and technical assistance for construction of a complete color television picture tube plant. Eximbank is prepared to extend to the Borrower direct loans totalling $68,501,950 to assist in financing the purchase of this equipment, technology and technical assistance. Repayment

of the Eximbank loans will be unconditionally guaranteed by the Government of the Polish People's Republic.

2. Identity of the borrower

Bank Handlowy w Warszawie S.A. is a joint stock company and an agency of the Polish People's Republic. It has been designated by the Government of the Polish People's Republic as the authorized entity for the financing of purchases of goods and services of United States manufacture or origin.

B. EXPLANATION OF EXIMBANK FINANCING

1. Reasons

The proposed Eximbank loans, totalling $68,501,950, will finance the export of United States goods and services valued at $124,549,000. This will have a favorable impact on income and employment in the areas where the suppliers of the United States goods are located. Major employment benefits will be realized, as a total of 4,069 man/years of labor are required for the capital equipment in the transactions and additional labor will be required for the consumable supplies and services involved. In addition, many of the orders for equipment for these transactions will be placed with relatively small firms.

No adverse impact upon the United States economy is foreseen as a result of these exports. The subject facilities are designed to produce product primarily for the Polish domestic market and other East European markets. U.S. producers are not exporting to these markets and Corning/RCA will not undertake to repurchase any of the output.

In view of the magnitude of these transactions and the repayment terms required, Eximbank's loans are necessary to enable the U.S. manufacturers to secure these sales.

2. Financing plan

The total estimated contract price of United States goods and services to be supported by Eximbank's financing is $124,549,000, which will be financed as follows:

	Glass plant	Tube plant	Total	Percent of U.S. costs
Cash payment	$5,552,190	$6,902,710	$12,454,900	10
Eximbank loan	30,537,045	37,964,905	68,501,950	55
Private unguaranteed loan	19,432,665	24,159,485	43,592,150	35
Total	55,521,900	69,027,100	124,549,000	100

(a) Eximbank Charges

Disbursements under the Eximbank loans will bear interest at the rate of 8¾% per annum. Eximbank will charge a loan commitment fee of ½ to 1% per annum on the undisbursed portion of the Eximbank loans. Interest and fees will be payable semiannually.

(b) Repayment Terms

Loans extended for the purchase of United States goods and services in connection with the subject transactions will be repaid in 14 semiannual installments. The first 5 installments and a portion of the 6th installment will be applied to the repayment of the unguaranteed private source loan beginning October 5, 1979, and a portion of the 6th installment and all of the last 8 installments will be applied to the repayment of the Eximbank loans beginning April 5, 1982.

Sincerely,

STEPHEN M. DUBRUL, Jr.

MEMORANDUM FOR THE PRESIDENT AND CHAIRMAN OF THE EXPORT-IMPORT BANK OF THE UNITED STATES

THE WHITE HOUSE,
Washington, D.C., April 21, 1976.

In accordance with Section 2(b)(2) of the Export-Import Bank Act of 1945, as amended, I hereby determine that it is in the national interest for the Export-Import Bank of the United States to extend credit and participate in the extension of credit in connection with the following cases involving the purchase of United States products and services by the Polish People's Republic or an agency or national thereof:

A. Eximbank Credit No. 6190:

Borrower: Bank Handlowy w Warszawie S.A.

Project: Purchase of United States equipment, technology and technical assistance required for construction of a plant to produce glass funnels for color television tubes.

Total U.S. Costs (Approximate): $55,521,900.

Cash payment: $5,552,190 (10%).

Eximbank loan: $30,537.045 (55%).

Participation financing without Eximbank guarantee: $19,432,665 (35%).

B. Eximbank Credit No. 6192:

Borrower: Bank Handlowy w Warszawie S.A.

Project: Purchase of United States equipment, technology and technical assistance required for construction of a color television tube plant in Poland.

Total U.S. costs (approximate): $69,027,100.

Cash payment: $6,902,710 (10%).

Eximbank loan: $37,964,905 (55%).

Participation Financing without Eximbank guarantee: $24,159,485 (35%).

GERALD R. FORD.

DESEGREGATION AND THE CITIES, PART II, THE COURT AND HOUSING DESEGREGATION

Mr. BROOKE. Mr. President, the Supreme Court handed down an important unanimous decision on metropolitan housing segregation on April 20. The Court, in Hills against Gautreaux, ruled that because both HUD and the Chicago Housing Authority had unconstitutionally used public housing to intensify segregation, the lower courts had authority to order construction of subsidized housing outside the city limits to remedy the damage. The decision is an important judicial recognition of the metropolitan character of the housing market and it may move Chicago toward the kind of "fair share" housing approach which has been voluntarily adopted in several other metropolitan areas. The decision is likely to have only a gradual and limited impact on housing segregation, even in Chicago.

The Supreme Court, in its decision, cites an important recent Federal district court decision ordering HUD to enforce the housing requirements of the Housing and Community Development Act of 1974. This decision, dealing with metropolitan Hartford, has stimulated increased HUD attention to the act's requirement that some provision be made to begin to provide housing for those who work in suburban communities but cannot find housing there. Given the limited nature of the decision, the great complexity and long delays in the process of producing housing, and the extremely small national investment now going into subsidized housing, neither decision will make any significant difference in the broad trend of spreading segregation in the short run. They may, however, help trigger national debate about the need for a strong and positive housing policy working against the kind of intense segregation that has often made busing the only way to desegregate urban schools. After the text of the Hills against Gautreaux decision and excerpts from the Hartford case, I have included interpretations of the Gautreaux holding by officials and experts interviewed by the New York Times and the Baltimore Sun and the response of the National Committee Against Discrimination in Housing.

Mr. President, I ask unanimous consent that the above-mentioned material be printed in the RECORD.

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

[Supreme Court of the United States—No. 74-1047]

HILLS v. GAUTREAUX

[April 20, 1976]

MR. JUSTICE STEWART delivered the opinion of the Court.

The United States Department of Housing and Urban Development (HUD) has been judicially found to have violated the Fifth Amendment and the Civil Rights Act of 1964 in connection with the selection of sites for public housing in the city of Chicago. The issue before us is whether the remedial order of the federal trial court may extend beyond Chicago's territorial boundaries.

I

This extended litigation began in 1966 when the respondents, six Negro tenants in or applicants for public housing in Chicago brought separate actions on behalf of themselves and all other Negro tenants and applicants similarly situated against the Chicago Housing Authority (CHA) and HUD.[1] The complaint filed against CHA in the United States District Court for the Northern District of Illinois alleged that between 1950 and 1965 substantially all of the sites for family public housing selected by CHA and approved by the Chicago City Council were "at the time of such selection, and are now" located "within the areas known as the Negro Ghetto." The respondents further alleged that CHA deliberately selected the sites to "avoid the placement of Negro families in white neighborhoods" in violation of federal statutes and the Fourteenth Amendment. In a companion suit against HUD the respondents claimed that it had "assisted in the carrying on and continues to assist in the carrying on of a racially discriminatory public housing system within the City of Chicago" by providing financial assistance and other support for CHA's discriminatory housing projects.[2]

The District Court stayed the action against HUD pending resolution of the CHA suit.[3] In February of 1969, the court entered summary judgment against CHA on the ground that it had violated the respondents' constitutional rights by selecting public housing sites and assigning tenants on the basis of race.[4] *Gautreaux* v. *CHA*, 296 F. Supp. 907. Uncontradicted evidence submitted to the District Court established that the public housing system operated by CHA was racially segregated, with four overwhelmingly white projects located in white neighborhoods and with 99½% of the remaining family units located in Negro neighborhoods and 99% of those units occupied by Negro tenants. *Id.*, at 910.[5] In order to prohibit future violations and to remedy the effects of past unconstitutional practices, the court directed CHA to build its next 700 family units in predominantly white areas of Chicago and thereafter to locate at least 75% of its new family public housing in predominantly white areas inside Chicago or in Cook County. *Gautreaux*

Footnotes at end of article.

v. *CHA*, 304 F. Supp. 736, 738–739.[5] In addition, CHA was ordered to modify its tenant assignment and site selection procedures and to use its best efforts to increase the supply of dwelling units as rapidly as possible in conformity with the judgment. *Id.*, at 739–741.

The District Court then turned to the action against HUD. In September of 1970, it granted HUD's motion to dismiss the complaint for lack of jurisdiction and failure to state a claim on which relief could be granted. The United States Court of Appeals for the Seventh Circuit reversed and ordered the District Court to enter summary judgment for the respondents, holding that HUD had violated both the Fifth Amendment and § 601 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (1970), by knowingly sanctioning and assisting CHA's racially discriminatory public housing program. 448 F. 2d 731, 739–740.[7]

On remand, the trial court addressed the difficult problem of providing an effective remedy for the racially segregated public housing system that had been created by the unconstitutional conduct of CHA and HUD.[8] The court granted the respondents' motion to consolidate the CHA and HUD cases and ordered the parties to formulate "a comprehensive plan to remedy the past effects of unconstitutional site selection procedures." The order directed the parties to "provide the Court with as broad a range of alternatives as seem . . . feasible" including "alternatives which are not confined in their scope to the geographic boundary of the City of Chicago." After consideration of the plans submitted by the parties and the evidence adduced in their support, the court denied the respondents' motion to consider metropolitan relief and adopted the petitioner's proposed order requiring HUD to use its best efforts to assist CHA in increasing the supply of dwelling units and enjoining HUD from funding family public housing programs in Chicago that were inconsistent with the previous judgment entered against CHA. The court found that metropolitan relief was unwarranted because "the wrongs were committed within the limits of Chicago and solely against residents of the City" and there were no allegations that "CHA and HUD discriminated or fostered racial discrimination in the suburbs."

On appeal, the Court of Appeals for the Seventh Circuit, with one judge dissenting, reversed and remanded the case for "the adoption of a comprehensive metropolitan area plan that will not only disestablish the segregated public housing system in the City of Chicago . . . but will increase the supply of dwelling units as rapidly as possible." 503 F. 2d 930, 939. Shortly before the Court of Appeals announced its decision, this Court in *Milliken* v. *Bradley*, 418 U.S. 717, had reversed a judgment of the Court of Appeals for the Sixth Circuit that had approved a plan requiring the consolidation of 54 school districts in the Detroit metropolitan area to remedy racial discrimination in the operation of the Detroit public schools. Understanding *Milliken* "to hold that the relief sought there would be an impractical and unreasonable over-response to a violation limited to one school district," the Court of Appeals concluded that the *Milliken* decision did not bar a remedy extending beyond the limits of Chicago in the present case because of the equitable and administrative distinctions between a metropolitan public housing plan and the consolidation of numerous local school districts. 503 F. 2d, at 935–936. In addition, the appellate court found that, in contrast to *Milliken*, there was evidence of suburban discrimination and of the likelihood that there had been an "extra-city impact" of the petitioner's "intra-city discrimination." *Id.*, at 936–937, 939–940. The appellate court's determination that a remedy extending beyond the city limits was both "necessary and equitable" rested in part on the agreement of the parties and the expert witnesses that "the metropolitan area is a single relevant locality for low rent housing purposes and that a city-only remedy will not work." *Id.*, at 936, 937. HUD subsequently sought review in this Court of the permissibility in light of *Milliken* of "inter-district relief for discrimination in public housing in the absence of a finding of an inter-district violation."[9] We granted certiorari to consider this important question. 421 U.S. 962.

II

In *Milliken* v. *Bradley*, *supra*, this Court considered the proper scope of a federal court's equity decree in the context of a school desegregation case. The respondents in that case had brought an action alleging that the Detroit Public School System was segregated on the basis of race as the result of official conduct and sought an order establishing "'a unitary, nonracial school system.'" 418 U.S., at 723. After finding that constitutional violations committed by the Detroit School Board and state officials had contributed to racial segregation in the Detroit schools, the trial court had proceeded to the formulation of a remedy. Although there had been neither proof of unconstitutional actions on the part of neighboring school districts nor a demonstration that the Detroit violations had produced significant segregative effects in those districts, the court established a desegregation panel and ordered it to prepare a remedial plan consolidating the Detroit school system and 53 independent suburban school districts. *Id.*, at 733–734.[10] The Court of Appeals for the Sixth Circuit affirmed the desegregation order on the ground that, in view of the racial composition of the Detroit school system, the only feasible remedy required "the crossing of the boundary lines between the Detroit School District and adjacent or nearby school districts." *Bradley* v. *Milliken*, 484 F. 2d 215, 249. This Court reversed the Court of Appeals, holding that the multidistrict remedy contemplated by the desegregation order was an erroneous exercise of the equitable authority of the federal courts.

Although the *Milliken* opinion discussed the many practical problems that would be encountered in the consolidation of numerous school districts by judicial decree, the Court's decision rejecting the metropolitan area desegregation order was actually based on fundamental limitations on the remedial powers of the federal courts to restructure the operation of local and state governmental entities. That power is not plenary. It "may be exercised 'only on the basis of a constitutional violation.'" 418 U.S., at 738, quoting *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 16. See *Rizzo* v. *Goode*, —— U.S. ——, ——. Once a constitutional violation is found, a federal court is required to tailor "the scope of the remedy" to fit "the nature and extent of the constitutional violation." 418 U.S., at 744; *Swann*, *supra*, at 16. In *Milliken*, there was no finding of unconstitutional action on the part of the suburban school officials and no demonstration that the violations committed in the operation of the Detroit school system had had any significant segregative effects in the suburbs. See 418 U.S., at 745, 748. The desegregation order in *Milliken* requiring the consolidation of local school districts in the Detroit metropolitan area thus constituted direct federal judicial interference with local governmental entities without the necessary predicate of a constitutional violation by those entities or of the identification within them of any significant segregative effects resulting from the Detroit school officials' unconstitutional conduct. Under these circumstances, the Court held that the interdistrict decree was impermissible because it was not commensurate with the constitutional violation to be repaired.

Since the *Milliken* decision was based on basic limitations on the exercise of the equity power of the federal courts and not on a balancing of particular considerations presented by school desegregation cases, it is apparent that the Court of Appeals erred in finding *Milliken* inapplicable on that ground to this public housing case.[11] The school desegregation context of the *Milliken* case is nonetheless important to an understanding of its discussion of the limitations on the exercise of federal judicial power. As the Court noted, school district lines cannot be "casually ignored or treated as a mere administrative convenience" because they separate independent governmental entities responsible for the operation of autonomous public school systems. 418 U.S., at 741–743. The Court's holding that there had to be an interdistrict violation or effect before a federal court could order the crossing of district boundary lines reflected the substantive impact of a consolidation remedy on separated and independent school districts.[12] The District Court's desegregation order in *Milliken* was held to be an impermissible remedy not because it envisioned relief against a wrongdoer extending beyond the city in which the violation occurred but because it contemplated a judicial decree restructuring the operation of local governmental entities that were not implicated in any constitutional violation.

III

The question presented in this case concerns only the authority of the District Court to order HUD to take remedial action outside the city limits of Chicago. HUD does not dispute the Court of Appeals' determination that it violated the Fifth Amendment and § 601 of the Civil Rights Act of 1964 by knowingly funding CHA's racially discriminatory family public housing program, nor does it question the appropriateness of a remedial order designed to alleviate the effects of past segregative practices by requiring that public housing be developed in areas that will afford respondents an opportunity to reside in desegregated neighborhoods. But HUD contends that the *Milliken* decision bars a remedy affecting its conduct beyond the boundaries of Chicago for two reasons. First, it asserts that such a remedial order would constitute the grant of relief incommensurate with the constitutional violation to be repaired. And, second, it claims that a decree regulating HUD's conduct beyond Chicago's boundaries would inevitably have the effect of "consolidat[ing] for remedial purposes" governmental units not implicated in HUD's and CHA's violations. We address each of these arguments in turn.

A

We reject the contention that, since HUD's constitutional and statutory violations were committed in Chicago, *Milliken* precludes an order against HUD that will affect its conduct in the greater metropolitan area. The critical distinction between HUD and the suburban school districts in *Milliken* is that HUD has been found to have violated the Constitution. That violation provided the necessary predicate for the entry of a remedial order against HUD and, indeed, imposed a duty on the District Court to grant appropriate relief. See 418 U.S., at 744. Our prior decisions counsel that in the event of a constitutional violation "all reasonable methods be available to formulate an effective remedy," *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43, 46, and that every effort should be made by a federal court to employ those methods "to achieve the greatest possible degree of [relief], taking into account the practicalities of the situation." *Davis* v. *Board of School Comm'rs*, 402 U.S. 33, 37. As the Court observed in *Swann* v. *Charlotte-Mecklenburg Board of Education*: "Once a right and a violation have been shown, the scope

Footnotes at end of article.

of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." 402 U.S., at 15.

Nothing in the *Milliken* decision suggests a *per se* rule that federal courts lack authority to order parties found to have violated the Constitution to undertake remedial efforts beyond the municipal boundaries of the city where the violation occurred.[13] As we noted in Part II, *supra*, the District Court's proposed remedy in *Milliken* was impermissible because of the limits on the federal judicial power to interfere with the operation of state political entities that were not implicated in unconstitutional conduct. Here, unlike the desegregation remedy found erroneous in *Milliken*, a judicial order directing relief beyond the boundary lines of Chicago will not necessarily entail coërcion of uninvolved governmental units, because both CIA and HUD have the authority to operate outside the Chicago city limits.[14]

In this case, it is entirely appropriate and consistent with *Milliken* to order CHA and HUD to attempt to create housing alternatives for the respondents in the Chicago suburbs. Here the wrong committed by HUD confined the respondents to segregated public housing. The relevant geographic area for purposes of the respondents' housing options is the Chicago housing market, not the Chicago city limits. That HUD recognizes this reality is evident in its administration of federal housing assistance programs through "housing market areas" encompassing "the geographic area 'within which all dwelling units . . .' are in competition with one another as alternatives for the users of housing." Department of Housing and Urban Development, FHA Techniques of Housing Market Analysis 8 (Jan. 1970) *quoting* The Institute for Urban Land Use and Housing Studies, Housing Market Analysis: A Study of Theory and Methods, c. II (1953). The housing market area "usually extends beyond the city limits" and in the larger markets "may extend into several adjoining counties." *Id.*, at p. 12.[15] An order against HUD and CHA regulating their conduct in the greater metropolitan area will do no more than take into account HUD's expert determination of the area relevant to the respondents' housing opportunities and will thus be wholly commensurate with the "nature and extent of the constitutional violation." 418 U.S., at 744. To foreclose such relief solely because HUD's constitutional violation took place within the city limits of Chicago would transform *Milliken's* principled limitation on the exercise of federal judicial authority into an arbitrary and mechanical shield for those found to have engaged in unconstitutional conduct.

B

The more substantial question under *Milliken* is whether an order against HUD affecting its conduct beyond Chicago's boundaries would impermissibly interfere with local governments and suburban housing authorities that have not been implicated in HUD's unconstitutional conduct. In examining this issue, it is important to note that the Court of Appeals' decision did not endorse or even discuss "any specific metropolitan plan" but instead left the formulation of the remedial plan to the District Court on remand. 503 F. 2d, at 936. On rehearing, the Court of Appeals characterized its remand order as one calling "for additional evidence and for further consideration of the issue of metropolitan area relief in light of this opinion and that of the Supreme Court in Milliken v. Bradley." *Id.*, at 940. In the current posture of the case, HUD's contention that any remand for consideration of a metropolitan area order would be impermissible as a matter of law must necessarily be based on its claim at oral argument "that court-ordered metropolitan relief in tihs case, no matter how gently it's gone about, no matter how it's framed, is bound to require HUD to ignore the safeguards of local autonomy and local political processes" and therefore to violate the limitations on federal judicial power established in *Milliken*. In addressing this contention we are not called upon, in other words, to evaluate the validity of any specific order, since no such order has yet been formulated.

HUD's position, we think, underestimates the ability of a federal court to formulate a decree that will grant the respondents the constitutional relief to which they may be entitled without overstepping the limits of judicial power established in the *Milliken* case. HUD's discretion regarding the selection, of housing proposals to assist with funding as well as its authority under a recent statute to contract for low-income housing directly with private owners and developers can clearly be directed towards providing relief to the respondents in the greater Chicago metropolitan area without preempting the power of local governments by undercutting the role of those governments in the federal housing assistance scheme.

An order directing HUD to use its discretion under the various federal housing programs to foster projects located in white areas of the Chicago housing market would be consistent with and supportive of well-established federal housing policy.[16] Title VI of the Civil Rights Act of 1964 prohibits racial discrimination in federally assisted programs including, of course, public housing programs.[17] Based upon this statutory prohibition, HUD in 1967 issued site approval rules for low-rent housing designed to avoid racial segregation and expand the opportunities of minority group members "to locate outside areas of [minortiy] concentration." Department of Housing and Urban Development, Low-Rent Housing Manual, § 205.1, ¶4(g) (Feb. 1967 rev.). Title VIII of the Civil Rights Act of 1968, expressly directed the Secretary of HUD to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further" the Act's fair housing policy. 42 U.S.C. § 3608(d)(5) (1970).

Among the steps taken by HUD to discharge its statutory duty to promote fair housing was the adoption of project selection criteria for use in "eliminating clearly unacceptable proposals and assigning priorities in funding to assure that the best proposals are funded first." Evaluation of Rent Supplement Projects and Low-Rent Housing Assistance Applications, 37 Fed. Reg. 203 (1972). In structuring the minority housing opportunity component of the project selection criteria, HUD attempted "to assure that building in minority areas goes forward only after there truly exists housing opportunities for minorities elsewhere" in the housing market and to avoid encouraging projects located in substantially racially mixed areas. *Id.*, at 204. See 24 CFR § 200.710 (1975). See generally Maxwell, HUD's Project Selection Criteria—A Cure for "Impermissible Color Blindness"? 48 Notre Dame Law. 92 (1972).[18] More recently, in the Housing and Community Development Act of 1974, Congress emphasized the importance of locating housing so as to promote greater choice of housing opportunities and to avoid undue concentrations of lower income persons. See 42 U.S.C. §§ 5301(c)(6), 5304(a)(4)(A), (C)(ii) (1970 ed., Supp. IV); H. R. Rep. No. 93-1114, at 8.

A remedial plan designed to insure that HUD will utilize its funding and administrative powers in a manner consistent with affording relief to the respondents need not abrogate the role of local governmental units in the federal housing assistance programs. Under the major housing programs in existence at the time the District Court entered its remedial order pertaining to HUD, local housing authorities and municipal governments had to make application for funds or approve the use of funds in the locality before HUD could make housing assistance money available. See 42 U.S.C. §§ 1415(7)(b), 1421b(a)(2) (1970). An order directed solely to HUD would not force unwilling localities to apply for assistance under these programs but would merely reinforce the regulations guiding HUD's determination of which of the locally authorized projects to assist with federal funds.

The Housing and Community Development Act, of 1974, 42 U.S.C. § 1437 *et seq.* (1970 ed., Supp. IV), significantly enlarged HUD's role in the creation of housing opportunities. Under the § 8 Lower-Income Housing Assistance program, which has largely replaced the older federal low-income housing programs,[19] HUD may contract directly with private owners to make leased housing units available to eligible lower-income persons.[20] As HUD has acknowledged in this case, "local governmental approval is no longer explicitly required as a condition of the program's applicability to a locality." Regulations governing the § 8 program permits HUD to select "the geographic area or areas in which the housing is to be constructed," 24 CFR § 880.203(b), and direct that sites be chosen to "promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons." §§ 880.112(d), 883.209(a)(3) (1975). See §§ 880.112(b), (c), 883.209(a)(2), (b)(2). In most cases the Act grants the unit of local government in which the assistance is to be provided the right to comment on the application and, in certain specified circumstances to preclude the Secretary of HUD from approving the application. See 42 U.S.C. §§ 1439(a)-(c) (1970 ed., Supp. IV).[21] Use of the § 8 program to expand low-income housing opportunities outside areas of minority concentration would not have a coercive effect on suburban municipalities. For under the program, the local governmental units retain the right to comment on specific assistance proposals, to reject certain proposals that are inconsistent with their approved housing assistance plans, and to require that zoning and other land use restrictions be adhered to by builders.

In sum, there is no basis for the petitioner's claim that court-ordered metropolitan relief in this case would be impermissible as a matter of law under the *Milliken* decision. In contrast to the desegregation order in that case, a metropolitan relief order directed to HUD would not consolidate or in any way restructure local governmental units. The remedial decree would neither force suburban governments to submit public housing proposals to HUD nor displace the rights and powers accorded local government entities under federal or state housing statutes or existing land use laws. The order would have the same effect on the suburban governments as a discretionary decision by HUD to use its statutory powers to provide the respondents with alternatives to the racially segregated Chicago public housing system created by CHA and HUD.

Since we conclude that a metropolitan area remedy in this case is not impermissible as a matter of law, we affirm the judgment of the Court of Appeals remanding the case to the District Court "for additional evidence and for further consideration of the issue of metropolitan area relief." 503 F. 2d at 940. Our determination that the District Court has the authority to direct HUD to engage in remedial efforts in the metropolitan area outside the city limits of Chicago should not be interpreted as requiring a metropolitan area order. The nature and scope of the remedial decree to be entered on remand is a matter for the District Court in the exercise of its equitable discretion, after affording the parties an opportunity to present their views.

The judgment of the Court of Appeals remanding this case to the District Court is

affirmed, but further proceedings in the District Court are to be consistent with this opinion.

It is so ordered.

MR. JUSTICE STEVENS took no part in the consideration or decision of this case.

FOOTNOTES

[1] The original complaint named the Housing Assistance Administration, then a corporate agency of HUD, as the defendant. Although the petitioner in this case is the current Secretary of HUD, this opinion uses the terms "petitioner" and "HUD" interchangeably.

[2] The complaint sought to enjoin HUD from providing funds for 17 projects that had been proposed by CHA in 1965 and 1966 and from making available to CHA any other financial assistance to be used in connection with the racially discriminatory aspects of the Chicago public housing system. In addition, the respondents requested that they be granted "such other and further relief as the Court may deem just and equitable."

[3] Before the stay of the action against HUD, the District Court had certified the plaintiff class in the CHA action and had rejected CHA's motion to dismiss or for summary judgment on the counts of the complaint alleging that CHA had intentionally selected public housing sites to avoid desegregating housing patterns. 265 F. Supp. 582.

[4] CHA admitted that it had followed a policy of informally clearing proposed family public housing sites with the alderman in whose ward the proposed site was located and of eliminating each site opposed by the alderman. 296 F. Supp. 907, 910, 913. This procedure had resulted in the rejection of 99½% of the units proposed for sites in white areas which had been initially selected as suitable for public housing by CHA. *Id.*, at 912.

With regard to tenant assignments, the court found that CHA had established a racial quota to restrict the number of Negro families residing in the four CHA family public housing projects located in white areas in Chicago. The projects, all built prior to 1944, had Negro tenant populations of 7%, 6%, 4%, and 1% despite the fact that Negroes comprised about 90% of the tenants of CHA family housing units and a similar percentage of the waiting list. A CHA official testified that until 1968 the four projects located in white areas were listed on the authority's tenant selection form as suitable for white families only. *Id.*, at 909.

[5] In July of 1968, CHA had in operation or development 54 family housing projects with a total of 30,848 units. Statistics submitted to the District Court established that, aside from the four overwhelmingly white projects discussed in n. 4, *supra*, 92% of all of CHA's family housing units were located in neighborhoods that were at least 75% Negro and that two-thirds of the units were situated in areas with more than 95% Negro residents. *Id.*, a 910.

[6] The District Court's remedial decree divided Cook County into a "General Public Housing Area" and a "Limited Public Housing Area." The "Limited Public Housing Area" consisted of the area within census tracts having a 30% or more non-white population or within one mile of the boundary of any such census tract. The remainder of Cook County was included in th "General Publi: Housing Area." 304 F. Supp., at 737. Following the commencement of construction of t least 700 family units in the General Public Housing Area of the city of Chicago. CH' was permitted by the terms of the order to locate up to one-third of its General Public Housing Area units in portion of Cook County outside of Chicago. See *id.*, at 738–739.

[7] The Court of Appeals found that "HUD retained a large amount of discretion to approve or reject both site selection and tenant assignment procedures of the local housing authority" and that the Secretary had exercised those powers "in a manner which perpetuated a racially discriminatory housing system in Chicago." 448 F. 2d, at 739. Although the appellate court stated that it was "fully sympathetic" with the "very real 'dilemma'" presented by the need for public housing in Chicago, it ruled that the demand for housing did not justify "the Secretary's past actions [which] constituted racially discriminatory conduct in their own right." *Ibid.*

[8] The court's July 1969 order directing CHA to use its best efforts to increase public housing opportunities in white areas as rapidly as possible had not resulted in the submission of a single housing site to the Chicago City Council. A subsequent order directing the submission of sites for 1500 units by September 20, 1970, had eventually prompted CHA to submit proposed sites in the spring of 1971, but inaction by the City Council had held up the approval of the sites required for their development. See *Gautreaux* v. *Romney*, 332 F. Supp. 366, 368.

The District Court subsequently took additional measures in an attempt to implement the remedial orders entered against CHA. In May 1971, the city of Chicago and HUD agreed to a letter of intent that provided that the city would process sites suitable for use by CHA to permit the authority to commence acquisition of sites for 1,700 units in accordance with a specified timetable. HUD then released certain Model Cities funds on the condition that the City Council and CHA continue to show progress toward meeting the goals set forth in the May letter. After the city fell far behind schedule, the District Court granted the respondents' request for an injunction directing HUD to withhold $26 million in Model Cities funds until the city remedied its existing deficit under the timetable. See 332 F. Supp. 366, 368–370. The Court of Appeals reversed the injunction, holding that the District Court had abused its discretion in ordering funding cutoff. 457 F. 2d 124.

Between July 1971 and April 1972, the City Council failed to conduct any hearings with respect to acquisition of property for housing sites and did not approve land acquisition for any sites. 342 F. Supp. 827, 829. Following the filing of a supplemental complaint naming the mayor and the members of the City Council as defendants, the District Court found that their insertion had prevented CHA from providing relief in conformity with the court's prior orders. In a further effort to effectuate relief, the court ruled that the provision of Illinois law requiring City Council approval of land acquisition by CHA "shall not be applicable to CHA's actions . . . taken for the purpose of providing Dwelling Units." *Id.*, at 830. The Court of Appeals upheld the decision. 480 F. 2d 210.

[9] Although CHA participated in the proceeding before the Court of Appeals, it did not seek review of that court's decisions and has not participated in the proceedings in the Court.

[10] Although the trial court's desegregation order in *Milliken did* not direct the adoption of a specific metropolitan plan, it did contain detailed guidelines for the panel appointed to draft the desegregation plan. 345 F. Supp. 914 (FD Mich.). The framework for the plan called for the division of the designated 54-school district desegregation area into 15 clusters, each containing a part of the Detroit school system and two or more suburban districts. Within this framework, the court charged the panel with the responsibility for devising a plan that would produce the maximum actual desegregation. *Id.*, at 918, 928–929 Sec. 418 U.S., at 733–734.

[11] The Court of Appeals interpreted the *Milliken* opinion as limited to a determination that, in view of the administrative complexities of school district consolidation and the deeply-rooted tradition of local control of public schools, the balance of equitable factors weighed against metropolitan school desegregation remedies. See 503 F. 2d, at 935–936. But the Court's decision in *Milliken* was premised on a controlling principle governing the permissible scope of federal judicial power, a principle not limited to a school desegregation context. See 418 U.S., at 744.

In addition, the Court of Appeals surmised that either an interdistrict violation or an interdistrict segregative effect may have been present in this case. There is no support provided for either conclusion. The sole basis of the appellate court's discussion of alleged suburban discrimination was the respondents' exhibit 11 illustrating the location of 12 public housing projects within the portion of the Chicago Urbanized Area outside the city limits of Chicago. That exhibit showed that 11 of the 12 projects were located in areas that, at the time of the hearing in November of 1972, were within one mile of the boundary of a census tract with less than a 70% white population. The exhibit was offered to illustrate the scarcity of integrated public housing opportunities for the plaintiff class and for lower-income white families and to indicate why the respondents did not "expect cooperation from the suburban areas" in providing housing alternatives in predominately white areas. In discussing the data underlying the exhibit, counsel for the respondents in the trial court expressly attempted to avoid the "possible misconception" that he was then asserting that the suburban municipalities and housing authorities were "guilty of any discrimination or wrongdoing." In view of the purpose for which the exhibit was offered and the District Court's determination that "the wrongs were committed within the limits of Chicago," it is apparent that the Court of Appeals was mistaken in supposing that the exhibit constitutes evidence of suburban discrimination justifying metropolitan area relief.

In its brief opinion on rehearing, the Court of Appeals asserted that "it is reasonable to conclude from the record" that the intracity violation "may well have fostered racial paranoia and encouraged the 'white flight' phenomenon which has exacerbated the problems of achieving integration." 503 F. 2d, at 939–940. The Court of Appeals' speculation about the effects of the discriminatory site selection in Chicago is contrary both to expert testimony in the record and the conclusions of the District Court. Such unsupported speculation falls far short of the demonstration of a "significant segregative effect in another district" discussed in the *Milliken* opinion. See 418 U.S., at 745.

[12] The Court in *Milliken* required either a showing of an interdistrict violation or a significant segregative effect "[b]efore the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes." 418 U.S., at 744. In its *amicus* brief in *Milliken*, the United States argued that an interdistrict remedy in that case would require "the restructuring of state or local governmental entities" and result in "judicial interference with state prerogatives concerning the organization of local governments."

[13] Although the State of Michigan had been found to have committed constitutional violations contributing to racial segregation in the Detroit schools, 418 U.S., at 734–735, n. 16, the Court in *Milliken* concluded that the interdistrict order was a wrongful exercise of judicial power because prior cases had established that such violations are to be dealt with in terms of "an established geographic and administrative school system." *id.*, at 746, and because the State's educational structure vested substantial independent control ov r school affairs in the local school districts. See *id.*, at 742–744. In *Milliken*, a consolidation order directed against the State would of necessity have abrogated the rights and powers of the suburban school districts under Michi-

gan law. See *id.*, at 742 n. 20. Here, by contrast, a metropolitan area remedy involving HUD need not displace the rights and powers accorded suburban governmental entities under federal or state law. See Part III-B, *infra*.

[14] Illinois statutes permit a city housing authority to exercise its powers within an "area of operation" defined to include the territorial boundary of the city and all of the area within three miles beyond the city boundary that is not located within the boundaries of another city, village, or incorporated town. In addition, the housing authority may act outside its area of operation by contract with another housing authority or with a state public body not within the area of operation of another housing authority. Ill. Rev. Stat. c. 67½, §§ 17(b), 27c (1959).

Although the state officials in *Milliken* had the authority to operate across school district lines, the exercise of that authority to effectuate the Court's desegregation order would have eliminated numerous independent school districts or at least have displaced important powers granted those uninvolved governmental entities under state law. See n 13, *supra*.

[15] In principal markets such as Chicago, the Standard Metropolitan Statistical Area is coterminous with the housing market area. See Department of Housing and Urban Development, FHA Techniques of Housing Market Analysis 13 (Jan. 1970); Department of Housing and Urban Development, Urban Housing Market Analysis 5 (1966).

[16] In the District Court, HUD filed an appendix detailing the various federal programs designed to secure better housing opportunities for low-income families and represented that "the Department will continue to use its best efforts in review and approval of housing programs for Chicago which address the needs of low income families."

[17] It was this statutory prohibition that HUD was held to have violated by its funding of CHA's housing projects. See 448 F. 2d 731, 740.

[18] A HUD study of the implementation of the project selection criteria revealed that the actual operation of the minority housing opportunity criterion depends on the definition of "area of minority concentration" and "racially mixed" area employed by each field office. The meaning of those terms, which are not defined in the applicable regulations, 24 CFR § 200.710 (1975), varied among field offices and within the jurisdiction of particular field offices. Department of Housing and Urban Development, Implementation or HUD Project Selection Criteria for Subsidized Housing: An Evaluation 116–117 (Doc. 1972).

[19] For fiscal year 1975 estimated contract payments under the § 8 program were approximately $10,700,000 as compared to a total estimated payment of $16,350,000 for all federal subsidized housing programs. The comparable figures for fiscal year 1976 indicate that $22,725,000 of a total $24,800,000 in estimated contractual payments are to be made under the § 8 program. See Hearings on Department of Housing and Urban Development—Independent Agencies. Appropriations for 1976, before the Subcomm. on HUD—Independent Agencies of the House Comm. on Appropriations, 94th Cong., 1st Sess., pt. 5, at 85–86 (1975). See also *id.*, at 119 (testimony of HUD Secretary Hills).

[20] Under the § 8 program, HUD contracts to make payments to local public housing agencies or to private owners of housing units to make up the difference between a fair market rent for the area and the amount contributed by the low-income tenant. The eligible tenant family pays between 15% and 25% of its gross income for rent. See 42 U.S.C. § 1437f (1970 ed., Supp. IV).

[21] If the local unit of government in which the proposed assistance is to be provided does not have an approved housing assistance plan, the Secretary of HUD is directed by statute to give the local governmental entity 30 days to comment on the proposal after which time the Secretary may approve the project unless he determines that there is not a need for the assistance. 42 U.S.C. § 1439(c) (1970 ed., Supp. IV). In areas covered by an approved plan, the local governmental entity is afforded a 30-day period in which to object to the project on the ground that it is inconsistent with the municipality's approved housing assistance plan. If such an objection is filed, the Secretary may nonetheless approve the application if he determines that the proposal is consistent with the housing assistance plan. § 1439(a). The local comment and objection procedures do not apply to applications for assistance involving 12 or fewer units in a single project or development. § 1439(b).

The ability of local governments to block proposed § 8 projects thus depends on the size of the proposed project and the provisions of the approved housing assistance plans. Under the 1974 Act, the housing assistance plan must assess the needs of lower-income persons residing in or expected to reside in the community and must indicate the general locations of proposed housing for lower income persons selected in accordance with the statutory objective of "promoting greater choice of housing opportunities and avoiding undue concentration of assisted persons." 42 U.S.C. §§ 5304(a)(4)(A), (c)(ii). See H.R. Rep. No. 93–1114, at 8. See also *City of Hartford* v. *Hills*, —— F. Supp. ——, Civil No. H–75–258 (Conn., Jan. 28, 1976). In view of these requirements of the Act, the location of subsidized housing in predominantly white areas of suburban municipalities may well be consistent with the communities' housing assistance plans.

[Supreme Court of the United States—No. 74–1047. On Writ of Certiorari to the U.S. Court of Appeals for the Seventh Circuit]

CARLA A. HILLS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, PETITIONER, VERSUS DOROTHY GAUTREAUX ET AL.

[April 20, 1976]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN and MR. JUSTICE WHITE join, concurring.

I dissented in *Milliken* v. *Bradley*, 418 U.S. 717 (1974), and I continue to believe that the Court's decision in that case unduly limited the federal courts' broad equitable power to provide effective remedies for official segregation. In this case the Court distinguishes *Milliken* and paves the way for a remedial decree directing the Department of Housing and Urban Development to utilize its full statutory power to foster housing projects in white areas of the greater Chicago metropolitan area. I join the Court's opinion except insofar as it appears to reaffirm the decision in *Milliken*.

[U.S. District Court, District of Connecticut]

MEMORANDUM OF DECISION, JANUARY 28, 1976

City of Hartford v. Hills, Civil No. H–75–258.

I.

This case is the culmination of a confrontation between the City of Hartford and seven of its suburban towns. At issue is the propriety of the decision by the United States Department of Housing and Urban Development (HUD) to approve federal community development grants to these towns. The plaintiffs contend that this approval was improper, because of the emphasis in the applications on non-housing expenditures, and upon local rather than regional needs.[1]

The plaintiffs are the City of Hartford, Connecticut; eight city officials;[2] and two representatives of a class consisting of minority, as well as low and moderate income, persons now living "in deteriorating, inadequate, or over-costly housing in the City of Hartford, Connecticut."[3] The plaintiffs seek declaratory and injunctive relief against the seven towns,[4] the Secretary and other officials[5] of the Department of Housing and Urban Development, and the Department itself. The plaintiffs claim that the defendant officials have failed to live up to their obligations under Title I of the Housing and Community Development Act of 1974.[6] Title VIII (Fair Housing) of the Civil Rights Act of 1968,[7] and Title VI of the Civil Rights Act of 1964.[8] They also assert constitutional claims under the civil rights statutes[9] and the fifth amendment.

Specifically, the plaintiffs claim that the federal defendants abused their discretion in that they approved applications for community development funds under the 1974 Act although the statutory review standards mandated that the applications be disapproved. Similarly, they claim that HUD contravened Title VIII of the 1968 Act by failing to "affirmatively administer" the community development program in order to expand low and moderate income housing opportunities in Hartford's suburbs. Finally, they allege that HUD violated Title VI of the 1964 Act by approving these community development grant applications "in the face of a history by these applicant communities of discriminatory housing, zoning, and land use practices. . . ."[10]

A hearing was held on the plaintiffs' motion for a preliminary injunction, and the defendants' motion to dismiss or in the alternative for summary judgment. Shortly thereafter the defendants were preliminarily enjoined from "spending in any fashion" the funds at issue in this case. Later that order was modified to permit the release of urgently needed funds, most of which were expended for housing-related purposes. At the hearing on the modification request all parties agreed that final judgment could be entered on the basis of the record as it had been developed up to that point, and as it would be supplemented by several affidavits. All of those affidavits have now been filed, and the case is before me for a decision on the merits.[11]

* * * * *

IV.

As has been made clear by the preceding discussion, this case involves the new statutory framework for community development funding adopted by Congress in 1974. Title I of the Housing and Community Development Act of that year consolidated ten categorical grant programs into a single block grant program.[27] A three-year community development plan was required as part of the application, and appropriations were authorized through Fiscal Year 1977. Congress intended to streamline the administration of these federal programs,[28] by minimizing HUD's "front-end" review, substituting annual performance monitoring at the time when the future funding levels of grants to the particular community would be determined.[29] In place of the elaborate administrative review by federal officials which preceded grant approval under the ten programs, the new statute establishes a 75-day period, within which HUD must disapprove the application, or else it is automatically approved.[30] Furthermore, the statute directs HUD to approve the grant unless certain very limited conditions exist: (1) the community's true needs are not reflected in the application; or (2) the proposed projects will not meet the needs described; or (3) the proposal does not comport with other legal requirements.[31]

The new Act also gave local communities a greater role in determining how to spend their federal funds by requiring citizen participation and expanding the range of eligible activities. All the projects, however, must be

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Footnotes at end of article.

directed toward accomplishing the central objective of the legislation:

"The development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." [32]

Congress did not leave local communities with merely this broad statement of purpose. Rather, it legislated seven specific goals, thereby establishing national priorities to govern the use of community development funds. The Act also sets forth an extensive list of eligible activities, and requires that HUD disapprove applications for grants for any project not so qualified.[33] Three of the seven specific goals explicitly urge that moneys be spent on behalf of persons of low and moderate income.[34] Two speak directly,[35] and three more indirectly,[36] to the housing needs of that segment of the populace.

The plaintiffs' position is that one of these Congressional goals, in particular, is of great importance in this lawsuit—that concerned with reducing:

"The isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income. . . ." [37]

They argue that this is one of the primary goals of the Act, and that it was to be achieved, at least in part, through another aspect of the Act—the Housing Assistance Plan.[38] The Housing Assistance Plan (HAP), which is to be completed by the applicant community, must contain a survey of the housing stock of the community, an assessment of its housing needs, a goal for the provision of assisted housing, and a description of the location of existing and proposed lower income housing. The 1974 Act also made the HAP the basis for assistance under many of the federally subsidized, low-income housing programs.[39] As such, it is an important link between the housing and the community development sections of the Act.[40] The significance of this cannot be overestimated. Congress left no doubt of the pivotal role it intended for the HAP by excluding it from the list of application requirements which might be waived by the Secretary.[41]

The plaintiffs charge that HUD disregarded the statute by approving these grants without requiring the communities to complete one element of the "needs" section of the HAP; that part which requires a community to estimate the housing needs of low income persons 'expected to reside" within its borders.[42] Six of the defendants towns [43] had their grants approved despite their submission of a "zero 'expected to reside' " figure on their applications. The plaintiffs argue that this was not an accurate estimate of the housing needs which existed among persons in this category.[44] This omission, they argue, effectively emasculated the "needs" section of the applications themselves. They further argue that, if what they describe as "needs" had been included, the projects proposed by the towns would then have been inappropriate to the "needs" disclosed for the community. If either of these are true, they contend, the Secretary would have been mandated to disapprove the applications, under § 5304(c)(1) and (2). Finally, they also contend that HUD's approval of these grants, despite the towns' failure to make a realistic projection of the influx of new low-income residents, is contrary to the "legal review" duties imposed upon the Secretary by § 5304(c)(3). This is the source of their claims under the federal civil rights acts; it is also the basis of their claim that HUD has not even complied with the 1974 Act itself.

HUD's failure to require an accurate projection of low-to-moderate income persons expected to reside in the communities was not the result of an oversight. On May 21, 1975, while six of the seven communities' applications were still in the process of HUD review, the HUD Area Office received a memorandum from David O. Meeker, Jr., Assistant Secretary for Community Planning and Development at HUD.[45]

That memorandum informed the communities that they would be permitted to obtain approval of their first year grant applications, even without submitting figures in the "expected to reside" category. Two other approaches, involving estimates of this need, were suggested in this memorandum, but the option of whether to adopt them, or not to submit any figure, was given to each applicant community.[46] Mr. Thompson testified that the Meeker Memorandum was issued in response to "the difficulty all communities across the country were having on this 'expected to reside' element." The local HUD office approved these six grants pursuant to that directive. Thus, neither the towns nor the Area Office are entirely at fault.

The plaintiffs challenge this HUD directive, characterizing it as a *de facto* waiver of the "expected to reside" element of the Housing Assistance Plan, contrary to the non-waiver provision of the 1974 Act. The government argues that this was simply a deferral of that element, and well within HUD's authority in administering the Act.

Of course, deference is due to the construction of a statute by the administrative department responsible for its implementation. *Udall v. Tallman*, 380 U.S. 1 (1965). But this "sound principle . . . normally applies only where the relevant statutory language is unclear or susceptible of differing interpretations." *Shea v. Vialpando*, 416 U.S. 251, 262 no. 11 (1974). Thus, if the statute gives specific directions, *Koshland v. Helvering*, 298 U.S. 441, 447 (1936), or the administrative interpretation is not consistent with either the statute, *Morton v. Ruiz*, 415 U.S. 199, 232 (1974), or Congressional intent, *Espinoza v. Farah Manufacturing Co.*, 414 U.S. 86, 94 (1973), the administrative agency cannot amend it by regulation. *Koshland v. Helvering*, 298 U.S. 441, 447 (1936). This salutory rule is to be applied by the courts to prevent "the unauthorized assumption by an agency of major policy decisions properly made by Congress." *American Ship Building v. Labor Board*, 380 U.S. 300, 318 (1965). Although "[t]he court is not empowered to substitute its judgment for that of the agency" on matters of fact, *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416 (1971):

"The courts are the final authorities on issues of statutory construction, and 'are not obliged to stand aside and rubber-stamp their affirmance of administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the Congressional policy underlying a statute.' "

Volkswagenwerk v. FMC, 390 U.S. 261, 272 (1968) (citations omitted). As the Supreme Court stated in *Manhattan Co. v. Commissioner*, 297 U.S. 129, 134 (1936):

"The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law—for no such power can be delegated by Congress—but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. A regulation which does not do this, but operates to create a rule out of harmony with the statute, is a mere nullity."

Undaunted by these principles of law, HUD contends that the Meeker Memorandum was not in conflict with the statute, but merely supplementary to it. However, the statute could not be more clear. The Secretary was also permitted to accept the of paragraphs (1), (2), and (3) of 42 U.S.C. § 5304(a), under certain conditions. And the Secretary was permitted to waive all or part applicant community's certification that it had complied with paragraphs (5) and (6). Only paragraph (4), that describing and requiring the HAP, is not mentioned. The canon of construction *inclusio unius est exclusio alterius* compels the conclusion that the Secretary was not empowered to waive the requirement that the application include a Housing Assistance Plan for the community. Such a creation of additional exceptions to statutory requirements, by administrative action, is not favored. *Carey v. Local Board No. 2, Hartford, Connecticut*, 297 F. Supp. 252, 260 (D. Conn.), *aff'd*, 412 F.2d 71 (2d Cir. 1969).[47]

The defendants correctly observe that HUD has not waived the entire HAP, but merely one of the elements that go into the community's assessment of its needs for lower-income housing.[48] The failure to submit a figure for the "expected to reside" category does not detract, for example, from each town's calculation of the housing needs of its present inhabitants who fall within the lower-income classification.[49] However, the "expected to reside" figure is the keystone to the *spatial deconcentration objective* of the 1974 Act.[50] The recent report issued by the United States Commission on Civil Rights [51] emphasizes that the Housing and Community Development Act of 1974 envisions a new direction in federal assistance programs because it:

"for the first time ties the provision of community development funds to the provision of lower-income housing by requiring each locality to submit a housing assistance plan as part of its community development block grant application. To receive *community development funding*, a locality must address its needs for lower-income housing." (Emphasis added).[52]

The success of this new "carrot and stick" approach to the dispersal of low and moderate income groups depends upon the willingness of the suburban towns to provide federally-assisted housing within their boundaries. Of course, communities can choose not to participate in the program.[53] However, the Meeker Memorandum permits suburban towns to obtain funding under the Act without the *quid pro quo* Congress decided to require—their taking steps to expand housing opportunities for low and moderate income persons. Indeed, this requirement is one of the most important differences between the Housing and Community Development Act of 1974 and the categorical grant community development programs it replaced.[54] Thus, the Meeker Memorandum removes the incentive Congress provided for these communities to accept such federally-assisted housing, thereby effectively gutting the "enforcement" provisions of the Act.[55]

I conclude that HUD acted contrary to law when it approved these six grants, without requiring the towns to make any assessment whatsoever of the housing needs of low and moderate income persons who might be "expected to reside" within their borders. When HUD offered the towns the third option presented by the May 21, 1975 Meeker Memorandum, to submit no figure at all, and they all selected that option, they acted contrary to the clear implication of the statute, that the HAP could not be waived by the Secretary.[56] The preliminary injunction previously entered in this case will be made permanent with respect to the Towns of Enfield, Farmington, Glastonbury, Vernon, West Hartford, and Windsor Locks.

V.

The grant to the Town of East Hartford presents a somewhat different problem. Unlike the other defendant towns, East Hartford actually submitted a figure for the "expected to reside" portion of its HAP. The original HAP disclosed a total need for 135 assisted units in this category, including 81 elderly or handicapped, 16 large families, and 38 others. These figures were subsequently

Footnotes at end of article.

reduced, to 131, 78, 15, and 38, respectively, in a revision of the HAP undertaken at HUD's request.

The plaintiffs contend that these figures understated the actual number of lower income persons who should have been "expected to reside" in East Hartford, based on the facts and data available at that time. They argue from this that the Secretary acted contrary to law because she was obligated to disapprove the East Hartford grant application, since the "expected to reside" figures were "plainly inconsistent" with the facts and data. 42 U.S.C. § 5304(c)(1) (1975 Supp.).

The issues presented for decision are whether the Secretary's approval of this grant was: (1) within the scope of her authority; and (2) neither arbitrary nor capricious. *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 414–16 (1971). The answers to these questions—

"Require the reviewing court to engage in a substantial inquiry. . . . Although this inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one. The court is not empowered to substitute its judgment for that of the agency." [57]

Here the answer to the first question is simple. Congress dictated that the grants be approved, unless the Secretary made certain determinations. HUD established review procedures which delegated the power to approve applications to the Area Directors, but retained the power to disapprove in Washington.[58] The administrative record discloses that these determinations were not made with respect to the East Hartford application. On the contrary, the Hartford Area Office did "not consider the information submitted by the City of Hartford as 'facts and data,'" [59] and so concluded that conditional approval was warranted.[60] The decision to approve the grant was certainly within the "range of choices that the Secretary can make." *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416 (1971).

The second inquiry, however, presents more difficulty. The statute [61] requires me to determine, in essence, "whether the decision [to approve the grant] was based on a consideration of the relevant factors and whether there has been a clear error of judgment." 401 U.S. at 416. I conclude that the Secretary has abused her discretion in both respects. HUD's approval, without taking the steps required to obtain the "generally available" information it needed to evaluate these applications, and without considering such information, amounts to arbitrary and capricious decision-making. Furthermore, the decision to approve the East Hartford application, in the face of this "generally available" information, constituted a clear error of judgment, and was not in accordance with law. In other words, HUD was doubly at fault—it did not obtain the generally available information required for a proper review, and it acted upon the basis of inadequate information.

HUD does not claim that it was able to critically appraise the "expected to reside" figures in the East Hartford application. Mr. Lawrence Thompson, the Hartford Area Director, admitted that—

"In reviewing the HAPs, it was apparent that there was an absence of reliable data upon which to evaluate the surveys of housing needs of lower-income groups expected to reside in the community as a result of planned or existing employment facilities." [62]

As a result, HUD was unable to calculate its own estimate of "expected to reside" figures, or even "to make a determination as to the accuracy of the figures supplied by the defendant towns." [63]

Mr. Thompson suggested that more data was not gathered because, in the time that would have taken, the 75-day review period would have been exceeded, and the grants would have been automatically approved.[64] He acknowledged that all the local communities were having great difficulty in developing "expected to reside" figures, and that this caused him to suspend processing of all pending applications during May 1975, to await expected instructions from HUD in Washington, D.C.[65] These instructions came in the Meeker Memorandum of May 21, 1975, discussed in Part IV of this opinion. That memorandum set forth a methodology, developed by the central office, for computing an "expected to reside" figure for a community, based on the U.S. Census Bureau's "Journey to Work" tables.[66] It was the apparent unavailability of these figures on a municipality-by-municipality basis for the Hartford SMSA that led the Area Office to conclude that it was unable to prepare its own "expected to reside" figures, or to review those proposed by East Hartford.[67] However, a similar breakdown, lacking only income figures for the commuters, proved to be available from the Connecticut Department of Transportation, on only two days' notice! [68]

Mr. Thompson also stated that East Hartford was not given the opportunity to submit a "zero" as its "expected to reside" projection, as were the other six defendant towns,[69] only because its application was approved before processing was suspended.[70] Thus, it was simply happenstance that a figure for "expected to reside" was included in the East Hartford HAP at all. The record demonstrates that, so far as HUD was concerned, that number might have had no validity whatsoever—it was untested and untestable. HUD's approval of the grant to East Hartford in such circumstances cannot be considered a proper exercise of discretion. Rather, it was an abandonment of its duty to review and evaluate the housing needs projection for those persons "expected to reside" within East Hartford. I conclude that HUD's approval of East Hartford's grant application was contrary to law.

There is no doubt that HUD did not conduct a rigorous review of the East Hartford "expected to reside" projection. It justified this failure by pointing to an alleged absence of data. In fact, however, a wide variety of alternative data sources was available. For example, HUD's own instructions suggest the use of census materials; code enforcement records; local agency records; 701 plans; or studies done by reputable research, community service, or planning organizations, such as private consulting firms.[71] The proposed HUD Regulations also list several data sources, such as approved development plans; building permits; and major contract awards.[72] One of the plaintiffs' expert witnesses, Mr. Paul Davidoff, also listed a number of other possibilities, including studies conducted by or for state agencies; plant or shopping center surveys; zip code information from the payroll records of local companies; or data gathered by the local chamber of commerce.[73] And Mr. Jonathan Colman, Director of Planning for the City of Hartford, testified that figures detailing commercial development, in the form of floor space completed or under construction, are compiled by the Connecticut Department of Commerce.[74] The HUD Regulations [75] and instruction sheet [76] do not require that the data used to review grant applications be published. The standard is simply that it be accessible . . . or . . . available to both the applicant and the Secretary. . . ." [77] The materials and data sources described above fall within this broad category, and HUD's failure to gather and consult them prior to its evaluation of East Hartford's grant [78] was an abdication of its responsibilities under the Housing and Community Development Act of 1974.[79]

The foregoing discussion is not intended to suggest that East Hartford invented its 135, then 131, figures, or that HUD's review of the East Hartford application was entirely passive. East Hartford developed its "expected to reside" projection from the waiting list for the East Hartford Housing Authority,[80] and the HUD Area Economist, William Flood, commented upon the unsatisfactory nature of that methodology.[81] The Hartford Area Office itself—

"Agreed [with the City of Hartford] that a more comprehensive approach should be reflected in future HAPs. [But] HAO considered that using the waiting list *and 1970 census data* provided a satisfactory initial estimate of housing need in the absence of significant regional data. . . ." (Emphasis added).[82]

Even if it could be said that HUD adopted that waiting list as the data source for computing an "expected to reside" figure, and used it to review the East Hartford application, the approval of the grant on that basis constituted an abuse of discretion. The waiting list, alone, was clearly insufficient as a data base. Mr. Flood acknowledged this when he indicated that the first HAP submitted by East Hartford, using only the Housing Authority waiting list, was "clearly inconsistent with generally available data."[83] The revised HAP, which he found "marginally adequate" and "quite marginal," was based on the 1970 U.S. Census figures for low income persons in East Hartford, as supplemented by the Housing Authority waiting list information. That HAP raised the "currently existing need" figure from 331 to 473, increased the first and third year goals by 60 units,[84] and shifted the emphasis toward a closer balance between elderly and non-elderly housing.[85] However, no change was made in the data base from which the "expected to reside" element of the HAP was calculated, and that figure was actually reduced in the revised HAP! [86]

The objections Mr. Flood made to the use of the waiting list alone to estimate currently existing need apply with equal, if not greater, force to its use as the sole source for the "expected to reside" figures. For example, he pointed out that Section 8 subsidies are available to many families with incomes higher than the limits set for public housing, and that there are only a small number of units for large families in the existing inventory of the East Hartford Housing Authority. He also objected to the stale nature of the waiting list data, and the poor reputation of the housing authority.[87] The comments from Education/Instruction, a local civil rights research organization dealing with discrimination in housing and employment, parallel those made by Mr. Flood. They also point out that the availability of housing through the East Hartford Housing Authority was not publicized outside of East Hartford itself.[88] The Town itself acknowledged the validity of the criticism concerning the shortage of large-family units when it allocated a disproportionate share of its Section 8 funds to meet the needs of large families.[89]

The waiting list for the East Hartford Housing Authority may well be one factor upon which to base the "expected to reside" projection, but it cannot properly be the only one. The passivity with which HUD reviewed this element of the East Hartford HAP is well illustrated by the statement, made in comparing the criticisms of the application to East Hartford's response, that—

"The inclusion of these figures [131] in the HAP appears to respond to the explicit comment of 'no reflection of needs' [of those presently working in East Hartford] made by Hartford. CROG's comment on this matter is also answered by the computation listed above." [90]

HUD had a duty to do more than accept any "expected to reside" figure proposed by East Hartford, however inadequate its size or derivation.[91] The administrative record discloses that it did not live up to that duty.

For the reasons outlined in the foregoing opinion, I have concluded that the Secre-

tary abused her discretion in approving the community development entitlement grants to the seven defendant communities. The preliminary injunction previously entered in this case is hereby made permanent. The seven defendant Towns are enjoined from drawing upon the Treasury, or spending in any fashion, the entitlement funds granted to them pursuant to Title I of the Housing and Community Development Act of 1974, which are the subject of this lawsuit. The Towns may seek to obtain a new approval of these grant applications from HUD. This injunction may be lifted upon the filing with the court of such a new approval.

It is so ordered.

Dated at Hartford, Connecticut, this 28th day of January, 1976.

M. JOSEPH BLUMENFELD,
U.S. District Judge.

FOOTNOTES

[1] The funds are available under the Housing and Community Development Act of 1974. Pub. L. No. 93-383; 88 Stat. 633; 42 U.S.C. §§ 5301 *et seq.* (1975 Supp.).

[2] All eight are members of the Hartford Court of Common Council—the city's governing body.

[3] Paragraph 11 of the Complaint. These plaintiffs' Motion for Permission to Proceed In Forma Pauperis was granted on August 11, 1975.

[4] The seven towns whose grant applications are challenged are: East Hartford, Enfield, Farmington, Glastonburg, Vernon, West Hartford, and Windsor Locks. The towns were ordered joined, as additional defendants, on the motion of the United States Department of Housing and Urban Development.

[5] In addition to the Secretary, both the Regional Administrator and Area Director of HUD are named as defendants. All three are sued only in the official capacities.

[6] Cited in note 1 *supra*.

[7] Pub. L. No. 90-284; 82 Stat. 81; 42 U.S.C. § 3601 *et seq.*

[8] Pub. L. No. 88-352; 78 Stat. 252; 42 U.S.C. § 2000d *et seq.*

[9] 42 U.S.C. §§ 1981, 1982, and 1985.

[10] Paragraph 31 of the Complaint.

[11-25] Footnotes not printed in RECORD.

[26] See Parts IV and V *infra*.

[27] The new Community Development Program replaced the following ten development programs administered by the Department of Housing and Urban Development: the Public Facilities Loan Program authorized by Title II of the Housing Amendments of 1955; the Open Space Program authorized by Title VII of the Housing Act of 1961; the Planning Advance Program authorized by Sec. 702 of the Housing Act of 1954; the Water-Sewer, Neighborhood Facilities and Advanced Land Acquisition Programs authorized under Title VII of the Housing and Urban Development Act of 1965; the Urban Renewal, Code Enforcement and Neighborhood Development Programs authorized by title I of the Housing Act of 1949; and the Model Cities Program authorized by Title I of the Demonstration Cities and Metropolitan Development Act of 1966.

[28] 42 U.S.C. § 5301(b)(3) (1975 Supp.). *See also*, H. R. Rep. No. 93-1114, 93d Cong. 2d Sess. 2, 3 (1974); S. Rep. No. 93-693, 93d Cong., 2d Sess. 48, 49 (1974).

[29] 42 U.S.C. § 5304(d) (1975 Supp.).

[30] 42 U.S.C. § 5304(f) (1975 Supp.).

[31] 42 U.S.C. § 5304(c) (1975 Supp.).

[32] 42 U.S.C. § 5301(c) (1975 Supp.).

[33] 42 U.S.C. § 5305 (1975 Supp.) describes the eligible activities; 42 U.S.C. § 5304(c)(3) (1975 Supp.) requires disapproval of any application that proposes ineligible activities. Clarifying regulations were issued recently. 24 C.F.R. § 570.200 *et seq.*; 41 Fed. Reg. 2765 (January 19, 1976).

[34] 42 U.S.C. § 5301(c) (1), (3), (4) (1975 Supp.).

[35] 42 U.S.C. § 5301(c) (3) and (6) (1975 Supp.).

[36] 42 U.S.C. § 5301(c)(1), (2), (5) (1975 Supp.).

[37] 42 U.S.C. § 5301(c)(6) (1975 Supp.).

[38] The HAP is described in 42 U.S.C. § 5304 (a)(4) (1975 Supp.).

[39] Pub. L. No. 93-383 § 213; 42 U.S.C. § 1439 (1975 Supp.). This section virtually insulates a community from unwanted federally-assisted housing projects by permitting it to object to any application for assistance it deems "inconsistent" with its HAP.

[40] The newly-proposed HUD Regulations, note 11 *supra*, 24 C.F.R. § 570.303; 41 Fed. Reg. 2347 (January 15, 1976), acknowledge the importance of the HAP, describing it as "one of the most significant parts of the community development application process, [with] . . . a significant impact on various aspects of HUD-assisted housing program activities." *Id.* at 2348.

[41] U.S.C. § 5304(b) (3) and (4) (1975 Supp.).

[42] U.S.C. § 5304(a)(4)(A) (1975 Supp.). This information is to be given in Table II C of the applicant's Housing Assistance Plan.

[43] All but East Hartford.

[44] HUD's regulations state that this figure refers to lower income persons and families "planning or expected to reside in the community as a result of planned or existing employment facilities." 24 C.F.R. § 570.303 (b)(2). The plaintiffs offer, as examples of why they question the accuracy of a "zero" figure for any of the defendant towns, the fact that 4,600 Hartford residents commute more work in East Hartford, and that 6,980 more work in West Martford. Testimony of Jonathan Colman, September 22, 1975. These figures were from a study prepared by HARCON Associates, for the City of Hartford, based on information from the Connecticut Department of Labor. Furthermore, a study conducted in Glastonbury identified 806 persons working in the Town who resided elsewhere, but wanted to live in Glastonbury, and were eligible for federal housing assistance under the Section 8 program.

As Mr. Paul Davidoff, a lawyer and urban planner who served as a consultant to the City of Hartford in its review of the defendant towns' grant applications, testified:

"At the end, a judgment had to be made . . . [A] community might have made, for the first year, a tentative judgment. It might have been wrong. . . . But it isn't zero, because the zero figure is patently absurd in terms of the reality of what is happening in each of these communities. There is no basis at all, in fact, in any of the data on the growth of these communities . . . for zero to be put in."

Hearing of September 23, 1975.

[45] This memorandum, sent to all area office directors and all community planning and development division directors, was added to the record as Plaintiff's Exhibit 12, at trial, and as Exhibit B to the Affidavit of Lawrence Thompson, August 25, 1975. Mr. Thompson is Director of the Hartford Area Office of HUD. The memorandum provides, in pertinent part, that—

"Where, in the opinion of the reviewer, it is reasonable to assume that a significant portion of the potential need has not been included in the needs table of the HAP, the applicant should be contacted indicating that prior to HUD's tender of contract the applicant must:

(a) Adopt the HUD figure . . . , or

(b) Adopt its own figure . . . , or

(c) Indicate what steps the applicant intends to take in identify [*sic*] a more appropriate needs figure by the time of its second year submission."

The plaintiffs do not challenge the procedural propriety and legal effect of the May 21, 1975 Meeker Memorandum. Paraphrasing the analogous decision in *Fletcher v. Housing Authority of Louisville*, 491 F.2d 793, 799 n. 10 (6th Cir), *vacated and remanded*, 419 U.S. 812 (1974), it is HUD's decision to implement the memorandum, and not its issuance, which is involved here. Offering the options presented by the Meeker Memorandum to the six defendant towns is what the plaintiffs complain about, not the compliance by HUD with rule-making procedures before it issued the memo.

The degree of control exercised over the entire community development funding process by the HUD central office, in Washington, D.C., is illustrated by an excerpt from an earlier HUD directive, also issued by Mr. Meeker. Meeker Memorandum of November 29, 1974. Exhibit A to Affidavit of Lawrence Thompson, August 25, 1975. This earlier memorandum directs that:

"No CD programs may be approved, even conditionally, without approval of the HAP. Therefore, disapproval of the HAP amounts to disapproval of the whole CD program. Since CD plan disapproval can only be made at the Central Office, Area Offices finding a HAP unacceptable must follow the disapproval procedure described below. . . . The power to disapprove applications for entitlement funds is not delegated below my office."

[46] In letters sent out from the Community Planning and Development Division of the Area Office on June 2, 1975, to each of these six applicant communities. Because the local HUD Area Office was unable to develop its own "expected to reside" figures, only the second and third options of the Meeker Memorandum were presented to these towns.

[47] *See also, Marsano v. Laird*, 412 F.2d 65 (2d Cir. 1969).

[48] As Mr. Lawrence Thompson testified at the hearing: "The Housing Assistance Plan requirement is a statutory provision and it's way beyond my power to waive it. Only the Congress could." Hearing of September 24, 1975.

[49] HUD Regulations equate the terms "lower" and "low and moderate" income families, and define this group as those—

"Families whose annual incomes do not exceed 80 percent of the median family income of the area as determined by the Secretary with adjustments for smaller and larger families. . . ."

24 C.F.R. 570.3(o). The maximum annual income for these groups, during 1975 in the Hartford area, was $7,500 for low and $12,000 for moderate income families, depending on family size. Plaintiffs' Exhibit 10, Affidavit of William Slitt, September 16, 1975, ¶ 5.

The 1972 median incomes for the seven defendant towns, as set forth in the Affidavit of Jonathan Colman, July 29, 1975, Exhibit A to Plaintiffs' Memorandum in Support of Motion for A Preliminary Injunction, are as follows:

East Hartford: $12,000.
Enfield: $12,789.
Farmington: $13,712.
Glastonbury: $15,000*.
Vernon: $12,338.
West Hartford: $14,796*.
Windsor Locks: $13,372.

At the hearing of September 22, 1975, Mr. Colman testified as to the substantially lower 1970 Census median income figures for these towns. He further testified that even the 1972 figures quoted above had risen considerably by 1975.

*The base year for these two figures is not clear from the Affidavit.

[50] Testimony of Paul Davidoff, September 23, 1975. Mr. Thompson of HUD also agreed that the "expected to reside" figure is "an important requirement," and is "the only specific element of the Act that I can identify that operationally connects [the spatial deconcentration of lower-income persons] with what we do and the applicants do." Hearing of September 24, 1975.

[51] *Twenty Years After Brown: Equal Op-*

portunity In Housing, United States Commission on Civil Rights (December, 1975).

[52] *Id.* at 32.

[53] As have both Berwyn and Cicero, Illinois. *Id.* at 61 n.191. Indeed, the Town of Vernon applied for only $25,000 to build a residential park, although its first-year entitlement grant, under the statutory "hold harmless" formula, was over $100,000. 42 U.S.C. § 5306. Testimony of Jonathan Colman, September 23, 1975. The Town has since obtained a discretionary grant under the Act in the amount of $150,000. Letter of January 7, 1976, to the court, from Martin B. Burke, Town Attorney.

[54] *Twenty Years After Brown: Equal Opportunity In Housing*, United States Commission on Civil Rights (December, 1975) at 60.

[55] The newly-proposed HUD Regulations, see note 11 *supra*, suggest that HUD is contemplating a partial waiver for yet another year, in certain circumstances. 24 C.F.R. § 570.303(c)(2)(vi); 41 Fed. Reg. 2347, 2349 (January 15, 1975). As stated in note 11 *supra*, the validity of this proposed regulation is not, however, before me in this case.

[56] This decision avoids any need to assess the propriety of HUD's conclusion that the needs, as described in these six towns' applications, were not "plainly inconsistent" with "significant facts and data, generally available and pertaining to community and housing needs and objectives," and that the proposed projects were not "plainly inappropriate to meeting the needs and objectives identified by the applicant," as required by 42 U.S.C. § 5304(c)(1) and (2) (1975 Supp.). Those issues are, however, addressed with respect to the East Hartford application, in Part V *infra* of this opinion.

[57] 401 U.S. at 415–16. The cautionary instruction concerning the narrow scope of review is particularly appropriate in this case, since the Secretary herself has been given only a very limited range of discretion. 42 U.S.C. § 5304(c) (1975 Supp.). Congress clearly built a presumption of approval into the Act with this restrictive review standard and the automatic approval provision. 42 U.S.C. § 5304(f) (1975 Supp.).

[58] Meeker Memorandum of November 29, 1974. Exhibit A to the Affidavit of Lawrence Thompson, August 25, 1975.

[59] Memorandum to the East Hartford Entitlement File, May 19, 1975. Attachment J to the Administrative Record for East Hartford.

[60] Memorandum to Lawrence Thompson, April 24, 1975. Attachment O to the Administrative Record for East Hartford. The grant approval letter, dated May 2, 1975, is Attachment L to the Administrative Record.

[61] 5 U.S.C. § 706 provides:

"The reviewing court shall—

* * * * *

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

[62] Affidavit of Lawrence Thompson, August 25, 1975, § 12.

[63] Affidavit of William Flood, September 12, 1975, § 5. Exhibit B to the Defendants' Memorandum in Support of Motion to Dismiss or in the Alternative for Summary Judgment. Mr. Lawrence Thompson testified to the same effect at trial, stating that HUD lacked the data necessary "to compute a substitute figure to the figure that was supplied by the applicant." Hearing of September 23, 1975.

[64] Pursuant to 42 U.S.C. 5304(f) (1975 Supp.). Affidavit of Lawrence Thompson, August 25, 1975, § 13. The East Hartford application was received by HUD on March 24, 1975. Supplemental Affidavit of Lawrence Thompson, September 12, 1975, § 19. Exhibit A to the Defendants' Memorandum in Support of Motion to Dismiss or in the Alternative for Summary Judgment. The application was approved in a letter from Mr. Thompson, dated May 2, 1975. Attachment L to the Administrative Record for East Hartford. Thus, appropriately five weeks still remained on the "75-day clock" at the time the East Hartford application was approved.

[65] Supplemental Affidavit of Lawrence Thompson, September 12, 1975, ¶7. This problem was not limited to the Greater Hartford area. Affidavit of Allan Thornton, November 6, 1975 ¶4.

[66] Meeker Memorandum of May 21, 1975. Plaintiffs' Exhibit 12 and Exhibit B to the Affidavit of Lawrence Thompson, August 25, 1975.

[67] Affidavit of William Flood, September 12, 1975, ¶4.

[68] Affidavit of Paul Davidoff, October 21, 1975, ¶9, and Affidavit of Jonathan Colman, October 22, 1975, ¶3.

[69] In letters sent out by the HUD Area Office on June 2, 1975. Affidavit of William Flood, September 12, 1975, ¶8.

[70] Supplemental Affidavit of Lawrence Thompson, September 12, 1975, ¶22. Indeed, East Hartford received a similar letter on June 5, 1975. Affidavit of William Flood, September 12, 1975, ¶9. Attachment M to the Administrative Record of East Hartford. This letter emphasized the importance of the "expected to reside" element of the HAP, informed the Town of the options the Hartford Area Office had extended to the other communities, and stated that East Hartford, while not required to alter its HAP at that time, would be required to address this need at the time of its next submission, in accordance with HUD regulations.

[71] Instructions for Form HUD-7015.8 thru 11. Plaintiffs' Exhibit 2 at trial.

[72] 24 C.F.R. § 570.303(c)(2)(i)(A); 41 Fed. Reg. 2347, 2349 (January 15, 1976).

[73] Testimony at the Hearing of September 23, 1975.

[74] Testimony at the Hearing of September 22, 1975. These figures can be used to estimate new employment opportunities generated by that construction. HUD's awareness of the relationship between new commercial construction and new employment opportunities is demonstrated by Plaintiffs' Exhibit 14, a letter to Stephen Fils, Town Manager of Farmington, from Lawrence Thompson, March 9, 1972.

[75] 24 C.F.R. § 570.306(b)(2).

[76] Plaintiffs' Exhibit 2, note 71 supra.

[77] 24 C.F.R. § 570.306(b)(2).

[78] It is clear from the record that HUD's review was not based on this sort of data. "I chose to approve these seven applications after determining they were not plainly inconsistent with the facts and data available [*sic*] at that time." Affidavit of Lawrence Thompson, August 25, 1975, ¶ 14. Also, see Affidavit of William Flood, September 12, 1975, ¶ 5.

[79] 42 U.S.C. § 5304(c)(1) (1975 Supp.).

[80] Attachments D and K to the Administrative Record for East Hartford. The Town used the 40 per cent of the applicant pool who were not residents of East Hartford as its "expected to reside" estimate.

[81] Memorandum to Harry Reese, April 18, 1975. Attachment O to the Administrative Record for East Hartford.

[82] Memorandum to the East Hartford Entitlement File, May 15, 1975. Attachment J to the Administrative Record for East Hartford.

[83] Memorandum to Harry Reese, April 14, 1975. Attachment O to the Administrative Record for East Hartford.

[84] The increase consisted entirely of an allocation of $120,000 of Section 8 funds. All 60 units were to be in already existing housing.

[85] Attachments D and K to the Administrative Record for East Hartford.

[86] *Id.*

[87] Memorandum to Harry Reese, April 14, 1975. Attachment O to the Administrative Record for East Hartford.

[88] Letter to Ms. Connell, Chairwoman of the Ad Hoc Committee on the Housing and Community Development Act, CRCOG. Attachment H to the Administrative Record for East Hartford.

[89] Attachment K to the Administrative Record for East Hartford.

[90] Memorandum to the East Hartford Entitlement File, May 15, 1975. Attachment J to the Administrative Record for East Hartford.

[91] HUD's Acting Regional Administrator, Harold Thompson, emphasized this duty in a memorandum to the Area Director, Lawrence Thompson:

"In sum, these allegations [by the City of Hartford] are, in our opinion, well-documented and of a very serious nature. Therefore, whatever your decision may be regarding this matter, please ensure that the administrative file reflects a reasonable decision-making process."

Plaintiffs' Exhibit 13, Memorandum to Lawrence Thompson, April 29, 1975.

[From the New York Times, Apr. 26, 1976]

IMPACT OF COURT'S RULING ON LOW-INCOME HOUSING IS SEEN FAR OFF

(By William E. Farrell)

CHICAGO, April 25.—The Supreme Court's ruling last week that Federal courts can order the construction of low-income public housing in white suburbs to alleviate urban racial segregation is being greeted by some suburban officials with a mixture of criticism and indifference.

At the same time, civil rights advocates, while hailing the court's 8-to-0 ruling as an important breakthrough, are warning that it will take a long time before the decision has a tangible impact.

They are also cautioning against interpreting the decision as a panacea that will bring relief to minorities in the decayed housing that amounds in the nation's inner city slums.

The Court, acting in a 10-year-old Chicago suit, Hills v. Gautreaux, said on Tuesday that Federal courts could order suburban public housing to ease racial segregation in cities even when the suburbs involved have not been proved guilty of practicing housing discrimination.

In effect, the decision permits Federal courts to order a "metropolitan area" plan to deal with central-city segregation rather than limiting such a plan to the geographic confines of the city proper.

It is this aspect of the ruling that has pleased civil rights leaders, particularly in light of the Court's ruling in 1974 in a Detroit school desegregation case in which it said that a Federal judge could not impose an area-wide plan to end segregation in a single school district.

The housing case, named for Dorothy Gautreaux, a deceased litigant in this suit, involved the Federal Department of Housing and Urban Development, which in 1974 had been found by a United States Court of Appeals to have violated the Constitution for years by allowing federally subsidized public housing in Chicago to be built only in black neighborhoods.

Alexander Polikoff, who handled the case for Mrs. Gautreaux and the others as a lawyer for the American Civil Liberties Union and a local group called Businessmen for the Public Interest, said in an interview that the decision meant that "a crucial concept is now before us."

"It will take a long time," Mr. Polikoff said. "After all, it took us 40 years to develop our residential apartheid pattern."

The real significance of the ruling, he said, is that it might force a change in the direction of Federal housing policies.

The Supreme Court ruling means that the Gautreaux case now goes back to Judge Richard B. Austin in United States District Court here, where a hearing to discuss a metropolitan housing plan has been called for May 24.

The Supreme Court decision was hailed by Mayor Richard J. Daley of Chicago, who fought Judge Austin's original ruling in 1969 when it was limited to scattering public housing in white neighborhoods of the city, but not the suburbs. Virtually no public housing has been built in Chicago since then.

"The only way to do something about housing is on a metropolitan basis," Mr. Daley told newsmen.

But a number of officials of the suburbs that gird the nation's second-largest city felt that the decision threatened property values and usurped the prerogatives of local government.

"You cannot solve Chicago's public housing problem by placing public housing in the suburbs," said Nicholas Glase of Niles. "The Court can decide what it wants, but as long as Congress does not appropriate any funds for public housing construction in the suburbs, there won't be any."

"The Court is trying to protect one group's rights at the expense of other groups in society," said Mrs. Edwin Dropka, president of Save Our Suburbs, a coalition of Illinois suburban civic organizations.

MAYOR GIBSON'S VIEW

Kenneth A. Gibson, Mayor of Newark, one of the nation's most beleaguered urban centers, said that while he was pleased with the court ruling, "I have to concern myself with our residents and the public housing we have to offer them. We've had our own problems and this is what I must be concerned with."

Norman Threadgill, president of the Newark chapter of the National Association for the Advancement of Colored People, said of the decision: "This may eventually have some meaning, but it will take quite a few years before the decision has any measurable impact at all."

A canvass of suburban officials in the Detroit area—a city with a large black and poor population—showed that most were not overly concerned about the ruling.

An exception was Mayor Ted Bates of Warner, who said, "People will be up in arms. We are losing home rule to the cities. They are trying to take away the people's rights."

Donald Harm, city manager of suburban St. Clair Shores, said: "I'm not upset or worried by the decision."

Dr. Francis A. Gornegay, executive director of the Detroit Urban League, said he hoped the decision would help school integration. Some foes of school busing have argued that the clue to ending school segregation lies in ending housing segregation.

Several civil rights advocates said they hoped to see the decision used to achieve that purpose.

"It's a great theory right now," said William Drew, Milwaukee's Commissioner of City Development. "But the problem is there is no housing program now. If Congress did enact a new housing program, I'd recommend we do build in the suburbs."

In Atlanta, Mrs. John Delle Johnson, executive director of the local branch of the N.A.A.C.P., said thhe ruling "will naturally help the integration of schools. It will also help economically to allow poor people to live in the suburbs where new jobs are coming."

James Wallace, economist for the Department of Housing and Urban Development in the Boston area, said: "This decision will have considerable impact because in the past we have dealt with city and not suburb."

One housing expert in the private sector, who has been involved in attempts to build low- and moderate-income suburban housing, said the short-term impact of the decision would be negligible but that eventually the decision could help loosen suburban intransigence to minority-group housing.

[From the Baltimore Sun, Apr. 24, 1976]

RULING EFFECT DOUBTED

Officials in Baltimore and Anne Arundel counties had mixed reactions yesterday to the Supreme Court ruling that federal judges may order the Department of Housing and Urban Development to foster low-income housing in suburbs.

But, leaders in both counties said the order will have little effect on their subdivisions.

"The preliminary assessment I have received is that the opinion of the Supreme Court will have little effect if any on Baltimore county," said Theodore G. Venetoulis, the county executive.

Mary Christhilf, the executive director of the Anne Arundel county Housing Authority, echoed his words, saying, "I don't believe it will have any effect on the county at this point."

Mrs. Christhilf said she believes the county has had a good public housing record up to this time.

But the order drew the wrath of many elected officials in Baltimore county.

"Over my dead body HUD will tell us where to build our housing. We are perfectly capable of making those decisions ourselves," the Baltimore County Council chairman, John O'Rourke (D., 7th), said.

Another councilman, Clarence E. Ritter (R., 3d), said, "This is just another example of what too much big government can do. They are taking away decisions that should be made at the local level."

The court approved unanimously the concept of "metropolitan" or areawide relief to ease housing segregation.

The decision raises the prospect that a number of lawsuits will be filed or pressed around the nation by civil rights and open housing groups seeking to establish metropolitan housing plans as remedies for housing segregation.

No such suits have been filed as of yet in the Baltimore area.

NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING, INC.,
Washington, D.C., April 28, 1976.

EDITOR,
The Washington Post,
Washington, D.C.

DEAR EDITOR: The degree to which the recent Supreme Court decision in Hills v. Gautreaux has nationwide impact rests with the Department of Housing and Urban Development. The decision will be a major victory only to the extent that HUD acts affirmatively to carry out the mandate on a national level.

While the Supreme Court decision did not specifically require the lower court to order a metropolitan public housing dispersal plan as a remedy, Justice Potter Stewart, wirting for a unanimous court, said that "an order directing HUD to use . . . federal housing programs to foster projects located in white areas of the Chicago housing market would be consistent with and supportive of well-established federal housing policy."

Specifically, the Housing and Community Development Act of 1974 mandates deconcentration of housing for lower income families on a metropolitan basis. The Act also requires municpalities, including suburban municipalities, seeking HUD funding for community development activities to submit Housing Assistance Plans providing for the housing needs of lower income families as a condition of eligibility for receiving those community development funds. Further, Congress established a new program, called Section 8, which permits construction of lower income housing throughout metropolitan areas with no necessity for local government approval.

It is important to stress that the effect of the Supreme Court decision is only to open the door to the realistic possibility of expanding housing opportunities for low income minorities beyond the boundary lines of central cities to which they have previously been confined. Whether that door remains open so that minorities can pass through it or whether it is again slammed shut depends as much on what HUD does in response to the high court ruling as on what the District Court does.

HUD is already subject to a variety of desegregation mandates, established through prior Supreme Court decisions, Congressional enactments, Executive Orders, and its own regulations, which clearly call for vigorous implementation of the spirit, as well as the letter, of the Gautreaux decision.

Thus, Gautreaux is only the most recent in a long line of Supreme Court decisions, including Shelley v. Kraemer and Jones v. Mayer, that establish the responsibility of government to assure against the exclusion of racial minorities from white residential areas.

Congress has acted to the same end in passing the Federal Fair Housing Law in 1968, intended not only to eradicate housing discrimination, but also, as the Supreme Court has emphasized, "to replace the ghettos by 'truly integrated and balanced living patterns' ". In 1974, Congress enacted the economic equivalent of this policy of racial integration by passing the Housing and Community Development Act, aimed at reducing concentrations of lower-income families in central cities.

The Executive Branch, through issuance of President Kennedy's 1962 Executive Order on Equal Opportunity in Housing, has also acted as a strong participant in the governmental effort to broaden housing opportunities throughout metropolitan areas. And HUD itself, through its regulations implementing constitutional and statutory desegregation mandates, has fully supported this total governmental effort.

The issue, then, is not whether metropolitan-wide desegregation is consistent with legal and policy requirements. On that issue, all three branches of the federal government have spoken with one voice and acted with one resolve. Rather, it is whether HUD will respond affirmatively and creatively to the Supreme Court ruling, or whether it will drag its heels and resist joining in the monumental task of achieving metropolitan-wide desegregation.

For too long, the nation has been embroiled over the divisive issues of busing and school desegregation. There are some who have contended that busing is too high a price to pay to achieve the goal of racially integrated schools. The answer, they say, lies in housing desegregation. NCDH has been skeptical of these protestations and has questioned the genuineness of the arguments of those who suddenly purport to have discovered the virtue of residential desegregation.

The right to attend a racially desegregated school is a present constitutional right which must not be denied to any child on the basis of a pledge for the future which may take decades or even generations to be redeemed. Nonetheless, residential desegregation can ease the task of school desegregation and can remove busing, the single most divisive issue, from the unproductive dialogue that has prevailed for too long.

The effort to achieve metropolitan-wide residential desegregation will take many years. The effort must begin immediately and HUD must be a key factor in that effort. HUD already has the tools with which to make significant progress in achieving this goal. The question is whether the Department is willing to use them.

Cordially,

EDWARD L. HOLMGREN,
Executive Director.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If there be none, morning business is closed.

RELATIONS WITH THE SOVIET UNION

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of unfinished business, Senate Resolution 406, which the clerk will state.

The legislative clerk read as follows:

A resolution (S. Res. 406) relating to the importance of sound relations with the Soviet Union.

The Senate proceeded to consider the resolution.

The ACTING PRESIDENT pro tempore. Under the previous unanimous-consent agreement, the time until 1 p.m. is equally divided and controlled by the Senator from Alabama (Mr. ALLEN) and the Senator from California (Mr. CRANSTON).

Mr. CRANSTON. Mr. President, I ask unanimous consent to have the Senate consider an amendment which I send to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from California (Mr. CRANSTON) proposes an amendment:

On page 6, between lines 6 and 11, substitute the following:

"Beyond this determination to do all that is necessary to defend and protect our Nation, we believe that an integral part of our national security policy should be to seek through negotiations to reduce, moderate and stabilize the military competition between the United States and the Soviet Union.".

Mr. CRANSTON. Mr. President, I have discussed this amendment with the distinguished Senator from Alabama and the distinguished Senator from North Carolina, who have evidenced particular interest in this resolution and in these matters.

The amendment is self-explanatory. It simply seeks to stress that along with the other points in the resolution in regard to seeking to negotiate a reduction of the burdens and dangers of the strategic arms race in ways that assure that we will not be inferior to the Soviet Union, we should also seek to reduce, moderate, and stabilize the general military competition with the Soviet Union—with the same obvious intent that we not get into an inferior position, and that any agreements be carefully spelled out and in a form that enables us to know that they are being observed by the other side.

If there is no discussion, and I think there is not, I think we are ready for a vote on the amendment.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from California.

The amendment was agreed to.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HELMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CRANSTON. Mr. President, I ask unanimous consent that the Senate consider another amendment which I send to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered. The amendment is in order. The amendment will be stated.

The legislative clerk read as follows:

On page 7, at the end of the resolving clauses, between lines 11 and 12, insert the following: "Finally, the American objective is to achieve individual freedom and peace in the world. We believe that the people of our country want their government to translate this aspiration into practical measures. We recognize that the possibilities for constructive cooperation between the United States and the Soviet Union may be limited but we declare it to be the American purpose to carry on a process whose ultimate aim is to enlarge the sphere of cooperation as much as may prove possible.".

Mr. CRANSTON. Mr. President, this amendment is also self-explanatory. I have also discussed this amendment with the distinguished Senator from Alabama and the distinguished Senator from North Carolina, and they are in accord with it.

The principal purpose of this amendment is to summarize at the end, after various amendments that have now been added to the resolution as reported from the Foreign Relations Committee, the basic objective of the resolution and of the American people. That objective, plainly, insofar as the American people are concerned, is to achieve individual freedom and peace in the world, in our land, in the Soviet Union and in all lands.

It is my view it would be helpful to wrap up the resolution with this summation.

If there is no debate, and I believe there is none, I think again we are ready for a vote.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from California.

The amendment was agreed to.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HELMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CRANSTON. Mr. President, I shall now speak briefly in regard to the resolution.

Passage of this resolution, with its amendments, and what we say about it in this debate, will send a useful message to the Soviet Union. I hope the message will be understood.

The U.S. Senate and the American Government are not the puppets of some "ruling clique"—as the men in the Kremlin sometimes seem to assume. We are, instead, the representatives of the American people—in all their multitude and in all their diversity. As such, we understandably respond to their diverse, and sometimes conflicting, aspirations and anxieties.

The Soviet leaders would do well to understand that this resolution is not a product of a group of men at the top trying to foist their views on the American people. It is, rather, a reflection of the American people's hopes for peace—and concerns about Soviet intentions—which are naturally shared by many Members of this body.

This resolution should make clear to the men in the Kremlin that though there are apparent contradictions in the expressed policies of the United States, there is also a basic cohesiveness. We in the Senate and all of us together in our country speak with many different and divergent voices. But all of us—so-called hawks and so-called doves; liberals, moderates, and conservatives; Republicans, Democrats, and independents; northerners, southerners, easterners, and westerners—are united in our desire for peace and our hatred of repression.

It is important that the Soviet Government fully understands that though some of us are worried about the adverse effects increased defense spending may have on the American economy and in our ability to achieve domestic social goals, we are all concerned about the adverse effects that increased military spending by the Soviet Union may have on world peace.

We do not want the United States to get bogged down in Vietnam-type wars on the continent of Africa or anywhere else. But we also oppose Soviet imperialism and trouble-mongering in Africa and elsewhere. And we want a halt to Cuban military adventurism.

Many of us deplore the fact that the United States promiscuously spends millions of dollars to give military aid and economic comfort to many dictatorial, antidemocratic governments around the world. But all of us detest the repressiveness and tyranny of Communist rule.

The message of this resolution may be complex but it is clear:

The U.S. Senate favors the process of détente, by whatever name it is called. We are willing to meet the Soviet Union halfway by taking steps to reduce tensions between our two nations and to regulate our many competitive and conflicting interests to avoid war.

But the process of détente will in no way lessen our determination to remain unchallengeably strong militarily—while pursuing negotiations to control and reduce the military burdens carried by both the people of the United States and the people of the Soviet Union.

Nor will pursuing détente weaken our resolve to protect our vital interests against international hanky-panky by the Soviet Union or its friends, or to defend our allies against attack.

We believe that both the United States and the Soviet Union must work harder if the process of détente is going to work. We both must stop playing the dangerous game of nuclear "Can you top this?" and of military move and countermove in every corner of the globe. And we both must stop substituting pietistic platitudes for positive actions.

In a word: For a long time now, the foreign policies of both the United States and the Soviet Union have stood in need of considerable improvement. We think theirs needs far more improvement than ours. They think ours needs far more improvement than theirs. This resolution, hopefully, will move us both in the right direction.

Mr. ALLEN. Mr. President, I yield myself such time as I may use.

Mr. President, this resolution is not necessary, in the judgment of the Senator from Alabama. It will accomplish no worthwhile purpose. In fact, the resolution, as I see it, will picture the United States as being in a servile, subservient, Uriah Heepish position.

What answer will we get from this resolution? A monolithic silence from the Kremlin.

Here we are protesting our desire to enter into negotiations that will avoid a holocaust, that will avoid a conflict between Russia and the United States. What we ought to be doing is seeing to it that we have the strongest military posture in the world.

If we are all the time asserting our desire for negotiations, our desire for agreements, without putting our faith and our trust in our own strength, the message it will deliver to the Soviets is the message that we must be mighty weak here in this country if we have to pass a resolution of this sort protesting our desire and maintaining our desire for negotiations with the Soviets.

There would be no response whatsoever to this resolution from Russia, from the Soviet Union.

They will ignore it or they will say, "Yes, our adversaries are mighty anxious to reach agreement, they are mighty anxious to negotiate, therefore, we can demand a higher price in any negotiations that do take place because the United States is so anxious to negotiate that their military strength must not be as strong as we have thought."

I view this resolution as being counterproductive in protecting the security of the United States. It is not going to bring forth a response from the Soviet Union. It is not going to cause them to keep their commitments. It is not going to cause them to be less of a threat to the United States.

Another thing that I disapprove of is the apparent approval in this resolution, more or less in the fashion of buying a pig in a poke, in giving tacit and actual approval to the Vladivostok accord and the Helsinki accord.

We all know that in the Helsinki accord, the main thing Russia was seeking there was to get rubberstamp approval from the United States of its military conquests in World War II.

I just hate to be giving approval to what Russia did in World War II when it took over all of Eastern Europe and to say, "Well, we are going to protect the present boundaries after they have taken over half of the continent."

They are going to respect those boundaries, but it gives approval to what the Russians have done since World War II.

I do not like that and I do not like approval of the Vladivostok accord, because I do not suppose anybody knows altogether what is in that accord. As far as I know, it has not been before the Senate and I do not think it will be.

Why should we give blanket approval to the Vladivostok accord?

Mr. CRANSTON. Will the Senator yield at this one point?

Mr. ALLEN. Yes.

Mr. CRANSTON. The resolution specifically states in regard to Vladivostok that these agreements are "to be submitted to the Senate as a treaty."

So there is no blank check and there should not be.

Mr. ALLEN. The subsequent agreement, yes. The subsequent agreement, not the present agreement, that subsequent agreement.

Mr. CRANSTON. This refers only to the principles.

Mr. ALLEN. Yes, this is not agreements in being. What the Senator is talking about there, according to the language of the resolution, is agreements entered into subsequently.

Mr. CRANSTON. That is correct. All we are talking about in terms of agreements entered into is the basic principles which are found in terms of seeking to reduce the dangers of the nuclear arms race.

We explain the hope that they will be translated into a formal treaty that binds the Soviet Union and us into implementation of this.

Mr. ALLEN. Yes; but I do not see why the Senator found fault with my statement that the Vladivostok accord has not been before the Senate for approval.

Mr. CRANSTON. I am talking about the Vladivostok accord, and its basic principles. They are not binding because they are not concise. The objective is to get them translated into something that then can be considered by the Senate.

I am sure the Senator would wish the Senate to consider it, as I would.

Mr. ALLEN. Yes; I understand. I am saying, though, that we are giving more or less advance approval to the Vladivostok accord, we are giving approval to the Helsinki accord. As I say, waiting in the wings is the resolution that endorses Mr. Kissinger's African policy, and we say here that we are going to use our military strength to protect our vital interests and our allies and our friends. Yet, Mr. Kissinger enlists the support of all of the African nations against the existing government in Rhodesia, and also by inference the existing government in South Africa.

So this does not seem we are looking after our friends, because we are subsidizing those who oppose our friends.

I feel that we have everything to lose and nothing to gain by the passage of this resolution.

Yes; let us implement these accords, let us put them into effect, let us abide by them. But what assurance are we going to have that the Russians are going to abide by this?

This is a unilateral approach, as I see it, though it calls on Russia to do a great thing, but we are pledging to abide by these accords and, in effect, we call on Russia to do the same thing. But we can rest assured that they are not going to agree to anything that is not to their best interests.

The resolution is in language that, after we get through reading it, we have not learned a great deal because, in effect, it says that we do not want to have an attack by Russia, we do not want to have hostility with Russia, and we want to enter into agreements, want to enter into negotiations, to prevent that happening.

Well, is that not our attitude without putting it in the form of this resolution?

For further guidance of those who would have a part in these negotiations, along with the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.) and the distinguished Senator from North Carolina (Mr. HELMS), I have submitted an amendment. We will have a vote on it shortly after 1 o'clock.

This resolution, after giving these whereases, ends up with some principles that the Senate is stating, in this sense of the Senate resolution, that it supports.

But there is not too much meat in those statements of principle that the Senate is called upon to state it supports. In order to put some meat into the resolution, in order to furnish a guide to negotiators of these treaties and agreements on the part of the United States to which the resolution refers and which the Senate wants to enter into, we have proposed that following the statement "We therefore support"—and the resolution lists certain things they support, one being the principles of the Vladivostok agreement of November 1974, whatever that is—we have something that we can sink our teeth into in carrying out the phrase "We therefore support." It is, "the principle that any future treaty or agreement between the United States and the Soviet Union shall not limit the United States to levels of intercontinental strategic forces inferior to the limits provided for the Soviet Union."

That, in effect, is the Jackson amendment to the offensive nuclear weapon limitation agreement that the Senate passed in September 1972, I believe.

In SALT I I think most will concede, and statistics will bear it out, we froze in an advantage of about 3 to 2 in favor of the Soviet Union as against the United States in offensive nuclear weapons. This amendment says to our negotiators:

> In any future agreement do not bring in any agreement which does not provide for parity in the area of nuclear weapons with Russia.

These are instructions. This has some meat in it. This, in effect, tells our negotiators that if they come in with an agreement:

> Do not bring it in unless it provides for parity between the United States and the Soviet Union in the area of nuclear weapons.

We all know that the Soviet Union is responsible for some 15,000 Cuban troops that are in Angola and poised to take part in other invasions on the African continent—against some of our friends, I might say. So the second amendment that we are proposing, and it will be voted on after the other amendment, in listing the principles that we support, is "A joint effort on the part of the United

States and the Soviet Union to bring about the immediate withdrawal by Cuba of all of her armed forces from Africa."

This is going to send a message to Russia. Mr. President, in talking about the message that is being sent, there is not too much being said unless we have something concrete in it. So this tells Russia that we know that they can have those troops withdrawn. We are calling for a joint effort on the part of the United States and the Soviet Union to bring about that withdrawal of Cuban troops.

I am delighted to say that the distinguished Senator from California (Mr. CRANSTON) agrees with the thrust of these amendments and he has agreed at the proper time to support these amendments. I appreciate his cooperation, and I appreciate his sincerity in putting some real meat into this resolution. I do not feel the resolution is necessary or that it is advisable, even with these improvements, assuming they are agreed to, and I believe they will be agreed to.

I am going to have to vote against the resolution, though I know it is going to pass overwhelmingly. But I feel as if we would be passing a resolution which really has some meat in it if we do adopt these amendments.

Mr. President, I reserve the remainder of my time.

Mr. HELMS. Will the Senator yield?

Mr. ALLEN. I yield such time as the distinguished Senator from North Carolina desires.

Mr. HELMS. I thank the distinguished Senator.

First of all, Mr. President, a parliamentary inquiry.

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

Mr. HELMS. As the Senator from North Carolina understands it, the order is for the vote on the first Allen-Byrd-Helms amendment to occur shortly after 2:15, is that correct?

The ACTING PRESIDENT pro tempore. The Senator is correct. The vote is to occur subsequent to the vote on the veto override. All votes pertaining to this resolution will occur subsequent to that veto override.

Mr. HELMS. I thank the Chair.

And subsequent to that there will be 5 minutes of debate divided equally on the second amendment, following which there will be a rollcall vote, is that correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. HELMS. The yeas and nays have been ordered on the second amendment?

The ACTING PRESIDENT pro tempore. The yeas and nays have been ordered.

Mr. HELMS. I thank the Chair.

Mr. President, I commend the distinguished Senator from Alabama for his comments here today. I have tried to cooperate with the distinguished Senator from California, the principal sponsor of the pending resolution, so that there may be an up or down vote on it. But I share the concerns expressed by the Senator from Alabama in connection with this resolution, particularly at a time when a Presidential campaign is in progress in which there is so much obfuscation about the Panama Canal issue.

I am apprehensive that adoption of this resolution will send a signal to the dictator in Panama that we do not intend to defend our rights there. I think it is an unwise time, if indeed there could ever be a wise time, even to imply weakness on the part of the United States.

This Senator from North Carolina, Mr. President, who has no doubt whatsoever about the rights of the United States concerning the Panama Canal. It is sovereign territory. It is our territory. It is our canal. Let others go on the television and on the campaign trail and say, "Oh, we really do not own it." And the response of the Senator from North Carolina is, "Baloney." Every part and parcel of the historical record shows that we do own it, and I am astonished and dismayed at pretenses to the contrary.

Mr. President, what is being ignored in the Panama Canal debate across this country today is the fact that the United States has friends in South America who are hoping and praying that we will not yield in a moment of weakness for political reasons. They have said to me, in effect:

> Senator, what in the world is going on in your country? Do not your leaders understand there are those of us in South America who do not want communism?

We are dealing with a dictator who has gone over to Havana and embraced Fidel Castro, who has exported communism to Angola at the behest of the Soviet Union. He is exporting communism to Central and South America. And here we are today with a resolution, motivated by the highest and purest intent on the part of the able Senator from California, a resolution which the Senator from North Carolina feels will simply add to the impression that is growing all around the world that the United States is now no more than a paper tiger.

We are not a paper tiger if the American people can be informed, Mr. President.

All we need is to be Americans again. I do not suggest that we go around picking fights or starting wars, but I do suggest that now more than at any other time in our history, certainly in our more recent history, it is time for America to stand up. It is just as simple as that.

I do not think that by any Senate resolution, or otherwise, we ought to add to any impression that we are timid, or that we are frightened, or that we are going to yield our principles or our rights.

As to the resolution itself, Mr. President, I was interested in comments by the distinguished Senator from Illinois (Mr. STEVENSON), who said in this Chamber yesterday afternoon:

> ...if the object of this resolution is to support détente, that is to say, a lessening of tensions with the Soviet Union, then it is unobjectionable. It is a statement of the obvious. If, on the other hand the Senate is asked to convey some meaning by this resolution, what is it?

And then the Senator from Illinois said:

> I have read the resolution three times and cannot say.
>
> It is capable of any number of differing interpretations, some of which are altogether unacceptable to me and, I daresay, to the membership as a whole.

That is on page S6498 of the RECORD.

So I say again, Mr. President, with all due respect to, and total friendship for my friend from California, I shall have to vote against his resolution.

Mr. President, I reserve the remainder of my time.

Mr. CRANSTON. Mr. President, I am not really surprised to have heard from the two Senators that, despite the amendments that we have adopted, that they offered, they still oppose the resolution and have reservations about its consequences. Plainly this resolution has one overriding purpose, and that is to state the commonsense view that we must continue to find answers short of war in relations with our major adversary in the world at the present time, the Soviet Union. We know that we will have ongoing competition with them. We know that we will have certain conflicts and do have certain conflicts with them, and that they will not end. But we also know that it is in our mutual interest and in the interest of the world to seek to regulate, control, and channel those competitions and those conflicts in ways that keep us from war.

The Senator from Alabama said that the Soviet Union will not respond to this resolution. He stated that the Soviet Union will ignore this resolution. I do not know whether or not the Soviet Union will respond. I hope that they will. I hope they will respond by actions designed to reduce tensions between our two countries. If that is their course, they will find the United States reciprocating.

If, on the other hand, they take steps that deepen the strains and stresses, they will find us placing more emphasis on military might and less emphasis on seeking to negotiate our differences—because that will appear perhaps all too difficult under prevailing circumstances. That will mean an increasing burden of arms for the people of both nations, increasing dangers for the people of both nations and for our world.

As to the statement by the Senator from Alabama that the Soviet Union will ignore this resolution, I happen to know that is not the case. I happen to know that they have paid great attention to it. They have analyzed carefully inside the Kremlin and in the press in the Soviet Union the evolving nature of this resolution, its changing terms, and the debate in the Senate that has been conducted in connection with the consideration of this resolution.

I happen to know that the Soviet Union has deep interest in what all of this means. They are seeking to understand the conflict among ourselves in the Chamber and in this country over détente, over our relations with the Soviet Union, over our military program, and over the accompanying policies advocated so strongly by so many of us who are seeking to reduce tensions between ourselves and the Soviet Union.

In my opening remarks today I sought to interpret what I think all of this means. Obviously, a number of different Senators with different philosophies and different viewpoints have offered various

proposals that are now embodied in this resolution, reflecting different viewpoints, constituencies, and philosophies.

But, all in all, we have a resolution, with those particular approaches now embodied in it, that states the general view held by an overwhelming majority of this body. While, on the one hand, we intend to remain unchallengeably strong militarily, at the same time we have the twin determination to seek to negotiate our differences and regulate our relations with the Soviet Union in ways that lead us away from war.

President Ford has stated that we are the strongest Nation in the entire world. I believe that that is a true statement. And the Senator from Alabama concurs in that because he so stated yesterday in responding to a statement by the distinguished Senator from Minnesota (Mr. HUMPHREY), who stated his view that we are the strongest Nation on Earth. Senator ALLEN stated, referring to Senator HUMPHREY:

> When he says that we do have the strongest military strength of any nation in the world, I think that is great. I certainly hope and believe that that is true.

So plainly we are not dealing from weakness; we are dealing from strength. We intend to negotiate from strength but we hope that we can use that strength in positive, creative, constructive ways to lead us away from the colossal dangers of nuclear war, and to lead us also away from the dangers of conventional war, which if it breaks out between the United States and the Soviet Union, would likely lead swiftly to nuclear war.

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

I ask unanimous consent that the time for the quorum call, from its inception, be charged equally to both sides.

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. ALLEN. 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. ALLEN. Mr. President, I ask unanimous consent that the Secretary of the Senate may be authorized to make clerical changes in the resolution, including the renumbering of sections, if it should be adopted.

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

Mr. ALLEN. 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. CRANSTON. 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. CRANSTON. Mr. President, I ask unanimous consent that I may send to the desk an amendment that I have discussed with the Senator from Alabama.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Mr. CRANSTON. I send the amendment to the desk.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

> At the end of the amendment by the Senator from California (Mr. CRANSTON) insert the following: "In the belief that the lessening of international tensions must remain a continuing United States goal, we".
>
> On page 6, line 11, strike "We".

Mr. CRANSTON. Mr. President, that is simply to make the language track more carefully and appropriately than it does following the adoption of the previous amendment. I think there is no reason to debate it. I ask that we vote now.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. CRANSTON. Mr. President, we have only a few minutes remaining. If the Senator from Massachusetts is ready now, I will be delighted to yield to him.

Mr. KENNEDY. Mr. President, first I commend the leadership that has been provided with respect to this resolution by the Senator from California.

This resolution is timely in terms of the debate in the Senate. Hopefully, it will reflect the concern that many of us in this body have about the continued progress that can and must be made in order to make the world safe for diversity. I think that should be one of the principal challenges of American foreign policy—to recognize that there will be differences, but that we want to make the world safe for the expression of those differences. This means basically to try to make progress in areas which are in the interest of the people of the United States, in the interest of peoples in other countries, and in the interest of the cause of peace.

I think that the area uppermost in American foreign policy is to try to reach additional agreement with respect to strategic arms—continued progress in SALT II.

One of the reasons I support this resolution, Mr. President, is that it is an expression of the Members of the Senate that they do not want to see the election year interfere with orderly progress in trying to move us back from the dangers of nuclear holocaust.

This is important in terms of the peace and security of the people of the United States, and the peace and security of people around the world. This measure offers us an opportunity to vote as individuals to urge further progress on that issue. This is not only a sensible and responsible position, but also one quite clearly important for our national security.

Also, progress in the area of strategic arms is essential if we are really going to be serious about the danger of the proliferation of nuclear weaponry around the world. I fear that this still continues to be a matter of great consequence and great importance and great danger for the people of the United States and people around the world.

Hopefully, further negotiation in the area of strategic weaponry can bring us into a sane position on the issue which confronts us. There should be continued hard negotiation, obviously protecting our vital interests but also advancing the cause of peace.

Finally, Mr. President, I think there is a particular timeliness in this resolution because of the issue of Diego Garcia—the whole question whether we are going to see another arms race opened up in the Indian Ocean, with all the implications that has for contributing, not to the safety or the security of our interests in that part of the world, but rather to a serious destabilizing effect in that part of the world. Important testimony has been given to the appropriate committees, the Committee on Armed Services and the Committee on Foreign Relations. Hopefully, this resolution today will indicate that we here are serious about seeing whether there can be serious negotiations on that important issue, which can save the taxpayers billions of dollars, and be an opportunity to avoid further potential areas of conflict between the United States and the Soviet Union.

Mr. President, all of us are mindful of the areas where we continue to be in conflict with the Soviet Union. My support for this resolution does not mean that we have to trust the Soviet Union or believe that it will make any agreement that is not going to be hammered out as the result of extremely difficult negotiations. What the resolution does say to the American people is that we feel that hard-nosed negotiations which are successful can be extremely meaningful in advancing the cause of peace in the world, and can make an important contribution to the security and the strength of the United States.

Mr. President, I therefore express my strong support for Senate Resolution 406, the resolution on relations with the Soviet Union introduced by our distinguished colleague from California (Mr. CRANSTON). I am pleased to be a cosponsor of this resolution.

As we engage in debate on the future of U.S. foreign policy, it is clear that our relations with the Soviet Union remain of paramount importance. This is particularly so with regard to preventing a nuclear war—mankind's final war, in which there would be no winners, and very likely not even any survivors.

In submitting this resolution, Senator CRANSTON and the cosponsors of both parties were deeply mindful of the need to reaffirm U.S. concern for the vital issues in United States-Soviet relations, and to direct attention to matters that cannot be neglected even in an election year.

It is disappointing to many of us that the debate about U.S. foreign policy this year has so far failed almost completely to raise some of the most important questions facing this Nation. The clear running waters of open debate have been thoroughly muddied; and the American people are being misled about the dangers to the United States. The danger does not lie in the size of our defense effort:

> We have more than enough nuclear power; we are equivalent to the Soviet Union, and have three times as many warheads.

NATO forces in Europe are nearly as large as those of the Warsaw Pact, and are superior in quality. We thus have forces and a doctrine in Europe that would make any Soviet attack an act of madness, bringing inescapable ruin on the Soviet Union and its European allies.

The Library of Congress now tells us that, since 1969, the United States has been outbuilding the Soviet Union in ships, by 12 percent in numbers and by 71 percent in tonnage; and that at the current rate of production, by the mid-1980's we will be maintaining a 480-ship Navy to the Russians' 435. And even during the last 18 years—including the major years of Soviet ship construction—we have outbuilt them in tonnage by 3.3 million tons to 2.6 million tons. Surely this put the lie to charges that we are inferior at sea.

The Soviet Union *does* have more men under arms—as it has always done, except at the height of the Vietnam war. Yet the Soviet Union has to maintain a million men on the Chinese frontier; it has garrison forces in East Europe; it has a rapid turnover of draftees; many of its military forces are used for civilian purposes; and the Soviet military is inferior in both training and the quality of its weaponry.

We do, indeed, need to look seriously at our defense posture. But the problem is not in the level of our effort; it is in the kind of weaponry we are buying. For example, the $1.5 billion we are being asked to spend this year, on a B–1 bomber we do not need, would buy 7 attack submarines, 15 frigates, 80 to 100 tactical aircraft, or 3,000 tanks. We have also built a Navy of large, nuclear powered ships, when what we need are smaller ships, surface-effects vessels, and attack submarines.

Thus for all these reasons, it is clear that we have more than enough forces to defend ourselves and our allies. These are clear and simple facts, and no amount of distorted election rhetoric—no amount of effort to drop the word détente from our vocabulary—can change them.

No, Mr. President, the potential danger to the United States does not lie in our defense effort; rather it lies in our apparent reluctance to move forward in critical areas of arms control in this election year.

Next January, there will be only 9 months left before the 1973 agreement on offensive missiles expires. That is precious little time in which to get such a major agreement. And if there is no agreement, the consequences for the United States, for bringing the nuclear arms race under control, and for peace itself could be incalculable.

We are also faced with the growing challenge of nuclear proliferation—the most important single problem remaining in nuclear weapons. Yet by failing to push forward at SALT II, by failing to go beyond the threshold test-ban treaty—which will do nothing to limit proliferation—to a real comprehensive test-ban, we are only leaving everyone hostage to the threat of further proliferation.

And we must now face again the issue of Diego Garcia and Indian Ocean arms control.

Mr. President, I am profoundly disturbed by events of recent weeks in this area. When Congress voted funds for Diego Garcia last year, it impounded the funds until April 15, to give the President time to contact the Soviet Union about arms control in the Indian Ocean. He did not do so, and the administration issued a report to the Congress that is almost incredible. Suddenly, there is apparently a new reason for not trying to regulate naval competition in the Indian Ocean: Soviet involvement in Angola, some 2,500 miles distant.

Yet are we to sacrifice an effort to regulate competition in the Indian Ocean—hard by the Persian Gulf and the subcontinent—because of what happened last year in a distant part of Africa? Are we to suspend an effort to get in our self-interest, where otherwise we may see a new arms race that will dwarf problems of southern Africa? Last week, I read with admiration Secretary Kissinger's speech in Lusaka. In that, he stressed the issue of human rights and majority rule as the best American approach to southern Africa. He mentioned the problem of superpower involvement only in passing—as many of us in this body had long urged him.

This was a sensible approach. Yet almost at the same moment, the administration was telling Congress that this factor of superpower involvement was sufficient to delay efforts at arms control in the Indian Ocean, a distant and far more vital area.

This is an extraordinary chain of logic, and calls into question the good faith of the administration.

Today's Washington Post provides us with yet another revelation. Yesterday, our former Ambassador to Saudi Arabia, Mr. James Akins, testified that, last year, Saudi Arabia offered to provide aid to Somalia, to decrease its dependence on the Soviet Union. The Senate will recall that it was this dependence that was last year's main argument for our base at Diego Garcia. Yet the offer from Saudi Arabia was turned down. Why? Ambassador Akins reports information that the Pentagon did not want to lose the money for the Diego Garcia base. If this report is true, it is a serious indictment of administration policy and good faith on Diego Garcia.

Mr. President, the administration has a case to answer on this whole subject.

For all these reasons, therefore, I believe it is vital that the Senate of the United States, in this resolution, call the administration back to its senses. It is vital that we enter the national debate on United States-Soviet relations, to show again what is important, and what is not. And it is vital that we press for those actions in arms control, now, that can help us build a safe and secure future for ourselves, for generations yet to come, and for all mankind.

Mr. President, I urge my colleagues to join in support of this resolution.

I ask unanimous consent to have articles from the Washington Post and New York Times printed at this point in the RECORD, along with the administration's report on Diego Garcia.

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

[From the Washington Post, May 5, 1976]

SAUDI OFFER OF AID REPORTED

(By Laurence Stern)

Former U.S. Ambassador to Saudi Arabia James Akins told a Senate subcommittee yesterday that the State Department turned a deaf ear last year to a Saudi government offer to finance military and economic aid programs to Somalia as a means of eliminating the Russian presence there.

Akins said he was informed by a State Department colleague that the reason he received no answer from Washington to the Saudi offer was that the Defense Department was pressing its case for development of a major U.S. naval base in the Indian Ocean on Diego Garcia island.

A powerful Pentagon argument to Congress on the Diego Garcia base last year was the growing threat of the Soviet presence in Somalia.

"This is the most dishonest thing I have heard in 30 years in Congress," exclaimed Sen. Stuart Symington (D.-Mo.), who opposed the Indian Ocean base in the Senate Armed Services Committee.

"... The argument was used with great persuasion in Congress that since the Russians were in Somalia it was necessary to establish a base in Diego Garcia," he said.

Congress approved $13.8 million for a permanent naval base on the Indian Ocean island after a stormy battle over costs and increasing military rivalries in the region.

Subcommittee Chairman Frank Church (D-Idaho), after hearing Akins, said, "the circumstantial evidence certainly suggests a relationship between the desire of the Navy for the Diego Garcia base with a continuation of the Russian presence in Somalia to justify the base."

Akins said the Saudi offer was relayed to Washington through him because of the growing concern of the Saudi government over the Russian naval buildup in Somalia.

This concern, the former ambassador said, was stimulated by U.S. officials who made available to the Saudis photographs of Soviet naval facilities in Somalia. The Saudis, said Akins, "became very frightened."

The terms of the Saudi proposal which he reported to Washington, Akins said, was that the Saudis would provide some $15 million in economic support and for the supply of U.S. military aid to Somalia.

Akins said he had no idea whether the proposal was acceptable to the Somalis because it was stopped dead in Washington.

[After Akins' testimony, Symington confronted Defense Secretary Donald Rumsfeld and Navy Secretary William Middendorf about the allegations, Reuter reported.

[Both denied knowledge of the reported Saudi offer. A State Department spokesman declined to comment on the testimony.]

Akins, a 22-year career Foreign Service veteran and specialist in Arab affairs, was dismissed as ambassador to Saudi Arabia last year in the wake of his differences with Secretary of State Henry A. Kissinger over dealings with the Saudi government and on oil policy questions. He is no longer in the Foreign Service.

In another revelation, Akins acknowledged in reply to a question that the State Department denied him permission to go to London in late 1974 in an effort to persuade Prince Fahd to agree to a large auction of Saudi oil—a move that would have moderated the steep climb in Persian Gulf oil prices.

Top Saudi government officials, Akins said, had asked him to intercede with Fahd who was under pressure by other oil-producing countries to call off the auction.

Akins testified under oath that his trip to see Fahd was vetoed by superiors in Washington on grounds that the State Department lacked travel funds for the Jidda-to-London journey and that his presence in London would be "too conspicuous."

On another matter, Akins said he was not aware of the use of Saudi Arabian arms agent Adnan Khashoggi as an intermediary in contacts between President Nixon and King Faisal during and after the 1973 Middle East war, as reported yesterday in The Washington Post.

Questioned about The Post article, Akins said: "I was not aware of any such communications and I don't believe they took place?" If they had, he told the subcommittee, it would have been "highly irregular and improper."

However, he said that the Saudi defense minister Prince Sultan, had confided to him that Khashoggi had boasted in Riyadh "that he got me removed (as ambassador) in reprisal for having blocked agent fees."

The former diplomat testified ruefully that "I still think it (Khashoggi's boast) is a joke, but I don't think it's as funny anymore."

[From the New York Times, May 4, 1976]

STUDY FINDS A DECLINE IN SHIPBUILDING FOR SOVIET NAVY

(By John W. Finney)

WASHINGTON, May 3.—A library of Congress study has found that the number of ships built for the Soviet Navy has declined substantially in recent years, portending a possible reduction in the size of the Soviet fleet.

The study, prepared for the Senate Budget Committee, reported that in the 1969–1976 period, an average of 17.4 ships were delivered annually to the Soviet Navy. This was less than half the annual delivery rate of 45.5 ships during the 1958–1968 period, when the Soviet Navy was engaged in a large-scale buildup.

If the current construction rate is continued, the study said, it will sustain a navy of about 435 ships instead of the present fleet of about 750 combat, support and auxiliary ships. The reduction would be dictated in large measure by the fact that the Soviet Union is not building enough ships to replace the large number of destroyer escorts and submarines built during the 1960's, which face obsolescence in the 1980's.

AMERICAN AVERAGE

In contrast, for the last 20 years delivery of ships to the United States Navy has averaged about 19 ships a year—a construction rate, the study said, sufficient to maintain the current fleet of about 480 ships.

The study was made public at a time when the Administration, and Congress face a crucial, multibillion-dollar decision on whether to expand the shipbuilding program to build up to the Navy's long-held goal of a 600-ship fleet in the mid-1980's.

On the basis of instructions received from President Ford at a meeting of the National Security Council meeting last Saturday, Defense Secretary Donald H. Rumsfeld will appear before the Senate Armed Services Committee tomorrow to present what Pentagon officials described as the first installment on a major, long-term shipbuilding program.

In the defense budget submitted to Congress last January, the Administration asked for $4.4 billion in the coming fiscal year for the construction of 111 ships at a total cost of $35 billion.

REQUEST TO BE AMENDED

Pentagon officials said Mr. Rumsfeld would amend next year's request to provide for additional ships while stating that the Administration was still studying the Navy's long-term shipbuilding objectives.

According to Senate sources, Mr. Rumsfeld was insisting on testifying in closed session, contending that the long-term shipbuilding plans, which the Defense Department has talked about openly in the past, are secret. Some Senate Demorcatic aides voiced the suspicion that the Secretary's desire for secrecy may be politically motivated, particularly after Mr. Ford's defeat by Ronald Reagan in the Texas Republican Presidential primary last Saturday.

One of the charges being made by Mr. Reagan 's that Administration has allowed the United States to slip into a position of military inferiority, including naval power. If Mr. Rumsfeld testified in a public session, he might be forced into the position of acknowledging that the Administration had not yet developed or approved a long-term shipbuilding program designed to increase the Navy beyond its present size.

A SHIPBUILDING GAP

One of the arguments for a larger defense budget made by Secretary Rumsfeld—and since picked up by Mr. Reagan—is that, since 1962, the Soviet Union has built four times as many ships for its navy as has the United States.

The Library of Congress study, comparing the United States and Soviet shipbuilding programs of warships 1,000 tons and more, presents a somewhat different picture.

Since 1958, the study said, more ships have been delivered to the Soviet Navy than to the United States Navy (722 to 377), but the United States, which builds bigger ships, such as aircraft carriers, leads in tonnage built (3.3 million tons to 2.6 million tons).

And, since 1969, the study said, the United States has led the Soviet Union in the number of ships constructed by 12 percent and in tonnage by 71 percent.

Both the United States and the Soviet Union appear to have problems with their shipbuilding capacity.

In testimony to be published shortly by the Senate Armed Services Committee, Adm. James L. Holloway 3d, the Chief of Naval Operations, said the Soviet Union had a "major problem" in providing enough shipyard capacity to repair and overhaul the present fleet.

"The majority of the expansion in Soviet shipyards is designed to improve the repair facilities and reduce the time lag in overhaul periods," the admiral said.

APRIL 15, 1976.

HON. MIKE MANSFIELD,
U.S. Senate.

DEAR SENATOR MANSFIELD: In keeping with the request of the Congress for a report on negotiating initiatives with regard to mutual arms restraint in the Indian Ocean, I am sending letters to the Chairmen of the appropriate Congressional committees which include a statement of the Administration's position on this question. Knowing of your particular interest in this issue, I thought it appropriate to send you a copy of the Administration's report.

Sincerely yours,

ROBERT J. MCCLOSKEY,
Assistant Secretary for Congressional Relations.

REPORT ON INDIAN OCEAN ARMS LIMITATION

The Executive Branch has given careful consideration to the issues involved in arms limitation in the Indian Ocean area. We have examined the technical problems involved in any such limitation and we have considered the issue of arms limitation in the broader political context of recent events in the region, as well as our overall relationship to the Soviet Union. We have concluded that although we might want to give further consideration to some arms limitation initiative at a later date and perhaps take up the matter with the Soviet government then, any such initiative would be inappropriate now.

The situation in the Indian Ocean cannot be considered in isolation from past and possible future events on the African mainland. Soviet activities in Angola and the Soviet buildup of facilities in Somalia have raised major questions about the intentions of the Soviet Union in areas bordering on the Indian Ocean. While reemphasizing our support for majority rule in Africa and for political solutions of regional problems by regional stakes, we have made clear that we cannot acquiesce in the use of Soviet or surrogate forces as a means of determining the outcome of local conflicts.

We are now seeking to encourage the Soviet Union to conduct itself with restraint and to avoid exploiting local crises for unilateral gain. An arms limitation initiative at this time in a region immediately contiguous to the African continent might convey the mistaken impression to the Soviets and our friends and allies that we were willing to acquiesce in this type of Soviet behavior.

For these reasons, we could not consider seriously an arms limitation initiative focused on the Indian Ocean without clear evidence of Soviet willingness to exercise restraint in the region as a whole. This view has been reinforced by our examination of the technical issues which would be involved in any arms limitations negotiations. Although the technical complexities do not in themselves preclude negotiations, it is evident that a successful arrangement could occur only within a general political framework of mutual restraint in this region.

Clearly, it is not in our interest for this region to become a theater of contention and rivalry, nor would the states of the area welcome such a development. In fact, over the past two years the naval deployments of the United States and the Soviet Union have remained relatively stable. For our part, we will continue a policy of restraint in our military activities in the Indian Ocean area. We intend to proceed with our planned improvements to the support facilities on Diego Garcia, but there is no present intention to go beyond the plans as presented to the Congress last year or to increase our naval deployments to the area.

We, of course, hope that the Soviets will exercise restraint in the area. We will watch carefully to determine the impact on the Soviet military presence of their expansion of naval and air support facilities in Somalia. Restraint in Soviet Indian Ocean deployments, coupled with a more general forebearance from adventurism in the region as a whole, would provide a better context for considering the possibilities for arms limitation in the Indian Ocean. Thus, while we will keep open the matter of a possible future arms limitation initiative as a potential contribution to regional stability and to our relationship with the Soviet Union, we do not perceive it to be in the U.S. interest just at this time.

CHILD DAY CARE STANDARDS ACT—H.R. 9803—VETO

The ACTING PRESIDENT pro tempore. Under the previous unanimous-consent agreement, the hour of 1 p.m. having arrived, the Senate will now proceed to consideration of the veto message on H.R. 9803, with a vote thereon to occur at 2 p.m.

The ACTING PRESIDENT pro tempore (Mr. LEAHY) laid before the Senate a message from the House of Representatives, which was read, as follows:

The House of Representatives having proceeded to reconsider the bill (H.R. 9803) entitled "An Act to facilitate and encourage the implementation by States of child day care services programs conducted pursuant to title XX of the Social Security Act, and to promote the employment of welfare recipients in the provision of child day care services, and for other purposes", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

The ACTING PRESIDENT pro tempore. The question is, shall the bill pass, the objections of the President of the United States to the contrary notwithstanding?

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the time be equally divided between the manager of the conference report, the Senator from Louisiana (Mr. LONG) and the ranking Republican Member, the Senator from Nebraska (Mr. CURTIS).

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

Mr. CURTIS. Mr. President, I ask unanimous consent that Mr. Donald V. Moorehead, chief minority counsel of the Committee on Finance, be accorded the privilege of the floor during debate and vote on the veto of H.R. 9803.

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

Mr. CURTIS. Mr. President, I urge the Senate to sustain the veto of H.R. 9803. This is ill-advised legislation. It extends the already long arm of the Federal Government even further into the lives of our citizens.

As Senators are aware, Mr. President, this legislation provides that the mandatory staffing ratios for day care centers receiving funds under title XX of the Social Security Act will go into effect on July 1, 1976. Moreover, additional funds are provided to enable States to meet these stringent requirements.

The basic premise of this bill is that it assumes that we in Washington have such a monopoly on wisdom and sensitivity that only we can decide how many children can be adequately entrusted to one adult in a day care center. This premise is simply wrong as a matter of principle. We in Washington do not have the ability to select a single set of standards that will be appropriate to the needs of children in Minnesota, New York, Nebraska, and the other 47 States. Our States are themselves better qualified to determine what staffing ratios are appropriate for quality day care. Our citizens realize that Washington does not know all the answers and we should begin to realize that fact ourselves.

These staffing ratios are also objectionable on practical grounds. First, even among day care professionals, there is a dispute about whether the particular standards mandated by this bill are appropriate. At our direction, HEW is studying the issue to give us its best judgment. Why do we refuse to await the facts that we ourselves asked for? Second, where is the evidence that the somewhat different standards adopted by States such as Oklahoma are inadequate? There is no such evidence and yet we are ready to reject the ability—and I believe the right—of Oklahoma and other States to care for their children. Third, in some cases, the standards are unrealistic. For example, staffing ratios are imposed by this bill which could not be met by our best hospitals or our best schools. I see no logic whatsoever in such an approach.

This bill recognizes that the States cannot afford these standards so it provides for more Federal funds to permit compliance. This simply compounds the problem. We are cutting back on many existing programs and rejecting new ones for lack of funds. Yet, here we are providing more funds to meet standards that we cannot be certain are appropriate. Imposing these staffing ratios is a serious mistake. It is no less a mistake because we bury it in a wave of Federal dollars.

For these reasons, Mr. President, I urge my colleagues to sustain the veto of this bill and begin to return government to our citizens where it belongs. Such action, coupled with legislation postponing these staffing ratios, will give us time to consider the President's block grant program and alternative proposal. First, however, we must sustain this veto. Our citizens increasingly realize that Washington does not have all the answers. We should begin to realize the same fact.

Mr. President, I yield 10 minutes to the distinguished Senator from Oregon (Mr. PACKWOOD).

The PRESIDING OFFICER (Mr. GLENN). The Senator from Oregon is recognized.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that John Calvin of my staff have the privilege of the floor during consideration of this measure.

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

Mr. PACKWOOD. Mr. President, this bill, I think, brings into clear focus one of the philosophical issues we face this year and frankly, this election, bringing it into clearer focus than any other issue we are likely to vote on this year, with the exception, maybe, of general revenue sharing and I hope we vote on this. This issue is a microcosm of general revenue sharing.

In this bill, we are funding money to impose upon day care centers throughout the United States mandatory Federal standards. I mean it in exactly the way I am saying it—mandatory standards. Mandatory staffing standards. No flexibility, no choice in the State as to whether they might want to open up in the State 2 or 3 centers with a slightly larger staff. If they are going to have a day care center, for every child from zero to 6 weeks, they have to have one adult. One adult for one child from zero to 6 weeks. The assumption is that a child of from zero to 6 weeks has to have one adult to take care of it. I do not know what this presumption is for the mother of twins in such a circumstance. From 6 weeks to 2 years, there must be one adult for every four children; from 2 years to 3, there must be also one adult per four children; for children from 3 to 4 years, one adult for five children; from 4 to 5, seven children per adult; from 5 to 6 years of age, seven children per adult; for ages 6 to 9, 15 per adult, and from ages 10 to 14, 20 children per adult. That is the absolute standard. No variance. Any variance, no Federal money.

Now, what is the message that voters are sending to candidates this year if the news media's description of the campaigns is accurate? That message is boo on Washington; get them off our backs. Jimmy Carter is sweeping the Democratic primaries. Certainly, Governor Reagan has done well recently. But in both cases, these men are running well as somebody from outside of Washington, somebody who is saying, return government to the States, return it to local government.

What do we do? We turn around and impose exact standards of how many adults per child day care centers in this country must have.

Where did we get this magic wisdom? What makes us so all-fired smarter than every State welfare division in this country, most of whom have different standards from the Federal Government-imposed standards? How did we come to this infinite wisdom of what is right?

We are going to write it into law now and forever more. I do not think we are that smart. I do not think we are any smarter than Mississippi or California or New York as to what their day care standards ought to be.

Let us go even further than that. The Federal Government really is not too sure of what these standards ought to be. In 1974, we passed a bill that directed the Department of Health, Education, and Welfare to set up a study to determine what HEW thought day care staffing standards ought to be. In 1974, we ordered that Commission to report some time between January and June of 1977. And that Commission is working now. What are we saying in this legislation? "Never mind, we don't care what the Commission is doing. We are going to impose these standards right now."

I shall make a bet that if we pass this legislation, if we do not sustain the veto, and we simply terminate whatever work this Commission might be doing, or at least the validity of the results, we will not terminate the Commission. They will go on studying this problem for another year, even though we, by this act, are going to impose the standards.

All I am saying is this: One, if we have any faith that the act we passed in 1974 has some credibility and we are going to ask HEW to study this and come forth with a recommendation to Congress, then we should not be imposing Federal standards until that report is made.

Second, I think we are saying in this legislation that despite all of the election results—I bet I can read the CONGRESSIONAL RECORD and every one of us has said it. Despite the fact that every one of us has said at one time or another, get the Federal Government out of regulation, off our back, out of State control, zoning, EPA, whatever it is—every one of the people in this Senate has said it at one time or another. Despite the fact that we give lip service to that, here we are coming down the road, imposing compulsory staffing standards on day care centers throughout this country.

I think it is bad judgment. I think it is bad planning. I think so long as we have asked our own Department of Health, Education, and Welfare to recommend to Congress what standards they think are appropriate, the minimum we can do to at least be consistent with ourselves is to wait until that report is submitted to this Congress.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. CURTIS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CURTIS. If there is no one here from the majority side to use time, it is my understanding that if the time is not used, it runs against both sides.

The PRESIDING OFFICER. That is correct.

Mr. CURTIS. The minority are here, have used time, were ready to use more, but we do not want to exhaust the time that we have. I therefore ask unanimous consent that if time is not used by the majority, it run against the majority only.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LONG. 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. LONG. Mr. President, the President vetoed the bill before us, and the House of Representatives has voted to override that veto. I hope that the Senate will also vote to override the veto.

In his veto message, the President indicates that the issue before us is whether or not the Federal child care standards applicable to the social services program are appropriate or whether indeed there should be any Federal standards. But that is not the issue before us. That issue was settled on January 4, 1975, when he signed into law the Social Services Amendments of 1974 which deny any Federal funding to child care programs under the Social Security Act which do not meet specified Federal standards. These standards set requirements for staffing ratios, safety and sanitation, suitability of facilities, and other matters. These standards were not accidentally adopted. They were debated on more than one occasion. They were opposed, and I was among those who once opposed them. But they were also enacted, and they are now the law today.

The issue before us in H.R. 9803, then, is not whether we will impose Federal standards. We have already done that. Congress did it. The issue is whether we will make it possible for the States to obey that Federal law without seriously curtailing their child care programs. H.R. 9803 will accomplish this by providing additional child care funding—$125 million for the period between now and September 30 of this year—and by making it attractive for States to meet the Federal child care staffing requirements by employing welfare recipients in child care jobs.

In addition to providing new funding, H.R. 9803 also makes some necessary modifications to the Federal child care standards, not to make them more stringent, but to ease somewhat their applicability in certain instances. The Federal staffing standards for preschool children would be waived under the bill retroactive to February 1, the expiration of the last waiver, and up to July 1 of this year to give States an opportunity to come into compliance.

Child care centers and group homes would be exempted from the Federal requirements if they serve only a minimal number of federally paid-for children. Family day care mothers would be permitted to exclude their school-age children in determining the maximum number of children they may care for. Far from being a bill to establish Federal child care standards, H.R. 9803 is a bill—the only bill with immediate prospects of enactment—which gives some relief from the impact of the Federal standards which are now in the law.

Unfortunately, for essentially technical reasons related to the new congressional budget process, H.R. 9803 deals with the child care problem on only a temporary basis. I hope that we will be able to expeditiously bring this matter back to the Senate to resolve it on a permanent basis. H.R. 9803 will, however, meet the immediate crisis of providing the funding and other relief that will enable existing child care programs to continue in operation under the law. I urge the Senate to vote to override the President's veto of this bill.

Mr. MONDALE. Mr. President, I ask unanimous consent that Bert Carp and Sidney Johnson be given floor privileges during the consideration of this measure.

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

Who seeks recognition? Is all time yielded back?

Mr. LONG. Mr. President, I ask unanimous consent that I might suggest the absence of a quorum and that it be charged equally against both sides.

The PRESIDING OFFICER. Is there objection?

Mr. CURTIS. Mr. President, I would like very much to accommodate my distinguished chairman.

I would agree to the unanimous consent if it be charged to neither side.

Mr. LONG. That is all right with me.

Mr. CURTIS. And then debate beyond 2 o'clock, if necessary.

The PRESIDING OFFICER. The result would be the same, the vote would still occur at 2 o'clock.

Mr. CURTIS. And that be set aside and the vote be moved back to the appropriate time.

The PRESIDING OFFICER. That would be a change that would require unanimous consent.

Mr. CURTIS. Well, that is what is pending, the unanimous consent.

Mr. LONG. Mr. President, I ask unanimous consent that the vote be changed to 2:15. That will give us time, I should think, to have the quorum call.

Mr. PACKWOOD. I object.

The PRESIDING OFFICER. Objection is heard.

Who yields time?

Mr. CURTIS. Mr. President, I yield myself 2 minutes.

Mr. President, my distinguished chairman is correct in his statement that this has already been enacted into law, a law whereby the Federal Government, the Congress, fixes the number of children for one adult in a day care center. But it has not been implemented and, therefore, this action is timely, the President was correct in vetoing it, his veto should be sustained.

Can you imagine the Senate of the United States, wrestling with all the problems, foreign and domestic, that we have, will periodically be engaged in a debate whether or not someone in charge of day care centers should look after 12 youngsters, or 14, or 20?

It is clearly not the responsibility of the Federal Government. It is clearly not the responsibility of anybody in Congress. It is bad legislation. It is made worse by the fact that we are in this proposal saying to the States, "If you will accept this wrong principle, we will give you some money to help comply with it."

Mr. President, that has been the path followed to the destruction of representative government, that has been the path followed in taking away from the people at the local level their proper voice in matters of self-government that belong locally.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. CURTIS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CURTIS. How much time has now been charged to the minority and how much to the majority?

The PRESIDING OFFICER. Twelve minutes to the minority, 13 minutes to the majority.

Mr. CURTIS. Mr. President, the minority is prepared to yield back the remainder of its time if the majority is.

The PRESIDING OFFICER. It would take unanimous consent to change the time of the vote.

Mr. LONG. Mr. President, we would not want to change the time for the vote.

I renew my suggestion, Mr. President, that we might suggest the absence of a quorum and charge it equally against both sides.

Mr. CURTIS. Very well.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LONG. 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. LONG. Mr. President, I ask unanimous consent that the Senate stand in recess until 5 minutes of 2 o'clock this afternoon, and that at that time a quorum call be ordered.

The PRESIDING OFFICER. Is there objection? If there be no objection, the Senate will stand in recess until the hour of 1:55 with a quorum call following——

Mr. CURTIS. Reserving the right to object, and I shall not object, but I want to check with Senator PACKWOOD.

Mr. MANSFIELD. Mr. President, we will stay in session then. Just withdraw it.

Mr. CURTIS. Mr. President, may we have the unanimous consent request restated?

The PRESIDING OFFICER. The unanimous consent request was that the Senate stand in recess until the hour of 1:55 p.m., with a quorum call to occur at that time, and the vote still to occur at 2 p.m. Is objection heard?

Mr. PACKWOOD. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. LONG. Mr. President, I renew my suggestion that we might have a quorum call with the understanding that it will be charged equally to both sides.

The PRESIDING OFFICER. Is there objection?

Mr. MONDALE. Will the Senator yield before making that motion?

Mr. LONG. I yield.

Mr. MONDALE. Mr. President, I ask unanimous consent that Larry Gage, of Senator HATHAWAY's staff, be granted the privilege of the floor.

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

Is there objection to the equal division of the quorum time?

Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PEARSON. 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. PEARSON. Mr. President, I ask unanimous consent that Mr. Charles Warren, of Senator JAVITS' staff, be allowed the privilege of the floor.

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

Mr. PEARSON. 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. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ADDITIONAL STATEMENTS SUBMITTED ON H.R. 9803

Mr. DOMENICI. Mr. President, I rise to vote to sustain the President's veto of the conference report on H.R. 9803. Mr. President, I agree with Suzanne Woolsey, senior research associate at the Urban Institute that the substance of the dispute today has to do with the proper staff-child ratios to be imposed on day-care centers and whether the Federal Government or the States should do the imposing. I would also suggest that the Federal moneys designated for the administration of the federally imposed standards is another important aspect of the dispute.

This bill will only postpone the imposition of several Federal standards—standards often restrictive and burdensome to conscious day-care operators throughout the country. Although some standards would be modified by this bill, most are not. My vote to sustain the veto should be interpreted as my opposition to these Federal standards for day-care centers. Delaying their enactment really will not help in the long run.

When Congress enacted the legislation last year, the standards were to have been effective last October 1. Day-care center operators in New Mexico and throughout the country wrote to protest. These were not sleazy, marginal day-care centers set out to make an easy buck. Rather, they were trying to do a good job serving the children of working mothers at a reasonable cost to the centers and to the parents. They told us they did not mind realistic standards, but the ones imposed by Congress last year simply could not be met. Congress, finally recognizing some problems not earlier envisioned, passed legislation to postpone the enactment of the standards for 6 months to give us time "to study the new regulations" we had just passed. To my knowledge, the past 6 months were wasted; little, if any, review was made by the House Ways and Means Committee. And, here we are again faced with another delaying ploy. My question is, "For what?" Delaying further will not help as the past 6 months delay indicates.

Let us drop the standards we have apparently imposed too quickly and which may, in fact, be too burdensome and unrealistic.

I believe the States can get more out of the dollar and can do a better job in this area than the Federal Government with the inevitable redtape and exhaustive forms. I believe the Federal Government does not always know best. Nor are programs best administered away from the people directly involved. Let the people complain to their State governments. Let the day-care center operators have a say in what are reasonable minimal standards for their part of the country. Let the parents talk and discuss standards with their community day-care centers and their State government. I believe that has to be a better approach than everyone trying to bang on the doors of a remote Washington.

Mr. TUNNEY. Mr. President, I will cast my vote to override President Ford's veto of H.R. 9803, the child day-care center bill. I believe this veto to have been unjustified for several clear reasons. First, the title XX day-care program has provided and can continue to provide child-care services for those lower income persons throughout the Nation who, but for the day-care centers, would find it impossible to seek or hold employment. Second, the measure will relax the application of Federal day-care standards presently in force within the title XX day-care program, and will provide Federal matching funds to enable States better to deal with the HEW-developed staffing ratios. Were it not for this legislation, countless States, including my home State, would be badly pressed to meet the tremendous cost of the staffing ratios under the title XX program.

This legislation furthermore, marks the first time since 1972 that the Federal Government has infused additional sums into the title XX program. These dollars have been badly needed. In Los Angeles County alone, a survey of various kinds of day-care centers shows thousands of children on waiting lists—10,000 just for the 82 centers run by the Los Angeles City Unified School District. A national study by the Child Development Committee of the National Commission on the Observance of International Women's Year pointed out that 6 million children need day-care services because their parents work, and yet only 900,000 of these children currently are served. The influx of additional Federal dollars, if only to help meet strict staffing ratios, at least will enable the title XX day-care programs to be continued at the same level of operation instead of being cut back because adequate funds were not available to cope with the new staffing guidelines.

This legislation will go a long way to insure that quality day care is provided to those persons and their children who qualify for title XX benefits. Moreover, it should begin to ease the strain on States which must comply with new HEW guidelines. Whereas the veto would spell additional costs to the individual States, the override of this veto would mean that the individual States would receive Federal dollars to help defray the cost of compliance with the HEW standards. In fact it would cut the cost of compliance in half. The measure is within the congressional budget, as measured by both Budget Committees.

Last, this measure will not require States to change their own day-care standards. It only mandates that where Federal funds are used to provide care for young children outside their homes, the Federal Government will take some responsibility to see that the care received meets minimum standards. The sums provided will allow States to help keep the fees for child care down, particularly at those sites which serve both welfare and nonwelfare children.

I frankly believe that this legislation offers a sage means of dealing with a variety of difficulties which arose when the HEW title XX day-care standards were developed, and will allow the program to provide continued quality day-care services to thousands of families whose income capabilities are inextricably tied to the availability of adequate day care. I urge my colleagues to join in voting to override the veto of this measure, demonstrating once and for all that Congress has the force of will to overcome Presidential whim on a matter as serious as this.

Mr. STEVENS. Mr. President, I am going to support the President's veto of this legislation. I would, however, like to clarify my position at this time. I am in favor of day-care centers. The bill before us does not provide for additional day-care centers; it only provides additional funding for staffing of the existing centers.

Eighty percent of the funds authorized in this bill, or $100 million, will be distributed to the States based on a population formula. The State of Alaska has anticipated that $1.4 million annually is required to meet the costs of implementing the regulations. By the calculations of my staff our State's share of the $100 million will be approximately $130,000. So even on this half year basis, the State of Alaska will have to come up with about $500,000 and that is assuming that

we are able to obtain some of the discretionary funds included in the authorization. Some States have less need for Federal staffing money, yet they too will receive a distribution based on population—not need.

I must also question one other well-intentioned provision of the bill which is the incentive given to the employment of welfare mothers in day-care centers. If a woman is employed in a center, it stands to reason that her pre-school-aged children will have to attend the center. This further reduces the spaces available for children of mothers who work outside of the home. It is conceivable that with the required staffing ratios, an unemployed mother can be put to work in a day-care center and be paid for caring only for her children.

While I am voting to sustain this veto, I would like to reiterate the fact that this is not an anti-day-care vote. I feel that this particular legislation will further increase the burdens on the existing day care centers rather than expanding the availability of day care services which are greatly needed in almost every part of this country.

Furthermore, I think that the people most directly concerned with day care centers—the parents of the children involved—should have more to say about the day-care centers than the Federal Government.

Mr. HATHAWAY. Mr. President, yesterday, our colleagues in the House of Representatives voted 301 to 101 to override the President's veto of H.R. 9803. I think we can safely consider that vote an overwhelming one during an election year, and I am pleased to note that both of my Republican colleagues from Maine—BILL COHEN and DAVE EMERY—voted to override.

It is time now for the Senate to complete the job.

The controversial segments of this bill, Mr. President, concern child day-care staffing requirements under title XX, and the ability of many State and local agencies to meet those requirements. This bill would suspend the requirements until July 1 of this year, and at the same time provide ample additional funding to enable the States to meet the requirements.

I will not dwell at length on this aspect of the bill at this time, since so many of my colleagues have spoken and will speak to this issue. However, I would underscore the fact that this is not a vote on whether we agree with the HEW standards. Whether or not we agree with them—and I can well sympathize with those Members who feel perhaps they have gone a bit too far—the stringent standards will go into effect. It is not realistic to expect Congress to be able to schedule another bill solely to postpone the effect of the standards—even if we were inclined to do so. What this bill does is provide a little breathing space for the day-care programs—and more importantly, provide them adequate funding to permit compliance with the standards, and therefore avoid the loss of child care programs considered vital to provide people with jobs, rather than welfare.

I do want to call my colleagues' attention to another aspect of this legislation, involving title XX funding for alcoholism and drug abuse treatment programs. Specifically, the second part of this bill permits retention in the law of three amendments I offered which were first accepted by the Senate last autumn. These amendments, taken together, greatly eased the problems associated with such funding for States which have selected alcoholism and drug abuse as services to be provided under this law.

My home State of Maine, for example, set aside over $1 million out of its total $12 million title XX money for alcoholism services. However, it was discovered that they would not be able to make effective use of that money without some changes in the law or regulations. In particular, the restrictions on use of title XX funds for medical and room and board purposes were being construed too narrowly to permit funding of any alcoholism services. In addition, statutory requirements of confidentiality of patient and client records were in danger of being violated under the new regulations.

My amendments sought to resolve these problems, without in any way effecting the underlying bases for the regulations—which are largely directed toward the perfectly sound theory that title XX was not meant to be a medical program. Essentially, they exempt a very short-term detoxification period from the requirements, if the client goes on to further treatment. And the amendments also mandate that the entire alcoholism and drug abuse treatment process be considered, rather than any individual service component, in applying the medical and room and board restrictions.

Mr. President, these amendments are no longer controversial to any of the parties involved. The administration originally opposed them, but the last time around supported the amendments, as in keeping with their philosophy of easing title XX restrictions on the States.

However, these amendments will go down the drain right alongside the controversial ones, if the Senate does not vote to override this afternoon. And many States, which have set aside title XX funds for these services, will be hurt in the process. As it turns out, most of these are the smaller States, which have fewer independent resources for alcoholism and drug abuse treatment. New York, California, and Wisconsin, for example, set aside little or no title XX money for these purposes. But Maine, Maryland, South Carolina, Iowa, West Virginia, and others set aside relatively sizeable amounts.

On December 17, I held hearings before my Subcommittee on Alcoholism and Narcotics into the effects of these amendments. Testimony was presented that 42 out of 45 States surveyed felt these amendments were required, even though only 33 of those States set aside title XX money for alcoholism or drug abuse. In a separate survey by drug abuse experts, 20 out of 20 States demanded that the amendments be retained.

I have asked that a copy of the transcript of these hearings be available for you at this time, and you should have copies on your desks. I ask that you pay particular attention to the letters from 34 top alcohol and drug abuse officials in 25 different States who wrote supporting these amendments.

I strongly urge you to vote to override the President's veto of this bill.

SENATE OVERRIDE OF CHILD CARE VETO IS ESSENTIAL

Mr. HUMPHREY. Mr. President, I urge my Senate colleagues to join with the House in decisively overriding the President's veto of H.R. 9803.

The primary purpose of this bill is to assist the States in meeting Federal standards for child-care centers which provide services to children served by title XX of the Social Security Act, social services.

In order to ease the burden of compliance with Federal standards of care which must be provided in certain child-care centers, this bill would postpone until July 1, 1976, the deadline for compliance with Federal regulations which became effective on February 1. Principal among these regulations is a requirement that these centers have a specified number of staff members for the number of children served.

Congress has acted to ease the burden on State governments in meeting these standards by increasing, at an annual rate of $250 million, the $2.5 billion ceiling on social services. H.R. 9803 provides that $125 million will be made available through October 1, 1976. These funds will be distributed on an 80–20 matching formula, on the basis of State population.

In my own State of Minnesota, the increased cost of compliance with these regulations would be some $11 million, with a total of some 3,340 extra staff needed for both title XX and non-title XX children. Approximately 20 percent of these additional staff members could come from welfare rolls in Minnesota. Under the current formula, Minnesota receives $46,325,000 in social services funds. Its allocation under H.R. 9803 for the period from April 1 to October 1, 1976, would be some $2,316,000.

Other provisions of the bill have the effect of further relaxing Federal standards. These standards, for example, may be waived by the States for centers in which fewer than five children or 20 percent are children whose care is provided with Federal funds. Moreover, mothers who manage home day-care facilities will be allowed to disregard their own school-age children in the determination of child-staff ratios.

Finally, the bill seeks to provide incentives for giving jobs to those who currently are receiving public assistance by allowing States to reimburse 100 percent of the first $5,000 in salary for these employees. Up to $4,000 may be reimbursed in profitmaking centers, with the additional $1,000 subject to an existing tax credit, which currently is scheduled to expire on June 30.

Mr. President, there has been a good deal of controversy over this bill. Some of our colleagues, as well as the Presi-

dent, have criticized the imposition of any Federal standards in the area of child care. They believe that the States must be totally responsible for setting child care standards. In many States, staffing ratios and other standards do exist. But in others, there are no standards, or where they do exist, they are not always consistent with the Federal interagency day care requirements—FIDCR—which technically have been in effect since 1968, although full compliance has not been achieved.

These standards, Mr. President, will apply only to child-care centers in which a certain number of the children served receive support under social services. If you brush away all the political rhetoric, what it boils down to is accountability. Where Federal funds are involved, the Federal Government has a responsibility to see to it that certain minimum standards are enforced, to insure that these children receive the kind of care they deserve. The money made available in this bill is simply to ease the burden the States will face in meeting these minimum standards.

These facts have been realized by more than two-thirds of the House, and I hope that my colleagues in the Senate will follow suit by overriding the President's ill-advised, ill-conceived veto of this important bill.

Mr. TAFT. Mr. President, after much hard study, I have decided to vote to sustain the President's veto of H.R. 9803.

This bill has been advertised as essential to the provision of adequate day-care services for children of working parents across the country. It has been said that thousands of day-care centers will have to close for lack of funds if this bill does not pass. This is simply not the case.

It is true that we have painted ourselves into something of a corner by prematurely enacting Federal day-care center staffing requirements. This was done in spite of the fact that the Congress, recognizing the inadequacy of information in this area, has commissioned the Department of HEW to conduct a major study of our day-care needs. The solution to the problem is simply to extend the recently ended moratorium on imposition of these standards until further information is available. H.R. 9803, which would make emergency funding available to help those States which have not yet complied with the Federal standards, would be the second of two wrongs which do not make a right.

The day-care standards area is clearly a case in which the States, knowing better than Washington the needs of their people, the availability of personnel, and the quality of private, State, or local day-care centers, are in a superior position to determine programs and assess standards.

The President has proposed a block grant approach to title XX social service programs. This grant, of slightly over $2.5 billion, would represent an 11-percent increase in Federal funding for the social service programs, a part of which could go to day care. It is hoped that the States will continue to provide proportional matching funds.

I said that it is hoped that the States will provide such funds, because the block grant proposal also contains a provision which eliminates the requirement for State matching funds. In addition, the proposal eliminates most restrictions and requirements on the use of the Federal funds. It does add emphasis that the funds are to be used for services to low-income citizens, with income below the poverty guidelines, but it allows the States to choose which programs are best suited to meet the needs of the people in their areas.

This is not to say that the block grant approach does not have its difficulties. I am concerned that some States might choose to cut back sharply on their own contributions to title XX programs, either across the board, or by shifting funds rapidly out of one service and into another. I would look favorably on some sort of maintenance-of-effort requirement, and restrictions which would require that shifts in emphasis be done gradually, so as not to result in the sudden curtailment of any class of services.

There are many States, including Ohio, which would benefit from the removal of the matching requirement for title XX services. This would be especially true if there existed a maintenance-of-effort provision in the block grant program. For example, my own State of Ohio is entitled, under the population formula, to nearly 140 percent of the Federal title XX money it now receives. The money is not forthcoming because the State has not put up the required matching funds. This has been the free choice of the State legislature and the people of Ohio against raising State taxes. Nonetheless, it means giving up certain Federal funds. If the State were to continue its current spending for title XX programs, and if the administration's block grant proposals are adopted, the State's title XX services would receive an increase of roughly 33 percent in funding. Even if State effort were not maintained, this would mean an increase of nearly 9 percent for these services.

Increases of this magnitude would permit the State to maintain services of all types while still being able to shift emphasis to programs which are most urgently needed in particular localities.

Because the President's block grant proposal is a far better solution to the problem of title XX services, including day care, and because H.R. 9803 moves in the opposite direction from the block grant program, by increasing mandated expenditures while reducing local flexibility, I have decided to support the President's veto of this measure. I do not believe we should be taking action which might jeopardize a block grant proposal which, with a few modifications, will be a major improvement over current policies.

Another serious problem with H.R. 9803 are the serious inequities across States in the distribution of funds.

According to the Senate Finance Committee, many States, including Ohio, have already met the Federal standards. Thus, if we read the bill's fine print, we learn that Federal money could replace, rather than increase, the money given to day-care centers by the States. Furthermore, these States are ineligible for the special categorical grants the bill provides for States which are not even close to meeting Federal standards. States already in compliance will send a great deal of tax money to Washington to pay for this bill, and get back very little indeed.

In short, we need an extension of the moratorium on imposition of these Federal standards, and we need to take a hard look at the block grant alternatives, especially if such an alternative contains a maintenance-of-effort provision, and a clause to make sure that any shifts in emphasis are gradual rather than sudden.

Mr. PROXMIRE. Mr. President, when the day care bill was before us in January I voted against the amendments which were designed to delay the implementation of the new standards proposed by the Department of Health, Education, and Welfare, but I voted against the bill on final passage for two specific reasons.

First, at that time there was a controversy as to whether or not the additional funds were in the congressional budget.

A memorandum to Congressman BROCK ADAMS, the chairman of the House Budget Committee, printed in the CONGRESSIONAL RECORD for January 29, 1976, during the debate on the bill, stated that—

> The House Budget Committee staff can find no indication that the new day care benefits were ever specifically contemplated in the FY 1976 budget resolution.

As it has been my policy to vote against most proposals which are outside the budget or which exceed the budget in any significant way, I felt I should vote against final passage of the bill even though my votes on the amendments were essentially favorable to the program.

Second, unemployment had been running at 8.5 percent for the fourth quarter of 1975—which were the latest figures then available—which led me to believe that the most welfare mothers whose children were cared for by day care centers would not themselves be able to find employment due to the generally high level of unemployment then in effect.

Since then two things have happened.

First, the funds provided in this bill for this fiscal year and for the fiscal year beginning in October have been included in the congressional budget ceiling.

Second, there has been a significant drop in unemployment, including unemployment among adult women who are heads of households and supporting relatives, so that the opportunities for those whose children are in day-care centers to gain part or full-time employment is very much greater than it was.

Thus the argument that some welfare mothers can work in day-care centers taking care of children of other welfare mothers who can then gain employment is much truer now than it was in January when the latest unemployment figures indicated unemployment at 8.5 percent for the fourth quarter of last year.

I have, therefore, decided to vote to override the President's veto on the grounds that the reasons for my initial opposition no longer apply due to the fact that the congressional budget includes the funds under its ceiling and the unemployment situation has improved considerably.

Mr. MONDALE. Mr. President, I rise to join the distinguished Senator from Louisiana (Mr. LONG) in urging the Senate to override the President's veto of H.R. 9803, the emergency day care services bill.

The record will show that I have long believed in a strong State role in the administration of social services. For nearly 2 years I worked closely with a broad coalition including the Governors and other State officials as a chief sponsor of the new title XX of the Social Security Act. That bill, signed into law in January of last year, freed the States from excessive HEW regulations and established fundamental State control over the flow and direction of social service funding, within a congressionally imposed ceiling. I am proud of our accomplishments in that bill.

But at the same time, I have been impressed with the special responsibility we in the Federal Government must bear when we undertake to provide care for children, and especially young children, outside their homes. And that is why I have supported, and must continue to support, Federal minimum standards for federally financed day care.

It is important to understand that the existing standards, first established in 1968, do not only establish child/staff ratios. They also require day care centers receiving Federal aid to meet their States' own safety and health standards.

And there is presently widespread failure to meet safety and health standards as well as child/staff ratios. A 1974 GAO study of 607 centers in 9 States found 425 failing to meet health and safety requirements, and 243 failing to meet child/staff ratios. This is an inexcusable record of failure—almost of child neglect—by all levels of government.

The plain fact is that we can expect little progress in the near future without continued Federal standards.

And, whether States and day care providers act voluntarily or at Federal urging, the plain fact is that meeting health and safety standards and improving child/staff ratios will cost money—more than $200 million over the next year, according to State estimates collected by the staff of the Senate Finance Committee.

In many cases this is money that States simply do not have, and cannot obtain from local governments or private sources. Unless additional funds are provided, meeting standards will require reducing services. And reducing services will risk driving tens of thousands of working families back onto the welfare rolls, increasing Federal, State, and local costs.

I would hope that no one in this body wants to be responsible for providing substandard care to young children.

And certainly most of us do not want to drive working, taxpaying Americans back onto the welfare rolls. This is the dilemma that H.R. 9803 attempts to solve, in a balanced and reasonable way.

First, the bill further relaxes the application of day-care standards—by permitting States to waive Federal child/staff ratios in centers with fewer than 5 or fewer than 20 percent title XX-connected children and by permitting the disregard of a family day care mother's own school age children in the application of child/staff ratios to family day-care homes. These changes are estimated to cut the cost of compliance with the standards in half.

Second, the bill provides additional funding for day care at the annual rate of $250 million, effective as of this April 1. These funds, which will be available as an entitlement on an 80-20 Federal-State matching basis, will help to meet the additional cost of compliance with the standards.

Third, where day-care employees are hired from the welfare rolls the bill would permit States to reimburse 100 percent of the cost of the first $5,000 of salary cost, with no Federal match. With respect to profitmaking day-care centers, the bill would limit such reimbursement to $4,000, with the remaining $1,000 supplied by an extension of the existing incentive tax credit, scheduled to expire June 30.

I believe this emphasis is a hopeful one, promising both to reduce the net cost of this program by reducing Federal and State welfare payments, and to provide productive work for many who long for this opportunity. I would note that funds for training are available on an 80-20 matching basis under this bill, and on a 75-25 basis under existing law outside the title XX ceiling.

Fourth, the bill extends suspension of the child/staff ratios from February 1 until July 1, to permit necessary adjustments to be made.

In order to satisfy objections raised by the House Budget Committee, all provisions in this bill would expire on October 1 of this year. Grants of $125 million to States would be available during the 6-month life of this bill, and further extension will be in order following adoption of the first concurrent resolution on the budget, scheduled to take place by May 15.

This compromise bill cut the cost of compliance with day-care standards in half. It supplies funding to meet these costs. It is within the congressional budget, as measured by both Budget Committees.

And if this bill does not become law the existing, tougher standards must be applied retroactively, back to February 1.

If this bill does not become law, there will be no waiver. The cost of compliance will double.

If this bill does not become law, there will be no funds to help States, local governments and day care providers come into compliance.

Mr. President, this bill does not require States to change their own day care standards. It says only that where Federal funds are used to provide care for children outside their homes, then the Federal Government has some responsibility to see that the care they receive meets minimum standards.

And H.R. 9803 calls for only a modest investment in decent care for children whose families are struggling toward economic self-sufficiency. It is the kind of investment that Americans should be glad to make.

This bill has received broad support from Governors and other State officials in a majority of States, and from organizations ranging from the American Public Welfare Association to the AFL-CIO. The House of Representatives overrode the veto by a vote of 300 to 101. I would urge the Senate to join in enacting H.R. 9803 into law.

Mr. BUCKLEY. Mr. President, I will be voting to sustain the President's veto, but, for the record, I would like to take exception with one of the reasons he gave for his veto.

The President took exception with the fact that the legislation stipulates rigorous standards for the staffing of child care centers. It happens that I was the coauthor, with the Senator from Minnesota (Mr. MONDALE) of the amendment establishing the standards about which the President complains. The fact is that there is very ample evidence that significant damage can be done to infants who are in effect warehoused in institutions supervised by an inadequate staff that cannot develop the continuing identity with a single adult that is essential to the healthy development of very young children.

My reasons for supporting these high standards in a bill that I nevertheless voted against is that if Federal funds are to be utilized to promote the establishment of a national network of child care centers, then the Federal Government has a duty to see to it that those centers are operated in a manner that will not, on the best of evidence, do more harm than good.

My central problem with the legislation involves other considerations. First of all, it represents still another intrusion by the Federal Government into an area in which the States and localities are totally competent to make their own decisions in response to the demands of their own citizens.

Second, Federal sponsorship of the programs in question inevitably carries with it an implicit endorsement of certain institutionalized arrangements for the care of very young children that will tend to undercut the more personal arrangements that the vast majority of working mothers make, arrangements which, because they involve a constant relationship between a given adult and the child in question, provides the healthiest environment for the very young.

Third, the insertion of "specialists" and administrators between mother and child tends to encourage the dangerous myth that parents somehow are not competent to look after their own children.

It seems to me that the institution of the family is already under sufficient stress in our country without adding one more area for bureaucratic intervention. I therefore urge my colleagues to vote to sustain the veto.

Mr. President, at this point, I ask un-

animous consent that there be printed in the RECORD an essay on the bill by Daniel Oliver that appeared in the April 23, 1976, issue of the National Review Bulletin. It states a lot of commonsense things that have been too rarely heard in connection with public discussion of this very important and mischievous bill.

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

AT HOME

(By Daniel Oliver)

There is nothing new about organized day care: it has existed in this country since the 1800s. What the current debate is about is how much the Federal Government should get involved in the business—and whether greater federal involvement won't be at the expense of the private day-care facilities now operating in the country.

There are three ways in which the Federal Government could get involved. One would be for the Federal Government to provide a tax break for the parent who may have to send his child to a day-care center in order to go to work himself. A second would be for the Federal Government to provide money to existing day-care centers. A third would be for the Federal Government to get into the day-care center business itself, and this is where the controversial Child and Family Service Act (CFSA), sponsored by Senator Walter Mondale (D., Minn.) and Representative John Brademas (D., Ind.), comes in. It has aroused spirited opposition from those who fear that it will be the thin edge of the wedge of further government interference in the way Americans have traditionally brought up their children. Those who are fighting the bill have seen how federal monies in other areas have led to tightened federal controls.

Obviously there are many working mothers with children. In 1960, 18.6% of all married women with children under six who lived with their husbands had jobs. In 1974 the figure was 34.4%. Among widows, divorcees, and women not living with their husbands, the figure was 54%. (There are also numerous households with a single male parent.) In all, about six million children of pre-school age in 1974 had working mothers. But licensed day-care facilities can accommodate only a million of them. Where have the other five million been? Playing in the street? Surely, the argument has gone, there is a demonstrable need for more federal support for licensed centers. But there are alternatives to federal intervention, such as building more local centers, or even persuading mothers to stay home and look after their own children. In fact, most of the other five million children are receiving family or neighborhood-centered care, which most working mothers in all income brackets seem to prefer.

But it is not the preference of the AFL-CIO or the National Federation of Teachers. They favor the Mondale-Brademas CFSA, which would finance day care, with "prime sponsors" (i.e., centers) designated by the Federal Government. To be sure, they favor it with a difference: they want to "prime sponsors" to be the schools.

Actually, the Mondale-Brademas bill is very similar to one vetoed by President Nixon in 1971. Former HEW Secretary Caspar Weinberger said that bill would be impossible to administer because it involved thousands of prime sponsors, would duplicate existing programs, and would be very expensive. The Mondale-Brademas bill would authorize first-year spending of $150 million, second-year spending of $700 million. And in the third year: $1 billion.

How much control would parents maintain over their children in CFSA centers? Lots, claim the bill's supporters. No child would be subjected to experimentation without the knowledge of the parent, who can exempt the child if he or she chooses. But how much easier it would have been to provide for no experiments without *prior consent*. And that's not all. The wording of the bill is ambiguous as to who in fact is considered to be the parent. According to the statute, a parent is "any person who has primary day-to-day responsibility for any child": a definition that could seem to include the day-care-center woman and possibly even exclude the "real"—non-statutory—parent.

CFSA is suspect for other reasons too. It has provisions that would prevent private, "for-profit" centers from participating fully in the programs: i.e., eligibility would be based not on performance, but on politics. Additionally, some are suggesting that provisions should be included in the bill requiring that, in staffing the centers, preference be given to mothers on welfare. That too suggests that proponents are less concerned with the quality of the care given the children than with a jobs-creation bill.

Often those who favor this kind of day-care/child-development legislation have a mechanistic view of society in which efficiency and convenience supersede traditional social values. Many favor women's liberation and abortion. Pregnancies that interfere with careers—or with pleasure—have to be "terminated." Children who interfere with career development or job holding belong in day-care centers. That's part of the current social revolution. But despite fancy titles and rhetoric that always promises benefits for children, modern day care seems designed mainly to liberate women from their family responsibilities.

Ironically, one of the reasons for working may be the very incentive that subsidized baby-sitting offers. For most people, the expenses of a job—clothing, transportation, taxes, nurses, whatever—are costs to be considered in computing the real value of a salary. But if the baby-sitting is free, the net proceeds from the job are correspondingly higher.

The Child and Family Services Act is a concept that would get the Federal Government right into the middle of child rearing, with rules and regulations and approved methods for this and that. It would push bureaucratic entanglements down to the six-year-old level and younger—which, on second thought, may be exactly where they belong.

Mr. PERCY. Mr. President, I have been a proponent of quality enrichment day care governed by reasonable standards. It is only through adequate standards and licensing that children in federally assisted day care programs can be assured adequate care and protection. The Federal interagency day care requirements have been basically in effect since 1968, and through the years they have received much public review, comment, and refinement. States, however, have been continually lax in enforcing the standards. Federal standards, even if we are to go the route of block grants as proposed by the administration, are necessary. Where Federal moneys are concerned, the Federal Government cannot abrogate its responsibility to account for their use.

H.R. 9803, notwithstanding, existing law mandates States' compliance with the Federal Interagency Day Care Standards to qualify for Federal day care funding. Day care centers in most States are not up to standard, and most States need the funding provided by H.R. 9803 to come into compliance. The defeat of H.R. 9803, therefore, would result in virtually every State losing a substantial portion of its funding for day care services.

Illinois currently receives $30 million in Federal funds for day care services. These services reach some 40,000 children. Most of Illinois day care programs do not comply with the new Federal standards requiring stricter staffing ratios. If these standards are enforced, programs affecting an estimated 35,000 children could not continue. Illinois, which supports the standards, needs the $13 million that H.R. 9803 would provide to meet the standards. The money would be used to improve medical, nutritional, program, and safety standards in Illinois day care programs and, also, to hire welfare recipients—thus taking them off the welfare roll—as additional staff for those programs.

As I understand it, the full amount provided in this bill has been included in the Senate budget resolution.

For these reasons I am voting to override the veto of H.R. 9803.

Mr. DOLE. Mr. President, although I have previously made known my reservations concerning this legislation, I would just like to briefly explain again my position in support of the President's veto of H.R. 9803.

In the minority views of the Finance Committee report on this bill, we expressed our uniform concurrence with the objectives which it was designed to accomplish. We did take exception, however, to the manner in which it would address the goal of quality day care services for every child of working parents.

Notwithstanding the efforts by many to characterize opposition to this measure as a vote against the very concept of day care centers, my views have not changed on the matter of preempting State responsibility and authority through imposition of mandatory Federal staffing standards. I continue to believe, that is, that we are making a big mistake by asserting Federal control over an area of traditional local jurisdiction.

Unfortunately, there are many features of this measure which I would like to see enacted—and am confident it would be if considered independently. I refer in particular to the amendment governing funding of medical services provided to addicts and alcoholics under State social services programs, as well as the general limited financial support for upgrading of day care supervision itself.

Such provisions make it very difficult to oppose H.R. 9803 and I regret that, on balance, my fundamental objection to Federal intervention with regard to the staffing ratios compels me to do so. I would like to point out, however, that should the motion before us fail this afternoon, I have every expectation we can give expeditious consideration to an acceptable alternative which will meet most of the administration's concerns and satisfy the desires of those advocating an override.

As is typical of many lobbying efforts, Mr. President, this bill has been somewhat "oversold" by its proponents with the suggestion that it would go beyond staffing requirements alone and somehow

affect health and safety conditions of day care operations. While I can certainly appreciate the enthusiasm of those who have inspired it, I am afraid that is a rather inaccurate representation of what this bill seeks to accomplish.

The real thrust of H.R. 9803 is nothing more than to require every State to come into compliance with a magic set of Federal day care staffing standards as of July 1, 1976. The propriety of that mandate is thus the paramount issue to be decided by our coming vote—and with the House having twice indicated its preference for a suspension, there is no question we can and should allow HEW to complete its study of the matter before approving final implementation.

Those who favor this legislation in its present form should be willing to understand, Mr. President, that we have been deliberating this problem since last September—and that a failure to resolve it now would simply mean a brief delay until a suitable substitute can be drafted. I hope Senators who are concerned over the "State responsibility" aspect of this legislation—but do not want to be portrayed as an opponent of quality day care—will give that observation their attention before casting a vote on the pending motion.

The PRESIDING OFFICER. The question is, shall the bill pass, the objections of the President of the United States to the contrary not withstanding? The yeas and nays are required. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SPARKMAN (after having voted in the negative). Mr. President, I have voted "nay." I have a live pair with the Senator from Indiana (Mr. HARTKE), and the Senator from Connecticut (Mr. RIBICOFF) if present and voting they would have voted "yea." I withdraw my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. HARTKE) is necessarily absent.

I further announce that the Senator from Florida (Mr. CHILES), the Senator from New Hampshire (Mr. DURKIN), and the Senator from Connecticut (Mr. RIBICOFF) are absent on official business.

Mr. GRIFFIN. I announce that the Senator from New York (Mr. JAVITS) is absent on official business.

The yeas and nays resulted—yeas 60, nays 34, as follows:

[Rollcall Vote No. 165 Leg.]

YEAS—60

Abourezk	Hart, Philip A.	Mondale
Bayh	Haskell	Montoya
Beall	Hatfield	Moss
Bentsen	Hathaway	Muskie
Biden	Hollings	Nelson
Brooke	Huddleston	Pastore
Bumpers	Humphrey	Pearson
Burdick	Inouye	Pell
Byrd, Robert C.	Jackson	Percy
Cannon	Johnston	Proxmire
Case	Kennedy	Randolph
Church	Leahy	Schweiker
Clark	Long	Scott, Hugh
Cranston	Magnuson	Stafford
Culver	Mansfield	Stevenson
Eagleton	Mathias	Stone
Ford	McGee	Symington
Glenn	McGovern	Tunney
Gravel	McIntyre	Weicker
Hart, Gary	Metcalf	Williams

NAYS—34

Allen	Bellmon	Byrd,
Baker	Brock	Harry F., Jr.
Bartlett	Buckley	Curtis
Dole	Helms	Scott,
Domenici	Hruska	William L.
Eastland	Laxalt	Stennis
Fannin	McClellan	Stevens
Fong	McClure	Taft
Garn	Morgan	Talmadge
Goldwater	Nunn	Thurmond
Griffin	Packwood	Tower
Hansen	Roth	Young

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Sparkman, against.

NOT VOTING—5

Chiles	Hartke	Ribicoff
Durkin	Javits	

Mr. CURTIS. Regular order.

The PRESIDING OFFICER. On this vote, the yeas are 60 and the nays are 34. Two-thirds of the Senators present and voting not having voted in the affirmative, the bill, on reconsideration, fails of passage.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I yield to the distinguished Senator from Massachusetts (Mr. BROOKE).

Mr. BROOKE addressed the Chair.

The PRESIDING OFFICER. Will the Senator please suspend while we restore order in the Chamber? Will Senators please take their seats?

Does the majority leader ask unanimous consent to vacate the previous order in order to seek recognition of the Senator from Massachusetts?

Mr. MANSFIELD. Yes, Mr. President, to lay it aside temporarily for the purpose of recognizing the Senator from Massachusetts.

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

Will the Senator please withhold for a moment while the Chair attempts to obtain order in the Senate? Will the Senate please be in order?

The Senator from Massachusetts is recognized.

VISIT TO THE SENATE BY MEMBERS OF THE HOUSE OF LORDS OF THE UNITED KINGDOM

Mr. BROOKE. Mr. President, the U.S. Senate is honored to have four distinguished members of the House of Lords of the United Kingdom: Lord Montagu, the Duke of Marlborough, the Duke of Argyll, and Earl Dunmore.

RECESS

Mr. BROOKE. Mr. President, I ask unanimous consent that the Senate stand in recess for 5 minutes so my colleagues may be able to meet these distinguished members of the British Bicentennial Heritage Mission.

[Applause.]

There being no objection, the Senate, at 2:21 p.m., recessed until 2.26 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. BAKER).

RELATIONS WITH THE SOVIET UNION

The Senate continued with the consideration of the resolution (S. Res. 406) relating to the importance of sound relations with the Soviet Union.

AMENDMENT NO. 1632

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of Senate Resolution 406 with 5 minutes of debate on the pending Allen amendment, to be equally divided and controlled between the Senator from Alabama (Mr. ALLEN) and the Senator from Minnesota (Mr. HUMPHREY), and the vote thereon to follow.

The clerk will state the amendment.

The second assistant legislative clerk read as follows:

Amendment proposed by Mr. ALLEN:

On page 6, between lines 19 and 20, add the following new section:

"SEC. 2. The principle that any future treaty or agreement between the United States and the Soviet Union shall not limit the United States to levels of intercontinental strategic forces inferior to the limits provided for the Soviet Union.".

Renumber subsequent sections accordingly.

Mr. HELMS. Mr. President, I ask unanimous consent that the names of Senator DOMENICI, BUCKLEY, and HANSEN be added as cosponsors of the amendments of Senator ALLEN, Nos. 1632 and 1633.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent, in view of the fact that the vote is going to be very close, that the votes on the two Allen amendments and on passage of the resolution, which is the pending business, take up only 10 minutes apiece.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Who yields time?

Mr. ALLEN. Mr. President, I yield myself such time as I may use.

Mr. President, the resolution announces a number of principles which it supports and it calls on the Soviet Union and the United States to enter into negotiations and to reach agreement placing limitations on the arms race.

It does not give any criterion as to what those agreements shall provide.

This amendment adds, as a principle which the resolution supports, and I read from the amendment, the principle that any future treaty or agreement between the United States and the Soviet Union shall not limit the United States to levels of intercontinental strategic forces inferior to the limits provided for the Soviet Union.

In other words, this would say that the U.S. Senate supports the concept of parity as between the United States and the Soviet Union in the area of nuclear strategic weapons and that any future agreement shall not provide that the United States shall be inferior to the Soviet Union in this area.

This is a concrete statement of a principle that subsequent agreements with the Soviet Union on the part of the United States must contain, and the amendment has been agreed to by the managers of the resolution.

I think that it is necessary to have some definite language as to what these agreements shall contain or shall not contain.

It puts some meat into the resolution.

As it is, it is just a conglomeration of words without spelling out anything definite. This puts some real meaning into the resolution, and I urge the adoption of the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. CRANSTON. Mr. President, I would like to support the amendment of the Senator from Alabama. I want to point out that, in a colloquy yesterday between the Senator from California and the Senator from Alabama, when the amendment was offered, it was made plain that the implication of this amendment is not that we would be unwilling to sign a treaty that permitted different numbers for different weapons. It simply comes out firmly against our signing a treaty that would leave us in an overall position inferior to the Soviet Union. Rather obviously, no Senator would approve of our signing a treaty which left us inferior in overall strength. We might be inferior in one particular type of missile; we might be superior in some matching number of bombers, for example. The overall situation is what would be taken into account, the overall comparisons of the Soviet strength and the American strength.

At the same time, of course, while firmly against signing a treaty that would place us in an inferior overall position, the amendment does not exclude the choice, not in terms of a treaty but just our choice in terms of the national interest, of not seeking to match the Soviet Union in every respect if they choose to spend more than is necessary for their defense. We do not have to spend more than is necessary or invest in more than is sufficient for our defense; I emphasize the word "sufficient."

Mr. President, I ask unanimous consent to insert at this point in the RECORD a letter from the Department of State to Senator SPARKMAN, the chairman of the Foreign Relations Committee.

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

DEPARTMENT OF STATE,
Washington, D.C., May 3, 1976.

Hon. JOHN SPARKMAN,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Secretary Kissinger has asked me to reply to your letter of March 25 requesting coordinated Executive Branch comments on S. Res. 406, concerning "the importance of sound relations with the Soviet Union," which was submitted by Senator Cranston on March 16. We have directed our comments to the resolution as it was voted out of Committee on April 13.

We consider the resolution constructive and useful, and consistent with the goals of our foreign policy. We believe the resolution strikes a proper balance between the necessity of maintaining a militarily strong and united America and the traditional American aim of lessening international tensions and reducing the danger of nuclear war. The resolution is realistic in terms of its acknowledgment of the significant conflicting interests between the United States and the Soviet Union; at the same time it stresses, and very appropriately in our view, that it is in the U.S. national interest to seek to moderate these conflicts and promote the exercise of restraint.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

ROBERT J. MCCLOSKEY,
Assistant Secretary for Congressional Relations.

The PRESIDING OFFICER. All time on the amendment has expired. Under the previous order, 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 Nevada (Mr. CANNON), the Senator from Indiana (Mr. HARTKE), the Senator from Colorado (Mr. HASKELL), and the Senator from Louisiana (Mr. LONG) are necessarily absent.

I further announce that the Senator from Florida (Mr. CHILES), the Senator from New Hampshire (Mr. DURKIN), and the Senator from Connecticut (Mr. RIBICOFF) are absent on official business.

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 Oregon (Mr. PACKWOOD) is necessarily absent.

I also announce that the Senator from New York (Mr. JAVITS) is absent on official business.

The result was announced—yeas 91, nays 0, as follows:

[Rollcall Vote No. 166 Leg.]

YEAS—91

Abourezk	Glenn	Morgan
Allen	Goldwater	Moss
Baker	Gravel	Muskie
Bartlett	Griffin	Nelson
Bayh	Hansen	Nunn
Beall	Hart, Gary	Pastore
Bellmon	Hart, Philip A.	Pearson
Bentsen	Hatfield	Pell
Biden	Hathaway	Percy
Brock	Helms	Proxmire
Brooke	Hollings	Randolph
Buckley	Hruska	Roth
Bumpers	Huddleston	Schweiker
Burdick	Humphrey	Scott, Hugh
Byrd, Harry F., Jr.	Inouye	Scott, William L.
Byrd, Robert C.	Jackson	Sparkman
Case	Johnston	Stafford
Church	Kennedy	Stennis
Clark	Laxalt	Stevens
Cranston	Leahy	Stevenson
Culver	Magnuson	Stone
Curtis	Mansfield	Symington
Dole	Mathias	Taft
Domenici	McClellan	Talmadge
Eagleton	McClure	Thurmond
Eastland	McGee	Tower
Fannin	McGovern	Tunney
Fong	McIntyre	Weicker
Ford	Metcalf	Williams
Garn	Mondale	Young
	Montoya	

NAYS—0

NOT VOTING—9

Cannon	Hartke	Long
Chiles	Haskell	Packwood
Durkin	Javits	Ribicoff

So Mr. ALLEN's amendment (No. 1632) was agreed to.

AMENDMENT NO. 1633

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of the second amendment of the Senator from Alabama (Mr. ALLEN), on which there shall be 5 minutes debate, equally divided and controlled by the Senator from Alabama (Mr. ALLEN) and the Senator from Minnesota (Mr. HUMPHREY), to be followed by a vote thereon.

The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN) for himself and others proposes amendment No. 1633.

The amendment is as follows:

On page 6, at the end of line 25, add the following as a new section:

SEC. . A joint effort on the part of the United States and the Soviet Union to bring about the immediate withdrawal by Cuba of all of her armed forces from Africa.

The PRESIDING OFFICER. Who yields time?

Mr. HUMPHREY. Mr. President, does the Senator from Alabama wish to address himself to this amendment? We debated it yesterday. I am prepared to yield back my time.

Mr. ALLEN. Mr. President, I waive my time in view of the fact it has been debated.

Mr. HUMPHREY. I waive whatever time may be remaining.

Mr. ALLEN. Mr. President, I ask unanimous consent that the name of the Senator from Florida (Mr. STONE) be added as a cosponsor.

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

Is all time yielded back?

Mr. HUMPHREY. All time is yielded back.

Mr. BARTLETT. Mr. President, I wish to ask the Senator from Minnesota a question.

Mr. HUMPHREY. I am happy to do so, but the Chair has permitted me to yield back the time.

The PRESIDING OFFICER. The Chair rules the time has not yet been yielded back.

Mr. HUMPHREY. Mr. President, I yield to the Senator from Oklahoma.

Mr. BARTLETT. I appreciate the action of the Chair and the Senator from Minnesota.

On page 5 on the very bottom line the resolution says:

. . . the United States must remain unchallengeably strong militarily . . .

Will the Senator tell me what that means? Does that mean the United States militarily would be No. 1, or second to none, or exactly how would he describe it?

Mr. HUMPHREY. I think as to the rather unique word "unchallengeably" strong—I do not have the provision there. Just a minute. We debated this yesterday.

Mr. BARTLETT. It says—

. . . the United States must remain unchallengably strong militarily . . .

Mr. HUMPHREY. It simply means what the Senator and I would say as boys that no one on the block can whip us.

Mr. BARTLETT. We are No. 1; is that what it means?

Mr. HUMPHREY. It means we are the toughest of the lot. That is it. I hope it is No. 1. That is the only way that I know to be "unchallengeably strong."

I never had the chance to be No. 1, but I like the language.

Mr. BARTLETT. I thank the Senator.

Mr. HUMPHREY. I yield back the remainder of my time.

Mr. HUGH SCOTT. Before the Senator does, I wish to say I think the Senator from Minnesota at some point in his life, in the past, or in the future, ought, by God, to be No. 1.

Mr. HUMPHREY. I compliment the Senator from Pennsylvania for his wisdom and judgment.

The PRESIDING OFFICER. The Chair feels it should not except.

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

The PRESIDING OFFICER. All time has been yielded back. 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. HARTKE) and the Senator from Nevada (Mr. CANNON) are necessarily absent.

I further announce that the Senator from Florida (Mr. CHILES), the Senator from New Hampshire (Mr. DURKIN), and the Senator from Connecticut (Mr. RIBICOFF) are absent on official business.

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 Oregon (Mr. PACKWOOD) is necessarily absent.

I also announce that the Senator from New York (Mr. JAVITS) is absent on official business.

The result was announced—yeas 92, nays 1, as follows:

[Rollcall Vote No. 167 Leg.]

YEAS—92

Abourezk	Goldwater	Moss
Allen	Gravel	Muskie
Baker	Griffin	Nelson
Bartlett	Hansen	Nunn
Bayh	Hart, Gary	Pastore
Beall	Hart, Philip A.	Pearson
Bellmon	Haskell	Pell
Bentsen	Hatfield	Percy
Biden	Hathaway	Proxmire
Brock	Helms	Randolph
Brooke	Hruska	Roth
Buckley	Huddleston	Schweiker
Bumpers	Humphrey	Scott, Hugh
Burdick	Inouye	Scott, William L.
Byrd, Harry F., Jr.	Jackson	Sparkman
Byrd, Robert C.	Johnston	Stafford
Case	Kennedy	Stennis
Church	Laxalt	Stevens
Clark	Leahy	Stevenson
Cranston	Long	Stone
Culver	Magnuson	Symington
Curtis	Mansfield	Taft
Dole	Mathias	Talmadge
Domenici	McClellan	Thurmond
Eagleton	McClure	Tower
Eastland	McGee	Tunney
Fannin	McGovern	Weicker
Fong	McIntyre	Williams
Ford	Metcalf	Young
Garn	Mondale	
Glenn	Montoya	
	Morgan	

NAYS—1

Hollings

NOT VOTING—7

Cannon	Hartke	Ribicoff
Chiles	Javits	
Durkin	Packwood	

So Mr. ALLEN's amendment (No. 1633) was agreed to.

The PRESIDING OFFICER (Mr. GOLDWATER). Under the previous unanimous-consent agreement, without intervening amendment, motion, or debate, the Senate will now proceed to vote on Senate Resolution 406, as amended.

Mr. HUMPHREY. Mr. President, there is no time for debate now under the understanding?

The PRESIDING OFFICER. That is correct.

Mr. HUMPHREY. So we proceed at once.

The PRESIDING OFFICER. That is correct.

The question is on agreeing to the committee amendment, as amended.

The amendment was agreed to.

The PRESIDING OFFICER. The yeas and nays have been ordered on the resolution. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENSON (when his name was called). Present.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. HARTKE) is necessarily absent.

I further announce that the Senator from Florida (Mr. CHILES), the Senator from New Hampshire (Mr. DURKIN), and the Senator from Connecticut (Mr. RIBICOFF) are absent on official business.

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 Oregon (Mr. PACKWOOD) is necessarily absent.

I also announce that the Senator from New York (Mr. JAVITS) is absent on official business.

The result was announced—yeas 85, nays 8, as follows:

[Rollcall Vote No. 168 Leg.]

YEAS—85

Abourezk	Gravel	Montoya
Baker	Griffin	Morgan
Bayh	Hansen	Moss
Beall	Hart, Gary	Muskie
Bellmon	Hart, Philip A.	Nelson
Bentsen	Haskell	Nunn
Biden	Hatfield	Pastore
Brock	Hathaway	Pearson
Brooke	Hollings	Pell
Buckley	Hruska	Percy
Bumpers	Huddleston	Proxmire
Burdick	Humphrey	Randolph
Byrd, Harry F., Jr.	Inouye	Roth
Byrd, Robert C.	Jackson	Schweiker
Cannon	Johnston	Scott, Hugh
Case	Kennedy	Sparkman
Church	Laxalt	Stafford
Clark	Leahy	Stevens
Cranston	Long	Stone
Culver	Magnuson	Symington
Curtis	Mansfield	Taft
Dole	Mathias	Talmadge
Domenici	McClellan	Thurmond
Eagleton	McClure	Tower
Fong	McGee	Tunney
Ford	McGovern	Weicker
Garn	McIntyre	Williams
Glenn	Metcalf	Young
	Mondale	

NAYS—8

Allen	Fannin	Scott, William L.
Bartlett	Goldwater	Stennis
Eastland	Helms	

ANSWERED "PRESENT"—1

Stevenson

NOT VOTING—6

Chiles	Hartke	Packwood
Durkin	Javits	Ribicoff

So the resolution (S. 406), as amended, was agreed to as follows:

S. RES. 406

The importance of sound relations with the Soviet Union

Resolved, it is the sense of the Senate that:

(a) United States relations with the Soviet Union are a central aspect of United States foreign policy, and thus it is critically important that we should sort out the difficulties that exist in the Soviet-American relationship, and define the national interest in that relationship.

(b) Without illusions about the fundamental differences which separate the United States and the Soviet Union, we believe that the survival of the values we cherish in our free society requires the most careful and judicious regulation of relations between these two great powers. We proceed, then, from a recognition of the fact that the United States and the Soviet Union have, and are likely to have for some time, many competitive and conflicting interests. But we believe, nevertheless, that it is in the interest of both countries to regulate this competition and these conflicts so that they do not lead to war.

(c) The basic premise of the United States approach to this relationship is that the United States must remain unchallengeably strong militarily, both to insure United States security and to contribute to the security of our friends and allies abroad. This military strength must include a strategic capability which is fully sufficient to deter any Soviet attack on the United States or its allies, and which leaves no room for misperception by the Soviet Union of our readiness and determination to defend our vital interests and allies.

(d) Beyond this determination to do all that is necessary to defend and protect our Nation, we believe that an integral part of our national security policy should be to seek through negotiations to reduce, moderate, and stabilize the military competition between the United States and the Soviet Union.

(e) In the belief that the lessening of international tensions must remain a continuing United States goal, we therefore support:

(1) Efforts to conclude, as soon as practicable, negotiations on a timely basis to implement the principles of the November 1974 Vladivostok accords and, in addition, to continue to negotiate to reduce mutually the strategic military forces permitted each country under those accords. These agreements, to be submitted to the Senate as a treaty, should be based upon actions founded on clearly stated and verifiable stipulations.

(2) The principle that any future treaty or agreement between the United States and the Soviet Union shall not limit the United States to levels of intercontinental strategic forces inferior to the limits provided for the Soviet Union.

(3) Initiatives on the part of both the United States and the Soviet Union demonstrating a commitment to the achievement of peaceful solutions in present and potential areas of conflict, in ways consistent with the mutual obligations of both powers to refrain from seeking advantages by exploiting troubled areas of the world.

(4) A joint effort on the part of the United States and the Soviet Union to bring about the immediate withdrawal by Cuba of all of her armed forces from Africa.

(5) Other diplomatic, economic, commercial, and cultural initiatives which are undertaken with a careful regard for the balance of risks and advantages, which are implemented on a mutual and reciprocal basis, which are consistent with the economic and national security interests of the United States, and which support the implementation of the Articles of the Final Act of the

Conference on Security and Cooperation in Europe—particularly the provisions relating to respect for human rights and cooperation in humanitarian fields.

(6) Taking actions in all these matters in close consultation and cooperation with our allies.

(f) Finally, the American objective is to achieve individual freedom and peace in the world. We believe that the people of our country want their Government to translate this aspiration into practical measures. We recognize that the possibilities for constructive cooperation between the United States and the Soviet Union may be limited, but we declare it to be the American purpose to carry on a process whose ultimate aim is to enlarge the sphere of cooperation as much as may prove possible.

SEC. 2. (a) The Congress finds that—

(1) the three Baltic nations of Estonia, Latvia, and Lithuania have been illegally occupied by the Soviet Union since World War II;

(2) the Soviet Union appears to interpret the Final Act of the Conference on Security and Cooperation in Europe, signed at Helsinki, as giving permanent status to the Soviet Union's illegal annexation of Estonia, Latvia, and Lithuania; and

(3) although neither the President nor the Department of State issued a specific disclaimer in conjunction with the signing of the Final Act at Helsinki to make clear that the United States still does not recognize the forcible conquest of those nations by the Soviet Union, both the President in his public statement of July 25, 1975, and the Assistant Secretary of State for European Affairs in his testimony before the Subcommittee on International Political and Military Affairs of the House Committee on International Relations stated quite explicitly that the longstanding official policy of the United States on nonrecognition of the Soviet Union's forcible incorporation and annexation of the Baltic nations is not affected by the results of the European Security Conference.

(b) Notwithstanding any interpretation which the Soviet Union or any other country may attempt to give to the Final Act of the Conference on Security and Cooperation in Europe, signed in Helsinki, it is the sense of the Congress (1) that there has been no change in the longstanding policy of the United States on nonrecognition of the illegal seizure and annexation by the Soviet Union of the three Baltic nations of Estonia, Latvia, and Lithuania, and (2) that it will continue to be the policy of the United States not to recognize in any way the annexation of the Baltic nations by the Soviet Union.

SEC. 3. This resolution shall be transmitted by the Secretary to the President of the United States.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. HUMPHREY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of S. 2679, which the clerk will state.

The second assistant legislative clerk read as follows:

A bill (S. 2679) to establish a Commission on Security and Cooperation in Europe.

The Senate proceeded to consider the bill which had been reported from the Committee on Foreign Relations with amendments as follows:

On page 1, line 8, after "with" insert "or violation of";

On page 2, line 2, after "Fields." insert the following:

The Commission is further authorized and directed to monitor and encourage the development of programs and activities of the United States Government and private organizations with a view toward taking advantage of the provisions of the Final Act to expand East-West economic cooperation and a greater interchange of people and ideas between East and West.

On page 3, beginning with line 13, insert the following:

SEC. 5. In order to assist the Commission in carrying out its duties, the President shall submit to the Commission a semiannual report, the first one to be submitted six months after the date of enactment of this Act, which shall include (1) a detailed survey of actions by the signatories of the Final Act reflecting compliance with or violation of the provisions of the Final Act, and (2) a listing and description of present or planned programs and activities of the appropriate agencies of the executive branch and private organizations aimed at taking advantage of the provisions of the Final Act to expand East-West economic cooperation and to promote a greater interchange of people and ideas between East and West.

On page 4, line 1, strike "5." and insert "6.";

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 there is established the Commission on Security and Cooperation in Europe (hereafter in this Act referred to as the "Commission").

SEC. 2. The Commission is authorized and directed to monitor the acts of the signatories which reflect compliance with *or violation of* the articles of the Final Act of the Conference on Security and Cooperation in Europe, with particular regard to the provisions relating to Cooperation in Humanitarian Fields. The Commission is further authorized and directed to monitor and encourage the development of programs and activities of the United States Government and private organizations with a view toward taking advantage of the provisions of the Final Act to expand East-West economic cooperation and a greater interchange of people and ideas between East and West.

SEC. 3. The Commission shall be composed of eleven members as follows:

(1) Four Members of the House of Representatives appointed by the Speaker of the House of Representatives. Two members shall be selected from the majority party and two shall be selected, after consultation with the minority leader of the House, from the minority party. The Speaker shall designate one of the House members as chairman.

(2) Four Members of the Senate appointed by the President of the Senate. Two members shall be selected from the majority party and two shall be selected, after consultation with the minority leader of the Senate, from the minority party.

(3) One member of the Department of State appointed by the President of the United States.

(4) One member of the Defense Department appointed by the President of the United States.

(5) One member of the Commerce Department appointed by the President of the United States.

SEC. 4. In carrying out this Act, the Commission may require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as it deems necessary. Subpenas may be issued over the signature of the Chairman of the Commission or any member designated by him, and may be served by any person designated by the Chairman of such member. The Chairman of the Commission, or any member designated by him, may administer oaths to any witness.

SEC. 5. In order to assist the Commission in carrying out its duties, the President shall submit to the Commission a semiannual report, the first one to be submitted six months after the date of enactment of this Act, which shall include (1) a detailed survey of actions by the signatories of the Final Act reflecting compliance with or violation of the provisions of the Final Act, and (2) a listing and description of present or planned programs and activities of the appropriate agencies of the executive branch and private organizations aimed at taking advantage of the provisions of the Final Act to expand East-West economic cooperation and to promote a greater interchange of people and ideas between East and West.

SEC. 6. The Commission is authorized and directed to report to the House of Representatives and the Senate with respect to the matters covered by this Act on a periodic basis, and to provide information to Members of the House and Senate as requested.

Mr. HUMPHREY. Mr. President, the sponsor of the bill had to be at a committee meeting temporarily, so I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BUCKLEY. 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. BUCKLEY. Mr. President, I ask unanimous consent that Eugene Iwanciw of my staff be accorded the privilege of the floor during the course of the debate on this matter, including the votes.

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

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

The PRESIDING OFFICER. The Clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HUMPHREY. 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. HUMPHREY. Mr. President, we are going to take action on Senate bill S. 2679, to establish a Commission on Security and Cooperation in Europe.

This proposed legislation, which is of very significant importance, is the handiwork of the distinguished Senator from New Jersey (Mr. CASE). It fits in very properly with the action that we have just taken on Senate Resolution 406, which relates to the relationships of the United States to the Soviet Union and other countries in the cause of international peace and security.

The Soviet Union proposed a European security conference in 1954, and periodically repeated its request in subsequent years. In line with the progress made in the first SALT talks, the 1971 Berlin Four Power Agreement, and the Soviet agreement to negotiate mutual and balanced force reductions in Europe—MBFR—the

United States agreed to the Soviet proposal for a conference on security, and initial preparatory talks began in November 1972. In addition to the Soviet request for discussions on European frontiers and on economic and technological cooperation, the United States and its NATO allies insisted that the conference also address itself to human rights and humanitarian questions. The Soviet Union reluctantly acquiesced.

The conference met in Helsinki in July 1973, to formulate and approve an agenda, resumed in September 1973, and continued in session in Geneva for nearly 2 years. It concluded on August 1, 1975, with the signing of the declaration at a summit meeting in Helsinki. The 35 participants included all the European states, both Communist—except Albania—and non-Communist, the United States and Canada. Several nonparticipating Mediterranean states—Algeria, Egypt, Israel, Morocco, Syria, and Tunisia—were permitted to make statements. The nine members of the European economic community signed the declaration individually and as a unit.

The Helsinki declaration comprises four main parts, the first three of which have been popularly labeled "baskets:" the first, on security in Europe, includes the declaration of principles guiding relations between participating States and the document on confidence building measures; the second deals with cooperation in the fields of economics, science, technology, and the environment, and the third deals with cooperation in humanitarian and other areas. The fourth part concerns followup to the conference, and possible steps to encourage compliance with its principles and undertakings.

Basket three has four separate sections: human contacts, information, cultural cooperation, and educational cooperation. The first pertains most directly to governmental policies governing the States' own citizens. Its provisions are, therefore, more relevant to rights than are the other sections, which largely concern exchange of privileges or benefits among the participating States.

Other parts of the declaration deal with steps to execute certain principles and confidence-building measures—Basket 1; economic and scientific cooperation—Basket 2; security and cooperation in the Mediterranean—interposed between Baskets 2 and 3.

These are followed by a summary of the "followup" provisions and, in conclusion, by some reflections on the document's prospects and a discussion of possible steps on the intergovernmental, governmental, and nongovernmental levels to encourage compliance with its principles and undertakings.

On November 17, 1975, Senator CASE introduced S. 2679 providing for the creation of a Commission on Security and Cooperation in Europe designed to monitor the acts of the signatories to the conference on security and cooperation. This was just after the Soviet Union refused to let one of its most distinguished citizens, Andrei Sakharov, travel to Oslo, Norway, to receive his Nobel Peace Prize in person.

The bill would establish an 11-member commission, including members of the congressional and executive branches of Government. The proposed Commission on Security and Cooperation in Europe will show that we are just as concerned about the human rights aspects of the Helsinki agreement as the military and trade sections.

On April 13, 1976, the Foreign Relations Committee met in open session and voted, by voice vote without dissent, to report the bill favorably with an amendment by Senator PELL. The Pell amendment gives the commission the added task of monitoring and encouraging programs of the U.S. Government and private organizations relating to the provisions of the final act on expanding East-West economic cooperation and the interchange of people and ideas between East and West.

The committee agreed to another part of Senator PELL's proposal that the President be requested to submit a semiannual report to the commission providing information on actions reflecting compliance with or violation of the provisions of the final act, and giving a description of present or planned programs of the U.S. Government and private organizations aimed at taking advantage of the provisions of the final act or agreement.

Senator PELL's amendment was designed to help insure that the commission will play a more central role in the carrying out of the Helsinki final act, particularly those aspects of it relating to cooperation in humanitarian fields. In agreeing to this amendment to S. 2679, the committee emphasizes that the reference to East-West economic cooperation is in no way intended to offset the implementation of the provisions of the Trade Act of 1975 relating to freedom of emigration.

Mr. President, the Helsinki agreement, that was argued here yesterday is a statement of principle. The purpose of this Commission is to see whether or not the signatories to that agreement live up to those principles and to give an accounting on a continuing and regularized basis to Congress and the people of the United States, since we are one of the signatories.

In the committee report, which I have in hand, let me quote that section that is noted as "Purpose":

> The purpose of S. 2679 is to establish a Commission on Security and Cooperation in Europe to monitor the acts of the signatories of the Final Act of the Conference on Security and Cooperation in Europe with particular regard to the provisions relating to Cooperation in Humanitarian Fields. The Commission is also to encourage the development of programs to expand East-West economic cooperation and cultural interchange.

I note that, in the views as expressed herein by the administration, the administration says in its response to the committee that—

> . . . we share the interest of the sponsors of these bills in effective monitoring of CSCE implementation, . . .

Then they go on to say that, while the administration does not support all of its provisions, it recognizes the importance of the monitoring field or the monitoring activity.

The bill, I think, is a proper addition to what action we have taken thus far.

Mr. ALLEN. Mr. President, will the Senator yield for a question?

Mr. HUMPHREY. I yield.

Mr. ALLEN. I am wondering if the Senator has considered the fact that the function of this Commission could well be an executive function as distinguished from mere congressional oversight and congressional action. I am wondering, based on the precedent of the case of the distinguished Senator from New York (Mr. BUCKLEY) in Buckley against Valeo, when we found as to a commission performing executive functions and consisting of a majority of the members appointed by Congress, that a commission could not perform executive acts. I am wondering as to monitoring and encouraging the development of programs and activities of the U.S. Government and private organizations, with a view toward taking advantage of the provisions of the final act to expand East-West economic cooperation and a greater interchange of people and ideas between East and West, if that would not be an executive function as distinguished from a mere congressional function.

Mr. HUMPHREY. It is my judgment that it would not violate the court ruling that came in the case to which the Senator referred on the Federal Election Commission. The Federal Election Commission had administrative functions that it was performing, and it was not in a sense monitoring; but the Federal Election Commission also had powers and authority for penalties and all that went with any violation of law.

But I think that the Senator from New York, who has had an interest in this matter, might want to make an observation because he was one of the litigants in the case to which the Senator from Alabama has referred.

I yield to the Senator from New York for a comment.

Mr. BUCKLEY. I thank my friend from Minnesota. I believe his comments are exactly on target, and I also cite that there is precedent for a commission of this sort in the National Commission on Water Quality that has recently completed its work. It was established with membership from both the House of Representatives and the Senate, appointed by the respective officials of the two bodies, plus public members appointed by the President. Vice President ROCKEFELLER served as Chairman of this Commission. Its function was to study, draw conclusions, and make recommendations. But it had no power. It had no authority. I believe that under these circumstances the Commission that is envisaged in this legislation will not run counter to the findings of the Supreme Court.

Mr. ALLEN. I appreciate the comment of the distinguished Senator from New York. I am not persuaded, however, and certainly do not care to make any point. If the sponsors are willing to take that risk, it is certainly all right with me.

Mr. CASE. Mr. President, the explanations that have been given by our subcommittee chairman, the Senator from

Minnesota, are very complete and really require no further embellishment. The point that the Senator from Alabama brought out and the explanation of the issue raised by the Senator from New York further amplifies, I think, and makes completely clear the purpose of this particular mechanism that we propose to create.

Mr. ALLEN. I inquire as to the precedent cited, if that is a precedent of the Supreme Court, or whether that is a mere precedent of a previous congressional enactment, which was not tested in the courts? Could I have an answer to that question?

Mr. CASE. I am glad to yield to the Senator from New York if he has a specific answer. I do not know whether the Water Quality Commission mechanism has been before the court on that issue or not.

Mr. BUCKLEY. It has not been litigated.

The Senator from Alabama is entirely correct. It is a precedent within this body and not a legal precedent.

Mr. HUMPHREY. I also add for the legislative history that the so-called Hoover Commission, the Commission on the Reorganization of the Executive Branch of the Federal Government, which consisted of Members of Congress, members of the executive branch, as well as the public, I do not believe has been tested in the courts, but it is precedent.

Mr. ALLEN. I suggest the precedent cited by the distinguished Senator from New York, followed then by the action of Congress in setting up the Federal Election Commission, did perform an executive function that has merely been continuing in the same old rut which was stricken down by the Supreme Court and will probably have the same action taken with respect to it as to the Water Quality Commission if it were tested in court.

Mr. CASE. Mr. President, I do not care to delay action which I understand is virtually, if not entirely, already foreshadowed on this in a favorable light.

In a variety of ways over the years, Congress has shown its concern for the protection of human rights. Aid to countries stricken by drought or other disaster and foreign aid bill amendments to curtail aid to governments allegedly engaging in brutality against their own citizens are just some of the ways Congress has demonstrated its feelings that the well-being and rights of individual human beings must be considered in shaping foreign policy.

The bill establishing a special commission to monitor compliance with the 1973 Helsinki accords is another expression of the legitimate concern with the fate of human beings around the world.

The proposed 11-member Commission would focus on the human rights aspects—including reunification of families—of the final act of the Conference on Security and Cooperation in Europe, which was signed on August 1, 1975, by 35 nations, including those of Eastern and Western Europe, the United States, and Canada.

The conferences leading to the final agreement were a result of efforts by the Soviet Union, dating back to 1954, to hold a European Security Conference.

As part of the give and take of the negotiating process, the final agreement signed in Helsinki contained provisions—commonly known as Basket Three—dealing with cooperation in humanitarian and other fields.

This section was agreed to by the Soviet Union and other members of the Warsaw Pact, as well as the western nations.

There are other important sections of the Helsinki accords, and these too deserve scrutiny.

But to many of us, the Basket Three affecting human rights is the most important part, for relations between nations depend not only upon military balances and economic muscles but also on the way they treat people.

We are all too familiar with the heart-rending accounts of families separated by the Iron Curtain, of refugees being unable even to meet openly with their aging parents who still live in Warsaw Pact countries.

Thus I believe it is important that we do not let the Helsinki Pact's Basket Three become just another scrap of paper to be discarded by governments at their convenience. We should take a close look at how the signatory nations abide by such pledges as the following one in the Helsinki accord:

> The participating States will deal in a positive and humanitarian spirit with the applications of persons who wish to be reunited with members of their family, with special attention being given to requests of an urgent character—such as requests submitted by persons who are ill or old.

The proposed Commission, consisting of four Members from each House of Congress and three from the executive branch, will provide a good way of analyzing and reporting the compliance with the Helsinki Pact.

The measure, originally introduced in the House of Representatives last year by Congresswoman MILLICENT FENWICK will help Congress as well as the executive branch gather information on whether the nations which signed the Helsinki accord actually live up to their pledges. The State Department and Defense Department undoubtedly will keep track of any violations in their traditional areas of interest. However, Congress should have the machinery to gather data in the area of human rights which all too often appears to be of only secondary concern to the executive branch.

In the bill (S. 2679) I introduced in the Senate and Senator CLAIBORNE PELL amended before it was approved by the Senate Foreign Relations Committee on April 13, the President shall submit semiannual reports to the Commission on actions by the signatory nations reflecting compliance or violation with the provisions of the Helsinki accord.

These reports, plus information gathered from other sources by the Commission, will help us obtain a more complete picture of the degree of compliance with the Helsinki accord, especially in terms affecting the citizens of signatory nations.

It is important to have such information as we proceed in our relations with other countries of Europe, especially those of Eastern Europe. Foreign policy and foreign relations should also take into account human relations.

By approving the Commission, we will make clear our continuing concern about human right.

About 8 months have passed since the completion of the Helsinki Conference on Security and Cooperation in Europe. Only preliminary research on the outcome of that Conference and the implementation of the provisions of the Conference, especially the provisions relating to humanitarian issues, is available. One research paper, prepared initially at the request of the Atlantic Treaty Association in Brussels and since revised gives important clues about what might be expected in the future on implementation of the Conference provisions.

I ask unanimous consent that this research paper be printed in the RECORD. Its message is clearly stated. It suggests as a best course for the West—

> To nudge the Soviet Union in certain directions by firmly and persistently reminding Moscow both publicly and privately of the commitments it has undertaken in signing the Helsinki document. This is likely to be a difficult and wearisome process, one that calls for patience, firmness, and an ability to accept a good deal of frustration.

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

(See exhibit 1.)

Mr. CASE. It seems to me that continuity is most important in carrying forward such a task and that a commission to monitor the Helsinki Conference is the best institutional route to follow.

The Helsinki declaration contains a number of provisions relating to humanitarian issues. Because of the length of the entire conference document, those specific provisions on humanitarian issues have been excerpted for the benefit of Members concerned with the matter.

I ask unanimous consent that these excerpts be printed in the RECORD.

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

(See exhibit 2.)

Mr. CASE. I add that in addition to the Members of the Senate whose names appear on the bill, as it is at the desk, there were several others who asked to be joined as cosponsors. One of them is Senator PELL and another is Senator JAVITS and if I have missed anyone else around. Mr. HUMPHREY. Me—Mr. CASE. Senator HUMPHREY, indeed. Senator HUMPHREY is so ubiquitous in this matter that we always assume he is a member. Let his name appear first before all the rest at that particular point.

Mr. President, I ask unanimous consent that these Senators be added as cosponsors.

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

Mr. CASE. I do believe that I have no further remarks to make at this time.

EXHIBIT 1

SOVIET ATTITUDES AND POLICY TOWARDS "BASKET THREE" SINCE HELSINKI*

(By F. Stephen Larrabee, March 15, 1976)

INTRODUCTION

On August 1, 1975, the Conference on Security and Co-operation in Europe (CSCE), which opened in Helsinki on July 3, 1973, and continued in Geneva from September 18, 1973, to July 21, 1975, ended in Helsinki. Attended by representatives of thirty-five states from Europe and North America, the conference marked an unprecedented effort to expand areas of East-West détente and cooperation. The principal document to emerge from the conference was the Final Act, which contains three major sections:

1. Questions relating to Security in Europe, including the Declaration on Principles Guiding Relations between Participating States (Basket One);

2. Co-operation in the Field of Economics, of Science and Technology, and of the Environment (Basket Two);

3. Co-operation in Humanitarian and Other Fields (Basket Three).

While all the sections of the Final Act are of equal importance, the third section (Basket Three) was by far the most controversial and the most difficult on which to achieve agreement. Its inclusion in the Final Act was the result of hard, intensive bargaining on the part of the West and underscored the West's belief that détente, if it is to be meaningful, cannot simply be limited to an improvement in interstate relations but must bring improvements in the lives of the individual citizens in both parts of Europe and contribute to "a freer flow of people, information, and ideas." Yet, however successful the West may have been in ensuring that humanitarian aspects be made an integral part of the Final Act, history will judge the conference, as U.S. President Gerald Ford rightly stressed in his address to the Helsinki summit, "not by the promises we make, but by the promises we keep"—by the extent to which the noble sentiments expressed in the Final Act, particularly those in Basket Three, are implemented in practice.

More than six months have passed since the conclusion of the Security Conference and the signing of the Final Act. While this is too short a period of time to make any definitive judgment about the success or failure of the conference, one may nonetheless legitimately raise the question how much progress has been made to date towards the implementation of many of the provisions contained in the Final Act, particularly those contained in Basket Three. To what extent, in other words, has the Soviet Union acted to implement the pledges it signed at Helsinki? The answer to this question is of particular importance because the Soviet Union's willingness to implement these provisions is regarded by many in the West as the acid test of its commitment to genuine East-West détente and one of the key criteria for judging the significance of the conference itself.

The following pages examine Soviet attitudes and policy towards Basket Three since the conclusion of the Helsinki summit; they represent only a tentative appraisal and make no claim to be comprehensive. They do, however, try to deal with many of the central issues that have emerged over the last six months and that are likely to be of importance in the future. At the same time, they are written in recognition that the final verdict must be left to future historians.

BASKET THREE IN THE MULTILATERAL PHASE: SOVIET GOALS AND TACTICS

Before discussing Soviet policy regarding Basket Three since the conclusion of the Security Conference, it may be helpful to review briefly the role played by Basket Three in the multilateral negotiations in Helsinki and Geneva and the positions taken towards it by the Soviet Union and its allies. This may help to put current Soviet policy in a more meaningful perspective and give us a better appreciation of its nuances.

The West and the East entered into the multilateral phase of the Security Conference with different goals and conceptions of what each side hoped to achieve. At the very outset these differences were reflected in disagreements over the content of the conference's agenda. The Soviet Union and its allies sought to limit the agenda to a discussion of a Declaration of Principles governing interstate relations and questions related to co-operation in the fields of economics, science, and technology. Initially they rejected the Western view that the conference had to lead to an opening of borders in Europe—not just to a sanctioning of them—and that for détente to be meaningful it had to contribute to "an increase free flow of people, information and ideas" as well as an expansion of cultural cooperation.[1]

A month after the multilateral phase of the conference began, however, General Secretary of the CPSU Leonid Brezhnev, in a speech on the fiftieth anniversary of the founding of the USSR, signaled the Soviet willingness to discuss questions related to an expansion of cultural contacts and information—but under the condition that this co-operation respected "the sovereignty, laws, and customs of each country" and served "the mutual enrichment of peoples, increased the trust between them and promoted the ideas of peace, freedom, and good-neighborliness."[2] The addition of the latter phrase was important; it served to restrict both the nature and scope of any projected co-operation, and throughout the negotiations over Basket Three the Soviet Union and its allies continually sought to dilute many of the provisions by attaching such qualifying phrases, which, if they had been accepted, would have significantly limited the scope of any free flow of people, information, and ideas. Moscow also sought to inhibit—or at least restrict—a genuine free flow and expansion of cultural contacts by limiting them to official cultural exchanges which, from its point of view, would be easier to control. In general, the Soviet side considered Western attempts to make the provisions of Basket Three as airtight as possible an unwarranted attempt to interfere in its internal affairs—a fact that, as one Western delegate has noted, severely complicated the negotiations and made any type of agreement extremely difficult.[3]

In particular, the Soviet Union and its allies sought to get many of the qualifying clauses inserted in the preamble to Basket Three because this established the general framework for the more specific provisions. By and large, however, the West was successful in avoiding this. While the preamble does commit the participants to pursue certain goals such as a strengthening of peace and the enrichment of the human personality, it states that the expansion of the free flow of people, information, and ideas and a widening of cultural contacts "contribute to the achievement of these goals." In so doing, the preamble makes no distinction between the type of exchanges—i.e., between those that strengthen the cause of peace and those that don't; all serve the general goals set forth in the preamble.[4]

Despite the criticism to which many of the provisions in Basket Three have been subjected in the West, when one compares the initial Soviet position on Basket Three to the final text, it is fair to say that the West was generally successful in defending its conceptions and getting them written into the Final Act. There were several reasons for the *relative* success of the West: (1) the strong united front presented by the West throughout the negotiations, which was due in particular to the co-ordination of Western policy within NATO and the EEC; (2) the support of the neutral countries on many key issues; (3) the fact that the East was the main *demandeur;* it wanted a Final Act in order to exploit it for foreign and domestic purposes, and this gave the West a certain leverage in the negotiations.

The West, of course, did not get everything it wanted; it failed, for instance, to obtain the right to set up reading rooms. On the whole, however, it did reasonably well—better, in fact, than might have been expected. Much of the language in Basket Three and the Final Act is admittedly vague, but this was bound to result from the effort to achieve a consensus. To be sure, the provisions are only declarations of intent and are not legally binding. Nonetheless, they represent a commitment to undertake certain measures that cannot easily be ignored—a fact well-illustrated by the Soviet reaction to the Helsinki agreement over the last six months, to which we now turn.

Soviet Attitudes and Policy Since Helsinki: Continuity and Change

Since the conclusion of the Security Conference, the Soviet Union has placed the primary emphasis on Basket One—the ten-point Declaration of Principles governing relations between participating states—particularly article three, which sanctions the "inviolability" of the postwar European borders, and article six, which prohibits interference in the internal affairs of any state. Article six has been used as a rubric to restrict those aspects of Basket Three that Moscow finds distasteful or threatening to internal stability. At the same time, the Soviet Union has sought to use it as an instrument to criticize certain aspects of Western policy, such as the attempt by the EEC to use economic aid to push Portugal in a more democratic direction, which Moscow charged was "flagrant interference" in the internal Portuguese affairs and thus a violation of the Helsinki Agreement.[5]

Overall there have been two particularly striking features about Soviet policy towards the European Security Conference since the conclusion of the Helsinki summit. The first has been a continuity of Soviet attitudes towards Basket Three with those expressed during the negotiations. The ink was hardly dry on the agreement before the Soviet Union began resurrecting many of the restrictive interpretations of Basket Three that the West had rejected and succeeded in preventing from being included in the Final Act. In his speech to the Helsinki summit, for instance, Soviet Party leader Brezhnev praised the expansion of cultural contacts and improvements in the free flow of people, information, and ideas envisaged in the Final Act. At the same time, however, he noted that these had "to serve the goals of peace and trust" and could not be used "to sow discord among peoples."[6] Moreover, in the official Soviet communique on the results of the Security Conference, signed on August 6 by the Politburo, the Presidium of the Supreme Soviet and the U.S.S.R. Council of Ministers noted that co-operation in humanitarian fields has to be based on "observation of the laws and customs of each country."[7]

Both these statements, it should be noted,

*This is a revised version of a paper presented to a seminar on "The Helsinki Agreements and their Implementation" sponsored by the Atlantic Treaty Association in Brussels, February 23 to 24, 1976.

Footnotes at end of article.

placed substantial qualifications on the provisions included in Basket Three; they implied that the Soviet Union would oppose any free flow of information, people, and ideas that it felt did not serve the goals of "peace and trust" or that conflicted with its own laws and practices. They thus considerably watered down the intended pledges and, in essence, left the decision as to what aspects of the provisions would be implemented to the discretion of the Soviet Union itself.

In his speech to the Helsinki summit, Brezhnev also stressed that the main conclusion of the conference was that no one should try, on the basis of foreign policy considerations, to "dictate" to other states how to manage their internal affairs. "It is only the people of each given state, and they alone," he emphasized, "who have the sovereign right to decide their internal laws"—a theme that was repeatedly echoed in the Soviet media in the initial weeks after the conference adjourned.[9] What Brezhnev seemed to be saying was that Basket Three could not be used as a club to force changes in Soviet internal laws or practices. Thus, even before the Security Conference had officially ended, Brezhnev had served notice that the differences that had so divided East and West in regard to Basket Three during the course of the negotations had by no means been eliminated and that the Soviet Union intended to implement the provisions contained in Basket Three—but in accordance with its own restricted interpretation of their meaning.

The second—and perhaps even more striking—feature of the Soviet approach to the Helsinki agreement has been the noticeable shift of emphasis and change of tone in Soviet commentary about the conference. Initial Soviet comments were marked by an exuberance and optimism that seemed to reflect a belief that Moscow could exploit the atmosphere of détente created by the conclusion of the conference in order to further its foreign policy goals in Europe. The conference was heralded as "an unprecedented event of international significance" that had laid the basis for a new state of détente.[9] It was seen by Soviet commentators as "a triumph of reason" that had been made possible by the "materialization of détente" and that would contribute to its further expansion. The mai.. emphasis during this initial period—one that has continued into the present period—was on the need to follow up political détente with "miliary détente." From the Soviet point of view the atmosphere at Helsinki was expected to have a favorable effect on the talks at Geneva and Vienna and open up "a new chapter in Europe's history."[10]

In the first several weeks following the conclusion of the Helsinki summit, moreover, the Soviet Union went out of its way to stress that the conference represented a "balance of interests." As Brezhnev noted in his speech to the summit, the conference had been a "common success for all participants"; there has been neither "victors nor vanquished, winners not losers." Rather the conference had been a "victory for reason" in "which everyone" had won. This theme was repeated often in the Soviet press after the conference and seemed aimed at offsetting the impression prevalent in many circles in the West, particularly the United States, that the Soviet Union had been the sole beneficiary of the conference.

By September, however, much of the enthusiasm for Helsinki had become more restrained and was replaced by a new defensive tone as (1) Western leaders such as Harold Wilson and Giscard d'Estaing began to remind Moscow that its commitment to détente would be judged to a large degree by the manner in which it implemented the provisions of Basket Three; and (2) as its own citizens began to cite Moscow's signature on the Helsinki agreement as justification for greater freedoms at home.[11] Increasingly, Moscow began to find itself on the defensive as a result of this dual pressure, and this sensitivity began to be reflected in its media.

The new tone in regard to Helsinki was signaled by an article in *Izvestia*[12] by Georgi Arbatov, Director of the USA Institute and one of the Soviet Union's foremost experts on international affairs. The article calls for elaboration because it sets forth what have since become the main features of the Soviet response to Basket Three. In his article Arbatov makes several important points:

1. Détente does not mean that the Soviet Union has pledged itself to accept the social status quo in the world or halt its support for national liberation struggles—a point amply demonstrated by recent Soviet behavior in Angola.

2. It is wrong for the West to think that the Soviet Union "owes" them anything in return for accepting the present European borders, particularly in regard to the implementation of Basket Three.

3. The Soviet Union has far outstripped the West in terms of concrete fulfillment of the Helsinki agreement.

4. The West is trying to use Helsinki as a wedge to interfere in Soviet internal affairs, even though the Final Act strictly prohibits such attempts.

5. Although Moscow intends to implement the pledges undertaken at Helsinki, this does not mean that it will fling open its doors to "anti-Soviet, subversive propaganda, materials preaching violence or stirring up national and racial strife, and pornography."

6. Détente does not mean that the ideological struggle has ended, but it does necessitate renunciation of "ideological diversions and subversive methods of 'psychological warfare.' "

7. In the light of Watergate, Vietnam, and a host of other well-publicized scandals, what "moral right" do U.S. politicians have to talk about "eternal values of freedom and democracy"; before lecturing others on these values, the U.S. ought to "put its own house in order first."

Arbatov's article marked the beginning of an increasingly vociferous "counter-offensive" aimed at combatting Western criticism of the Soviet position on Basket Three and at demonstrating that the Soviet Union has been more scrupulous in implementing the Helsinki agreement, particularly Basket Three, than the West. Following the line set down by Arbatov, Soviet publicists have stressed that more Western films are shown in the Soviet Union than Soviet films are shown in the West, that the Soviet Union publishes nine times as many books by Western authors as Britain publishes by Soviet authors and four times as many as the US publishes by Soviet authors, that more people study Western languages in the Soviet Union than study Russian in the West.[13] They have also charged that whereas the Soviet Union has published the Helsinki agreement in full in *Pravda* and *Izvestia*,[14] no major Western newspaper has published the full text[15]—a point given particular stress by Brezhnev in his speech to the Seventh Party Congress of the Polish United Workers' Party in Warsaw last December.[16] In fact, Brezhnev's speech to the Congress typified the increasingly defensive tone that has crept into Soviet commentary on Helsinki lately. Besides accusing the West of overemphasizing certain "bits" of the Helsinki agreement, Brezhnev charged that "certain circles in the West" have—"contrary to the spirit of Helsinki"—been conducting a campaign of "misinformation" and "slander" against the Soviet Union and its allies.

Perhaps the most illustrative example of recent Soviet defensiveness on the issue of Basket Three, however, was a hard-hitting article in *Pravda* on February 20, 1976, signed by I. Alexandrov, a pseudonym usually employed to signify high-level Kremlin thinking. The article provided the most complete and authoritative Soviet response to date to mounting Western criticism of Moscow's footdragging in the implementation of Basket Three. Reacting strongly to Western criticism of the Soviet treatment of dissidents—a controversy that had been revitalized by accusations made at a widely publicized press conference in Paris on February 3 held in connection with the arrival of the mathematician Leonid Plyushch in the West—Alexandrov decried the "slanderous assertion" that dissidents are put in special psychiatric hospitals.[17] Soviet medicine, he noted, "guarantees that only the mentally deranged are subject to treatment, but it cannot guarantee that so-called dissidents are not among the mentally deranged." Furthermore, Alexandrov continued, as far as emigration is concerned, there has been a decline in the number of persons, especially Jews, leaving the Soviet Union; but this is due, he said, to a decline in the number of persons wishing to leave the Soviet Union and not to any restrictions imposed by the Soviet state. These "facts," he claimed, are "a convincing reply to all who hypocritically accuse the Soviet Union of failing to implement the third section of the Final Act of the Helsinki Agreement." The Soviet Union, Alexandrov stressed, "carefully observes all clauses of the Final Act," and accusations against it are "nothing but an attempt on the part of certain elements to camouflage their own numerous and crude violations of the accords reached in Helsinki."

The award of the Nobel Peace Prize to dissident scientist Andrei Sakharov appears to have been one of the major developments that prompted the Soviet authorities to step up this counter-offensive. The award was clearly an embarrassment to the Soviet leadership and put them in a difficult position in regard to allowing Sakharov to attend the award ceremony in Oslo since they could hardly grant a visa to Leonard Kantorovich, another Soviet scientist who had been awarded the prize and at the same time refuse a visa to Sakharov without calling attention to their own empty claims about the implementation of Basket Three. The final decision to refuse Sakharov a visa was justified on the grounds that he was privy to "state secrets" and that the refusal was for this reason entirely "in keeping with Soviet legislation." However true this may have been, few persons in the West could fail to recognize that it was a hollow excuse and an open admission of political weakness—one, moreover, that directly violated both the letter and the spirit of the Helsinki agreement.

One of the main elements of the Soviet counter-offensive in recent months has been an increasing emphasis on the fact that détente does not mean an end to the ideological struggle—a point that Brezhnev sought to make particularly clear during Giscard d'Estaing's trip to Moscow in October by openly rejecting the French President's call for "ideological détente." Whatever the state of Brezhnev's health at the time, it was clear from his response that French-Soviet relations had already caught a chill even before Brezhnev canceled his appointment with Giscard.

Another element of the Soviet counter-offensive that has taken on greater prominence lately has been the attacks made against the Western news media. While Radio Liberty and Radio Free Europe have been the main targets,[18] the Deutsche Welle and the BBC have also been subject to sharp criticism. In the case of RL and RFE, the aim has been to exploit the current antipathy towards the CIA—which has resulted from recent revelations of the agency's misdeeds—in order to

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discredit the radios, even though they are funded through appropriations from the US Congress. The recent, successful Soviet attempt to obtain the revocation of RFE's accreditation to the Winter Olympics in Innsbruck is indicative of this stepped-up campaign. As Secretary of State Henry Kissinger has emphasized, the revocation is a clear violation of the Helsinki agreement.[19] It also should be noted that the action establishes an ominous precedent.

Recent Changes in Soviet Internal Laws and Practices

Having outlined Soviet attitudes towards Basket Three and their evolution, let us return to the initial question posed at the outset of this paper: to what extent has the Soviet Union taken steps to implement the provisions contained in Basket Three? What concrete changes have occurred in Soviet practice as a result of Helsinki?

In the initial months following the conclusion of the conference, there was little evidence that the Soviet Union had begun to change any of its policies or practices in order to facilitate "a freer flow of people, information, and ideas" or expand cultural contacts, nor that it intended to do so. Indeed, just the opposite seemed true, as the decision to refuse Sakharov a visa to attend the Nobel Prize ceremony in Oslo illustrated. Moreover, Moscow reiterated on numerous occasions that it would implement the provisions of Basket Three only if they did not conflict with Soviet laws and customs and warned the West that Basket Three could not be used "to interfere" in Soviet internal affairs. In fact, Moscow's constant emphasis on the fact that the declaration of principles in the Final Act strictly prohibited outside interference in the internal affairs of other states seemed designed to disguise its own footdragging in regard to implementing many of the provisions.

In the last several months, however, Moscow has undertaken a number of measures aimed at demonstrating that it intends to comply:

Newspapers. On January 21 TASS declared that eighteen Western newspapers, among them *The New York Times, Frankfurter Allgemeine Zeitung,* and *Corriere della Sera* would go on sale in the Soviet Union some time in 1976; these, TASS stressed, were in addition to newspapers such as *Le Monde, The Times,* and *Neue Zuricher Zeitung,* which were already on sale in the Soviet Union. However, it should be noted that the latter papers are only available in small numbers—in the case of *Le Monde,* for instance, the number of copies available is about forty—and then only in tourist hotels where they are not on open display but hidden under the counter. Whether this will continue to be the practice with the eighteen other newspapers was not indicated by TASS, but past Soviet practice gives little encouragement in this regard. Nor does the fact that the TASS announcement was not printed in the Soviet papers.

Journalists. Helsinki has brought some moderate improvements in the working conditions for foreign journalists who represent a number of Western countries, including the United States and France. They have been granted multiple entry visas, allowing them to travel in and out of the Soviet Union more freely; also, as of March 1, Western journalists will no longer have to apply for a special permit if they wish to visit an area outside the restricted forty-kilometer limit. As is presently the case with diplomats, they will simply be required to give notice of their travel plans twenty-four to forty-eight hours in advance, specifying the reasons for their journey, their destination and exact route, their proposed means of transportation and any expected stopovers or breaks. However, since the state holds a monopoly on most facilities, the authorities can still prevent visitors from traveling to certain places, by exploiting technicalities such as lack of accommodations or unavailability of required means of transportation. On the whole, it would seem that openness in, and accessibility to news remains as difficult as before.

Exit Permits. Recently the Soviet Union has indicated a relaxation on its part in some of the rules and regulations related to emigration. According to Western sources, some of the measures taken so far have included:

1. reduction of the fee for obtaining an exit permit from 400 rubles ($540) to 300 rubles ($405).

2. relaxation of the requirement for a character reference from the applicant's supervisor and Party secretary at his place of work. This document was often difficult to obtain because applicants may have been dismissed from their jobs or hostile officials were unwilling to issue the document.

3. provision for review of cases every six months instead of ever year.

4. provision for appealing refusals within the state visa system.

There have also been unconfirmed reports that much of the paper work required for visas will be simplified and that the "knowledge of secrets act" which has blocked the emigration of many Jewish scientists to date, may be made more flexible.[20] However, the above-mentioned changes do not affect the 500 rubles ($675) fee charged for renunciation of Soviet citizenship by persons emigrating. Moreover, to date there has been little indication that more visas will be issued in general.[21]

The Soviet Union has also shown a greater willingness to allow a number of prominent dissidents such as Alexander Lunts, Leonid Piyushch, and Ernest Neizvestny to emigrate; this move seems to have been co-ordinated with the recent changes in emigration rules in an effort to give the appearance of complying with the Helsinki agreement. However, a number of other prominent émigrés—such as Benjamin Levich, the highest-ranking Soviet scientist ever to apply for an emigration visa, and Andrei Amalrik, author of the controversial essay *Will the U.S.S.R. Survive Until 1984?*—have been refused visas.

In addition to prominent dissidents who have been allowed to leave, there have been some Soviet citizens who have at first been refused visas and then later granted them. For instance, Helena Bonner, Sakharov's wife, was allowed to go to Italy after initially being refused a visa. Alexander Sokolov, a journalist who married an Austrian girl while she was studying in Moscow was finally allowed to leave after his case received a great deal of publicity in the West and after the personal intervention of Austrian Chancellor Bruno Kreisky. The wife of Boris Spassky, the Soviet chess champion, was also granted a visa after originally being turned down on a technicality. However, these are individual cases and can by no means be considered the general norm. But in each instance the persons involved were either well known or their cases had attracted considerable attention in the West, which testifies to the importance of Western public opinion and pressure in ensuring Soviet implementation of Basket Three.

It should also be noted that while the Soviet Union has begun to implement certain aspects of Basket Three in token compliance with the Helsinki agreement, it has also taken other steps that appear aimed, at least in part, at inhibiting emigration and making life more difficult for dissidents. One of the most notable of these was the introduction last November of a regulation regarding the receipt of money and gift remittances from abroad. Under the new regulations, which went into effect on December 22, 1975, it is no longer possible for benefactors abroad to transmit hard currency to Soviet citizens. (Up until December 22 Soviet citizens had been able to receive such remittances in the form of hard currency certificates redeemable in special *Vneshposyltorg* stores[22] accessible only to restricted clientele such as diplomats and high Party officials.) It will also no longer be possible for foreign benefactors to give Soviet citizens prepaid gifts of Soviet cars and appliances, etc. through such remittances. Instead, gifts of money will have to be received by Soviet citizens in rubles from the state bank of foreign trade at the official exchange rate. The Soviet Union has also introduced a new currency regulation that adds a thirty percent tax on foreign currency coming into the Soviet Union.

Those who will be hit hardest by the new rules are the dissidents and persons who have applied to emigrate; such people often find themselves fired from their jobs and are dependent upon gifts and donations from abroad in order to survive. The overall effect of these new measures will be to discourage people from applying for visas to emigrate and to make life more uncomfortable for them if they do apply.

HELSINKI AND BEYOND

Looking back over the last six months since the adjournment of the European Security Conference, it is hard to escape the conclusion regarding Soviet implementation of Basket Three, that the "harvest," as *The Economist* (January 31, 1976) aptly put it, is pretty meager. Despite a constant reiteration that it intends to implement the provisions of Basket Three, the Soviet Union has made very few genuine efforts to take steps towards this end. Moreover, in its public statements it has justified its testudinate approach by reviving a number of qualifying restrictions that the West had, through persistence and firmness, succeeded in eliminating from the Final Act. The overall effect of the resurrection of these restrictions has been to make the Helsinki document subordinate to Soviet laws and customs rather than to make Soviet practice or behavior conform to the standards set down in the Final Act itself.

Despite Soviet footdragging and evasion, however, some changes have occurred. They have come slowly and grudgingly, and by Western standards they have been far too few and limited; but they have nonetheless occurred. Moreover, it is clear from the increasingly defensive reaction of the Soviet Union in recent months that the Soviet leadership is under considerable pressure at least to give the appearance of carrying out the provisions of Basket Three. In other words, the leaders of the USSR clearly recognize that they cannot ignore the issue even if they cannot afford to go about fully implementing the provisions. Thus, at the very least, Helsinki has forced the Soviet Union to confront the problem of human rights more directly than heretofore, and the West has succeeded in ensuring that the question of human rights remains an integral part of the process of a relaxation in East-West tensions, even if all the provisions related to it have yet to be implemented.

For many in the East as well as the West, this may be small consolation. Their answer is likely to be that results—not tokenism—are what matter and that by this standard the Soviet Union is found culpable. Yet it would be wrong, as one of the Western delegates recently pointed out, to judge the results of the Helsinki conference by Western standards, however dedicated one may be to these and however dearly one believes in their universality.[23] The final Act was achieved by a consensus; this inevitably involved compromises and the inclusion of language so vague that it literally invites evasion. But the West, nevertheless, did succeed in wresting from the Soviet Union a com-

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mitment to respect certain norms that it can no longer easily disregard and that, even if implemented, only promise a partial improvement in the lives of the individual Soviet citizen.

The implementation of many of the provisions of Basket Three obviously poses many serious and objective problems for the Soviet leadership. It is unrealistic to expect the Soviet Union to implement many of these provisions overnight or even in six months. To do so would entail a major transformation of the Soviet system—an event that, however desirable it might be to many in the West, is unlikely to occur in the near future. Given the present nature of the Soviet system—the excessive centralization, the commitment of the present elite to an outmoded ideology increasingly at variance with the demands of a more interdependent international system, and the elite's fear of any change that would endanger or diminish its power—progress towards achieving a greater liberalization of Soviet society along the lines envisaged in the Helsinki document is bound to be slow and arduous. Change, if and when it comes, is most likely to be the result of a gradual process, a process of *kleine Schritte* (small steps), to use a phrase common in West German political circles some years ago. It is likely to come about, moreover, as a product of essentially internal processes, processes that the West can to some degree influence but can neither create nor control. The best it can do is to use Helsinki to nudge the Soviet Union in certain directions by firmly and persistently reminding Moscow both publicly and privately of the commitments it has undertaken in signing the Helsinki document.

This is likely to be a difficult and wearisome process, one that calls for patience, firmness, and an ability to accept a good deal of frustration. It is bound to be met with resistence and marred by occasional setbacks. But in the long run such a policy may meet with greater success than an all-or-nothing approach that seeks major changes immediately. To what degree the issue of human rights should be linked to other issues is a question to which there is no clear-cut answer; it will depend on the individual circumstances in each specific case. However, as a general principle—as Marshall Shulman has suggested—"the effective combination of private and group pressure with a formal government position of noninterference in Soviet internal affairs might have long-run advantages over an explicit and frontal government-sponsored challenge." [24]

While recognizing that to the extent changes envisaged in Basket Three of the Final Act occur, they are likely to come about as a result of a gradual process of small steps, it is vitally important for the West to continually demonstrate an unshakable commitment to the principle that improvements in the individual citizen's lot is a fundamental element of détente. A weakening of the West's commitment would not only imperil the long-range chances for the realization of human rights in the East, but could contribute to their erosion in the West. As Leo Labedz has rightly pointed out:

"If it does not defend its cultural values, if it fails to stand firm on the question of cultural freedom in general, the West will not only throw away the chance of the eventual evolution of the Communist régimes toward more civilised cultural standards, but will also gravely jeopardise the chances of these standards in the West." [25]

The leaders in the West ought to bear this steadily in mind as they look at Helsinki and beyond.

FOOTNOTES

[1] For a good discussion of the Soviet position on Basket Three during the negotiations, see Gerhard Henze, "Neue Aufgaben der Entspannungspolitik," *Europa Archiv*, 18/1975, pp. 567–577. The author was a member of the West German delegation to the Security Conference in Geneva.

[2] *Pravda*, December 22, 1972.

[3] Henze, *op. cit.*, p. 571.

[4] *Ibid.*, p. 573.

[5] *TASS*, in Russian, August 9, 1975; *Pravda*, August 8; August 10; and August 27, 1975.

[6] *Pravda*, August 1, 1975.

[7] *Pravda*, August 7, 1975.

[8] See, in particular, the *Pravda* editorial of August 3, 1975.

[9] *Pravda*, August 8, 1975. See also Brezhnev's speech to the summit which stressed the "historic significance" of the conference, (*Pravda*, August 1, 1975).

[10] *Izvestia*, August 5, 1975.

[11] In the last six months Radio Liberty's *Arkhiv Samizdata* has received more than fifty documents that refer to the Helsinki agreement and call on the Soviet government to implement the provisions contained in Basket Three. See also Peter Osnos in the *International Herald Tribune*, October 8, 1975, on Moscow's internal problems with the Helsinki agreement.

[12] September 3, 1975. An abridged version of the article was published in the *New York Times* on October 8, 1975.

[13] *Satsialisticheskaya industriya*, December 5, 1975.

[14] The full text of the Helsinki agreement was published in *Pravada* and *Izvestia* on August 2, 1975.

[15] *Izvestia*, August 16, 1975; *Radio Moscow*, in English to North America, November 5, 1975, 23:00 GMT.

[16] *Pravda*, December 10, 1975.

[17] For the text of Plyushch's press conference, see *Le Monde*, February 4, 1976.

[18] See in particular *Pravda*, January 15, January 30, and February 2, 1976; also, *Izvestia*, February 3, 1976.

[19] In a cable sent to Julian K. Roosevelt, the US member of the International Olympic Committee. See Henry Bradsher, *The Washington Star*, February 14, 1976.

[20] *The New York Times*, January 21, 1976.

[21] In 1974, for instance, 84,637 American tourists visited the USSR while 11,037 Soviet citizens visited the US (*Turist*, No. 10, 1975, p. 29). Most of the Soviet visitors to the US are believed to have been on official business as diplomats, commercial representatives, and exchange students (see RL 73/76, "Foreign Travel by Soviet Citizens," February 6, 1976).

[22] *Vneshposyltorg* is an agency of the Ministry of Foreign Trade that operates a network of hard currency and "certificate ruble" stores in which Soviet citizens holding "certificate rubles" may buy imported and other scarce goods at advantageous prices.

[23] Henze, *op. cit.*, p. 576.

[24] Marshall D. Shulman, "Toward a Western Philosophy of Coexistence," *Foreign Affairs*, October 1973, p. 56.

[25] See his excellent essay, "Shadow Over Helsinki," *Encounter*, June 1973, p. 88.

EXHIBIT 2

EXCERPTS FROM HELSINKI DECLARATION: "DECLARATION OF PRINCIPLES GUIDING RELATIONS BETWEEN PARTICIPATING STATES"

VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief—

The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.

They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.

Within this framework the participating States will recognize and respect the freedom of the individual to profess and practise, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

The participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere.

The participating States recognize the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation among themselves as among all States.

They will constantly respect these rights, and freedoms in their mutual relations and will endeavour jointly and separately, including in co-operation with the United Nations, to promote universal and effective respect for them.

They confirm the right of the individual to know and act upon his rights and duties in this field.

In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfil their obligations as set forth in the international declarations and agreements in this field, including inter alia the International Convenants on Human Rights, by which they may be bound.

COOPERATION IN HUMANITARIAN AND OTHER FIELDS (BASKET 3)

SECTION 1—"HUMAN CONTACTS"

Co-operation in Humanitarian and other fields

The participating States

Desiring to contribute to the strengthening of peace and understanding among peoples and to the spiritual enrichment of the human personality without distinction as to race, sex, language or religion.

Conscious that increased cultural and educational exchanges, broader dissemination of information, contacts between people, and the solution of humanitarian problems will contribute to the attainment of these aims,

Determined therefore to co-operate among themselves, irrespective of their political, economic and social systems, in order to create better conditions in the above fields, to develop and strengthen existing forms of co-operation and to work out new ways and means appropriate to these aims,

Convinced that this co-operation should take place in full respect for the principles guiding relations among participating States as set forth in the relevant document,

Have adopted the following:

1. Human contacts

The participating States

Considering the development of contacts to be an important element in the strengthening of friendly relations and trust among peoples,

Affirming, in relation to their present effort to improve conditions in this area, the importance they attach to humanitarian considerations,

Desiring in this spirit to develop, with the continuance of détente, further efforts to achieve continuing progress in this field,

And conscious that the question relevant hereto must be settled by the States concerned under mutually acceptable conditions,

Make it their aim to facilitate freer movement and contacts, individually and collectively, whether privately or officially, among persons, institutions and organiza-

tions of the participating States, and to contribute to the solution of the humanitarian problems that arise in that connexion.

Declare their readiness to these ends to take measures which they consider appropriate and to conclude agreements or arrangements among themselves, as may be needed, and

Express their intention now to proceed to the implementation of the following:

(a) Contacts and Regular Meetings on the Basis of Family Ties—

In order to promote further development of contacts on the basis of family ties the participating States will favourably consider applications for travel with the purpose of allowing persons to enter or leave their territory temporarily, and on a regular basis if desired, in order to visit members of their families.

Applications for temporary visits to meet members of their families will be dealt with without distinction as to the country of origin or destination: existing requirements for travel documents and visas will be applied in this spirit. The preparation and issue of such documents and visas will be effected within reasonable time limits: cases of urgent necessity—such as serious illness or death—will be given priority treatment. They will take such steps as may be necessary to ensure that the fees for official travel documents and visas are acceptable.

They confirm that the presentation of an application concerning contacts on the basis of family ties will not modify the rights and obligations of the applicant or of members of his family.

(b) Reunification of Families—

The participating States will deal in a positive and humanitarian spirit with the applications of persons who wish to be reunited with members of their family, with special attention being given to requests of an urgent character—such as requests submitted by persons who are ill or old.

They will deal with applications in this field as expeditiously as possible.

They will lower where necessary the fees charged in connexion with these applications to ensure that they are at a moderate level.

Applications for the purpose of family reunification which are not granted may be renewed at the appropriate level and will be reconsidered at reasonably short intervals by the authorities of the country of residence or destination, whichever is concerned; under such circumstances fees will be charged only when applications are granted.

Persons whose applications for family reunification are granted may bring with them or ship their household and personal effects; to this end the participating States will use all possibilities provided by existing regulations.

Until members of the same family are reunited meetings and contacts between them may take place in accordance with the modalities for contacts on the basis of family ties.

The participating States will support the efforts of Red Cross and Red Crescent Societies concerned with the problems of family reunification.

They confirm that the presentation of an application concerning family reunification will not modify the rights and obligations of the applicant or of members of his family.

The receiving participating State will take appropriate care with regard to employment for persons from other participating States who take up permanent residence in that State in connexion with family reunification with its citizens and see that they are afforded opportunities equal to those enjoyed by its own citizens for education, medical assistance and social security.

(c) Marriage between Citizens of Different States—

The participating States will examine favourably and on the basis of humanitarian considerations requests for exit or entry permits from persons who have decided to marry a citizen from another participating State.

The processing and issuing of the documents required for the above purposes and for the marriage will be in accordance with the provisions accepted for family reunification.

In dealing with requests from couples from different participating States, once married, to enable them and the minor children of their marriage to transfer their permanent residence to a State in which either one is normally a resident, the participating States will also apply the provisions accepted for family reunification.

(d) Travel for Personal or Professional Reasons—

The participating States intend to facilitate wider travel by their citizens for personal or professional reasons and to this end they intend in particular:

—gradually to simplify and to administer flexibly the procedures for exit and entry;

—to ease regulations concerning movement of citizens from the other participating States in their territory, with due regard to security requirements.

They will endeavour gradually to lower, where necessary, the fees for visas and official travel documents.

They intend to consider, as necessary, means—including, in so far as appropriate, the conclusion of multilateral or bilateral consular conventions or other relevant agreements or understandings—for the improvement of arrangements to provide consular services, including legal and consular assistance.

They confirm that religious faiths, institutions and organizations, practising within the constitutional framework of the participating States, and their representatives can, in the field of their activities, have contracts and meetings among themselves and exchange information.

(e) Improvement of Conditions for Tourism on and Individual or Collective Basis—

The participating States consider that tourism contributes to a fuller knowledge of the life, culture and history of other countries, to the growth of understanding among peoples, to the improvement of contracts and to the broader use of leisure. They intend to promote the development of tourism, on an individual or collective basis, and, in particular, they intend:

To promote visits to their respective countries by encouraging the provision of appropriate facilities and the simplification and expediting of necessary formalities relating to such visits;

To increase, on the basis of appropriate agreements or arrangements where necessary, co-operation in the development of tourism, in particular, by considering bilaterally possible ways to increase information relating to travel to other countries and to the reception and service of tourists, and other related questions of mutual interest.

(f) Meetings among Young People—

The participating States intend to further the development of contacts and exchanges among young people by encouraging:

Increased exchanges and contacts on a short or long term basis among young people working, training or undergoing education through bilateral or multilateral agreements or regular programmes in all cases where it is possible;

Study by their youth organizations of the question of possible agreements relating to frameworks of multilateral youth co-operation;

Agreements or regular programmes relating to the organization of exchanges of students, of international youth seminars, of courses of professional training and foreign language study;

The further development of youth tourism and the provision to this end of appropriate facilities;

The development, where possible, of exchanges, contacts and co-operation on a bilateral or multilateral basis between their organizations which represent wide circles of young people working, training or undergoing education;

Awareness among youth of the importance of developing mutual understanding and of strengthening friendly relations and confidence among peoples.

(g) Sport—

In order to expand existing links and co-operation in the field of sport the participating States will encourage contacts and exchanges of this kind, including sports meetings and competitions of all sorts, on the basis of the established international rules, regulations and practice.

(h) Expansion of Contacts—

By way of further developing contacts among governmental institutions and non-governmental organizations and associations, including women's organizations, the participating States will facilitate the convening of meetings as well as travel by delegations, groups and individuals.

Mr. CASE. If the Senator from Minnesota will permit, I yield to the Senator from Rhode Island who contributed so much to the development of the bill.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. PELL. Mr. President, I congratulate the Senator from New Jersey on this bill which goes so very far to translate the fine words and bold promises and prospects that came out of the Helsinki Conference into actual actions.

I know when one travels in this part of the world, when one talks to Eastern and Central Europeans they adopt a somewhat jaundiced view of the Helsinki Conference. They wonder if those words will result in any change in their own way of life, whether it is more likely there will be an exchange of journalists, whether a daughter will more likely be able to go and see her aged parents, whether children will be able to rejoin their parents. This is what the so-called Third Basket has held out to the peoples in Europe, and I would hope that with the passage of this bill establishing a Monitoring Commission, the Commission which will receive a report twice a year from the President on how far the Conference's words have been translated into events and also will serve as a spur to make sure that on the American side we follow up as much as possible the openings that there are behind the curtain to move ahead in this way.

For this reason, I think this Commission will serve a very real purpose and will help many unfortunate people who are now having a pretty miserable time of it in Eastern Europe.

Many fine statements were included in the Helsinki Final Act, but its ultimate significance will depend on the degree to which all of its provisions are implemented by all the signatories. Although the Final Act does not have the force of law and its implementation is voluntary, there is nevertheless a strong moral obligation on the signatories to translate its promises into reality.

For the United States and its NATO allies, the Final Act contains important statements of Western principles and ideas, including provisions in the humanitarian and information fields. So far, however, little action has been taken by the Soviet Union and its Warsaw Pact allies which could be described as implementation of the Final Act.

While there are no indications that the Warsaw Pact countries plan to ignore those provisions of the Final Act which are of particular importance to the West, it is clear that they intended to be very selective as regards degree, method, and timing of implication. Furthermore, there are differing views between East and West as to what the various provisions of the Final Act mean in terms of implementation.

It is important, therefore, that we in this country have a mechanism to evaluate the actions of the East in terms of our concept of what the Final Act means and what we believe the Warsaw Pact countries have agreed to do. Such a mechanism should be as open as possible so that the American people can see that their Government is determined to insure that the Final Act is not a cynically concocted collection of flowery phrases but is a guide to concrete action in breaking down the barriers between East and West.

The Commission which the distinguished Senator from New Jersey has proposed to be established would provide such a mechanism, and I am proud to be a cosponsor of his proposal. The Foreign Relations Committee has supported this proposal and agreed to an amendment of mine to strengthen the Commission by expanding its charter to include, along with monitoring compliance with the Final Act, the encouragement of American programs to take advantage of the provisions relating to cooperation in the economic, humanitarian, and information fields.

My amendment would also require the President to submit a semiannual report to the Commission providing information on actions reflecting compliance with or violation of the provisions of the Final Act, and giving a description of present or planned programs of the U.S. Government and private organizations to take advantage of the provisions of the Final Act in the fields I have just mentioned.

My amendment is designed to insure that the United States does not take a passive attitude toward implementation of the Final Act but takes the initiative in developing programs which will constitute a test of whether the Helsinki Act means what it says, particularly in the humanitarian field.

I, therefore, urge that S. 2679 with my amendment be agreed to.

Mr. CASE. Mr. President, I yield to the Senator from New York, who is a cosponsor of the bill and who has an amendment.

Mr. BUCKLEY. Mr. President, I congratulate the Senator from New Jersey for his initiative in bringing this matter before the Senate. I believe that the establishment of the proposed commission is something of signal importance.

Many of us were highly skeptical about the Helsinki Accords because we felt that, in practice, the Soviet bloc would utilize those provisions that tended to consolidate their grip on the Warsaw Pact nations while ignoring those features that inconvenience a totalitarian system.

One of the things that impressed me very early on, when representatives of Western Europe first met in Helsinki to outline an agenda, was the insistance that if we are truly concerned with establishing conditions for peace that extend through the years, this can be achieved only by somehow or other loosening the Communist system so that there can be some sort of intercourse—people to people and not just government to government.

Therefore, it seems to me that Basket III is essential to the viability of the Helsinki Accords, and it is therefore incumbent upon us, as we have approved this agreement, to see to it that those portions that are most important to the West—and I think most important to peace—be lived up to.

It is an extremely important step forward. I believe that the people of the United States entitled to month-by-month information on compliance. The very fact that this body will express its concern in this matter may bring extremely important pressures to bear on the countries of Eastern Europe and on the Soviet Union to liberalize their system and to avoid such intolerable practices as dictating that Radio Free Europe not be able to report the Olympics, and so forth.

Mr. President, yesterday, I had the opportunity to present testimony on this matter before the House Subcommittee on International Political and Military Affairs; and I ask unanimous consent that this statement be printed in the RECORD, as it will amplify the points I have made.

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

SENATOR JAMES L. BUCKLEY, TESTIMONY BEFORE THE HOUSE SUBCOMMITTEE ON INTERNATIONAL POLITICAL AND MILITARY AFFAIRS, MAY 4, 1976

Mr. Chairman, I wish to thank you and the members of the Committee for the opportunity to testify with regard to this important legislation. I would also like to extend my appreciation to Congresswoman Fenwick for her cooperation in this matter. I understand the time constraints with which you are dealing and will attempt to keep my remarks brief.

The Final Act of the Conference on Security and Cooperation in Europe signed last August is another step in our policy of detente with the Soviet Union, and it must be viewed in that context. The goal of this policy is to ease the tensions that have existed in the past and to encourage cooperation in many areas, especially in resolving disputes. In other words, this policy is to move U.S.-Soviet relations from that of confrontation to cooperation. The Final Act must thus be judged in this context.

Mr. Chairman, a policy of cooperation between East and West, between the Soviet Union and the United States is important and needed, and I endorse such a policy. My concern lies in whether the Soviet Union and its satellites in Eastern Europe accept this policy with the same interpretation that we do; whether the Soviet Union is prepared to change its policy of confrontation; or whether detente and the Final Act are just other means for continuing the policies of the past.

We have all heard much criticism of the U.S. policy of detente. It has been pictured as a one-way street where the Soviet Union is the recipient of U.S. concessions without any concessions on its part. There is no doubt that there have been some advances in U.S.-Soviet relations. But the question of whether sources of tensions have really been eased is still left unanswered. Whether any substantial steps toward cooperation have been made is still in question. Whether the Soviet Union has really changed its policy of hostility toward the West and the United States is still in doubt.

The events of the past two years bring into question this policy of detente, of which the Helsinki Accords are a part. Even as increased contact between East and West was taking place, events contrary to cooperation were occurring. Vietnam and Cambodia were conquered as a consequence of Soviet military aid. With Soviet support, Communists sought to take over the government of Portugal; Cuban troops were airlifted by the Soviets and Soviet military aid was provided to Communist forces in Angola. These events do not ease, but rather increase international tensions and the risk of conflict.

The policy of detente has hardly been successful in these cases. And the policy of detente is an issue in discussing the Final Act because it was in the spirit of detente that the United States became a signatory to this agreement. The success or failure of the policy of detente gives us an indication of whether we can expect the Helsinki Accords to represent a step forward or backwards on the road to peace. The degree of compliance with or violation of agreements under the policy of detente by the Soviet Union gives us an indication of the degree of compliance with or violation of the articles of the Final Act which we can reasonably expect from the Soviet Union and Eastern European countries.

Mr. Chairman, we already have some evidence of the degree of seriousness with which the Soviet Union is approaching the articles of the Helsinki Accords. While the goal of the Final Act and detente is to avoid international conflict, the Soviet Union continues to support revolutionary activity in Western Europe, Africa, Latin America, and Asia.

While the Final Act calls for a free flow of information and ideas between East and West, the Soviet Union has attempted to decrease rather than increase this flow. The Soviet Union and its East European satellites exerted pressure on the International Olympic Committee to rescind the accreditation of Radio Free Europe to cover the Winter Olympics. That action was not in the spirit of the Olympics, detente, or the Helsinki Accords. Rather, it was a direct attack on the freedom of the press and an attempt to institute on an international scale the type of censorship that is prevelant throughout the Soviet Union and Eastern Europe. This attack on the freedom of the press gives us cause for alarm for the future of press coverage of international events. The Summer Olympics in Montreal and the Olympics in the Soviet Union four years from now serve as useful examples.

The Helsinki Accords specifically call for cooperation in the reunification of families, the lessening of restrictions on marriages between citizens of different nations, and the easing of restrictions on emigration. I am very concerned that these provisions of the Final Act be implemented by all the signatories.

Yet hardly a day passes when I do not receive letters from constituents whose families are still in the Soviet Union or Eastern Europe. There have been repeated attempts to obtain exist visas for these families so that

they can be united with their loved ones in the United States. And there have been repeated rejections of these applications for exit visas. For the record I am submitting a partial list of names of individuals who have had their applications for exit visas rejected. I can also state that my experience has been that Soviet and East European authorities have generally not been cooperative in these matters.

Instead of an easing of emigration policies, I find evidence that people in the Soviet Union who apply for exit visas are subjected to harassment, dismissal from employment, and even arrests. This is not in the spirit or the letter of the Helsinki Accords.

My remarks today do not even touch on the violation of human rights that is so widespread throughout the Soviet Union. The evidence in this regard speaks for itself.

I support the goals of Basket III, incorporated in the Final Act of the Conference on Security and Cooperation in Europe, but I feel that the American people must be given some assurance that the Helsinki Accords will be observed by all the signatories. I am concerned that the Final Act not become, as detente has become, a one-way street in which the benefits of increased trade and technology flow to the Soviet Union without any concessions on their part to the very factors about their regimes which give rise to suspicion in the first place.

It is for this reason that I feel it is necessary for the Congress to monitor those acts of the signatories of the Final Act which reflect compliance with or violation of it. The establishment of a Commission on Security and Cooperation in Europe is the best means to perform that monitoring function.

I have heard proposals that this same purpose could be achieved through alternative means, such as the use of existing Congressional committees. As a practical matter I think that that course would be ineffective in this instance. The proposed Commission is important in that its sole function would be to monitor the Soviet Union's compliance with the Final Act. The many other obligations of a Congressional Committee, however energetic, would divert attention from this critical task.

Furthermore, by involving the Executive Branch in this Commission, we would be able to utilize the valuable information and expertise lodged in the Departments of State, Defense, and Commerce.

Lastly, the creation of this Commission would stress the importance with which the Congress views compliance with the Helsinki Accords; and this in itself will create pressures for compliance with its humanitarian provisions by the Eastern bloc.

For all these reasons, I support the legislation in its present form and I ask the Committee to act favorably on it.

Once again, Mr. Chairman, I thank you for allowing me to present my views on this important legislation.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc.

The PRESIDING OFFICER. The question is on agreeing to the committee amendments en bloc.

The committee amendments were agreed to en bloc.

Mr. BUCKLEY. Mr. President, at this time, I offer an amendment which I have discussed with the sponsors of the bill, and I send it to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

At the end of the bill, insert the following:

SEC. 7. There is authorized to be appropriated to the Commission for each fiscal year and to remain available until expended, $250,000 for the purpose of carrying out the provisions of this act.

Mr. BUCKLEY. Mr. President, I believe that the amendment speaks for itself. It is impossible to do the work we envisage unless we have minimum staffing. I believe this figure is reasonable and will give the Commission what it requires in order to function.

Mr. HUMPHREY. Mr. President, we have discussed this matter with the distinguished Senator from New York. I believe it is very much needed. As a matter of fact, it is what will give teeth to the Commission.

I commend the Senator from New York for his statement—namely, that we need to monitor what is taking place under the so-called Helsinki accords, particularly as it relates to the freedom of movement and freedom of communication, because many people do look upon these accords as but window dressing and to the Soviet advantage. It seems to me that we should hold their feet to the fire, so to speak. We should constantly bring to the attention of the United States and to the people of the world what progress, if any, is being made under these accords and what effect these accords are having upon human rights and human relations.

The Senator's statement was extraordinarily clear and helpful, and I wish to be privileged to associate myself with him.

On behalf of the subcommittee and the committee—we discussed this matter with the chairman of the committee and the members of the committee—we accept the Buckley amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. HUMPHREY. Third reading, Mr. President.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2679

An act to establish a Commission on Security and Cooperation in Europe

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is established the Commission on Security and Cooperation in Europe (hereafter in this Act referred to as the "Commission").

SEC. 2. The Commission is authorized and directed to monitor the acts of the signatories which reflect compliance with *or violation of* the articles of the Final Act of the Conference on Security and Cooperation in Europe, with particular regard to the provisions relating to Cooperation in Humanitarian Fields. The Commission is further authorized and directed to monitor and encourage the development of programs and activities of the United States Government and private organizations with a view toward taking advantage of the provisions of the Final Act to expand East-West economic cooperation and a greater interchange of people and ideas between East and West.

SEC. 3. The Commission shall be composed of eleven members as follows:

(1) Four Members of the House of Representatives appointed by the Speaker of the House of Representatives. Two members shall be selected from the majority party and two shall be selected, after consultation with the minority leader of the House, from the minority party. The Speaker shall designate one of the House members as chairman.

(2) Four Members of the Senate appointed by the President of the Senate. Two members shall be selected from the majority party and two shall be selected, after consultation with the minority leader of the Senate, from the minority party.

(3) One member of the Department of State appointed by the President of the United States.

(4) One member of the Defense Department appointed by the President of the United States.

(5) One member of the Commerce Department appointed by the President of the United States.

SEC. 4. In carrying out this Act, the Commission may require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as it deems necessary. Subpenas may be issued over the signature of the Chairman of the Commission or any member designated by him, and may be served by any person designated by the Chairman of such member. The Chairman of the Commission, or any member designated by him, may administer oaths to any witness.

SEC. 5. In order to assist the Commission in carrying out its duties, the President shall submit to the Commission a semiannual report, the first one to be submitted six months after the date of enactment of this Act, which shall include (1) a detailed survey of actions by the signatories of the Final Act reflecting compliance with or violation of the provisions of the Final Act, and (2) a listing and description of present or planned programs and activities of the appropriate agencies of the executive branch and private organizations aimed at taking advantage of the provisions of the Final Act to expand East-West economic cooperation and to promote a greater interchange of people and ideas between East and West.

SEC. 6. The Commission is authorized and directed to report to the House of Representatives and the Senate with respect to the matters covered by this Act on a periodic basis, and to provide information to Members of the House and Senate as requested.

SEC. 7. There is authorized to be appropriated to the Commission for each fiscal year and to remain available until expended $250,000 for the purpose of carrying out the provisions of this Act.

Mr. HUMPHREY. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. CASE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HUMPHREY. Mr. President, I compliment the Senator from New Jersey and thank the Senator from New York and the able and diligent Senators from Alabama and Rhode Island.

Mr. CASE. Mr. President, on behalf of all those named, I thank the Senator from Minnesota for his sparkling performance today.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second legislative clerk proceeded to call the roll.

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

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

ORDER FOR ADJOURNMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 12 o'clock noon tomorrow.

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

ORDER FOR RECOGNITION OF SENATOR HARRY F. BYRD, JR. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of the orders for recognition of Senators previously entered, Mr. HARRY F. BYRD, JR., be recognized for not to exceed 15 minutes.

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

ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the conclusion of the order for the recognition of Senators tomorrow, there be a period for the transaction of routine morning business of not to exceed 15 minutes, with statements limited therein to 5 minutes each.

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

ASIAN DEVELOPMENT FUND

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar Order No. 731, with the understanding that there be no action taken thereon today.

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

The legislative clerk read as follows:

A bill (S. 3103) to provide for increased participation by the United States in the Asian Development Fund.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia.

There being no objection, the Senate proceeded to consider the bill.

ORDER FOR CONSIDERATION OF S. 3103 TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, following the conclusion of routine morning business tomorrow, the unfinished business, S. 3103, a bill to provide for increased participation by the United States in the Asian Development Fund, be called up for action thereon.

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

PROGRAM

Mr. ROBERT C. BYRD. The Senate will convene at 12 noon tomorrow. After the two leaders or their designees have been recognized under the standing order, the following Senators will be recognized, each for not to exceed 15 minutes and in the order stated: Senators PROXMIRE, GOLDWATER, CULVER, MANSFIELD, and HARRY F. BYRD, Jr.; after which there will be a period for the transaction of routine morning business of not to exceed 15 minutes with statements limited to 5 minutes each; at the conclusion of which the Senate will resume the consideration of the then unfinished business, S. 3103, a bill to provide for increased participation by the United States in the Asian Development Fund. Rollcall votes are expected thereon.

ADJOURNMENT

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until the hour of 12 noon tomorrow.

The motion was agreed to and; at 4:07 p.m., the Senate adjourned until tomorrow, Thursday, May 6, 1976, at 12 noon.

NOMINATIONS

Executive nomination received by the Senate May 5, 1976:

NATIONAL CENTER FOR PRODUCTIVITY AND QUALITY OF WORKING LIFE

George Henry Kuper, of the District of Columbia, to be Executive Director of the National Center for Productivity and Quality of Working Life (new position).

EXTENSIONS OF REMARKS

PROMINENT CHICAGO ENTERTAINER NOMINATED FOR THE MUSIC HALL OF FAME

HON. JOHN G. FARY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 5, 1976

Mr. FARY. Mr. Speaker, Mr. Joseph "Pat" Paterek has been nominated by the Polish Roman Catholic Union of Chicago for the Music Hall of Fame, after 40 years of entertaining in radio, television, and concerts throughout the world.

Mr. Paterek will be honored at a banquet in Chicago on May 9, 1976 when he will receive a "Mr. Personality" award.

I have followed Joe "Pat" Paterek's career in the entertainment world and the great contributions he has given to the people of Chicago and I am happy to realize that his exceptional talents are now being recognized.

I concur with this nomination, and would like to present this brief biography of Joseph "Pat" Paterek:

BIOGRAPHY OF JOSEPH "PAT" PATEREK

Joe "Pat" Paterek was born on May 21, 1919 in Chicago and was one of eight children born to Joseph and Mary Paterek. Joe's father was Slovak and his mother was of Polish origin. Joe Pat attended the following schools—St. Pius, American Aircraft Institute and Midwestern Conservatory of Music and he graduated with high honors.

In 1937, Joe met his bride-to-be, Irene Desecki, while playing at a picnic at a small grove on Archer Avenue. They were married on Thanksgiving Day, November 26, 1942.

Three months after being married, Uncle Sam pointed his finger at Joe and he entered the Army Air Corps in March 1943. He served various branches of service. He took his basic training at Keesler Air Force Base in Biloxi, Mississippi and was assigned to a special unit of the Army Air Force. Joe played shows, radio programs, and many memorable engagements at Biloxi, Mississippi; Kingman, Arizona; Bakersfield, California; and Long Beach, California, entertaining the G.I.'s and civilians in many radio shows, theatres, service clubs, and U.S.O. shows. While in service, Joe made many acquaintances with stars of screen, radio, and now television.

After Joe's discharge in April, 1946, he enrolled at the Midwestern Conservatory of Music under the G.I. Bill and studied Accordion, Piano, Voice, Harmony, History of Music, Conducting, Ear Training, Orchestration, and Arranging.

In 1946, Joe started a new orchestra and played his first engagement at the Pulaski Ballroom with a ten piece band for the 18th Street Business Men's Association.

In 1947, Joe and Irene Paterek became the proud parents of a baby girl which they named Joan Marie.

In 1958, Joe Pat was on tour to Europe which was sponsored by Station WOPA and John Zola. They visited Shannon and Dublin, Ireland; Paris, France; Berlin, Warsaw, Krakow and Zakopany.

During the past years Joe Pat has played programs for Sig Sackowicz, Rudy Orisek, Junior Zielinski, John (Zola) Pszczola, Chet Gulinski, Chet Shafer, Ed Oskoerko, Uncle Henry Cukierka, John Baski—just to mention a few.

Ballroom engagements included the Aragon, Trianon, Merry Gardens, Riverview Park, Crystal Palace in Paw Paw Lake, Michigan; Peplin Hall in Mosinee, Wisconsin; and the Concord in the Catskill Mountains, New York.

Hotel engagements were the Edgewater Beach, Palmer House, La Salle, Sherman House, Bismarck, Conrad Hilton, Pick Congress, Morrison and others.

Country Clubs included the Chevy Chase, Midwest, Evergreen Park, Cog Hill, Bunker Hill, and Elmhurst.

Through the years Joe has played at many hospitals such as Hines, Vaughn, Oak Forest, Great Lakes, Saint Joseph's and many Senior Citizen's Homes.

Also, Joe was invited by the entertainment director for a Presidential Inauguration to participate in a show of many ethnic backgrounds.

Joe and his International Polka Stars played the Polish American Congress Man of the Year Award banquet held in December